# *HOLLOWAY V. UNITED STATES*: THE UNITED STATES SUPREME COURT EXAMINES "CONDITIONAL INTENT" IN THE ANTI CAR THEFT ACT OF 1992

For more than one hundred years, the Due Process Clause[1] of the Fourteenth Amendment has provided the framework that compels the government to prove every element of a charged crime beyond a reasonable doubt.[2] American criminal law has long

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[1] *See* U.S. CONST. amend. V. The Due Process Clause provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." *Id.* The Due Process Clause of the Fifth Amendment, however, is applicable only to the federal government. *See* LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW § 10-7, at 663 (2d ed. 1988). *But see* U.S. CONST. amend. XIV, § 1 (The Due Process Clause of the Fourteenth Amendment binds the states: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."). Due process is "a principle basic to our society." Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring). The Due Process Clause incorporates both procedural and substantive due process rights. *See generally* TRIBE, *supra*, §§ 10 & 15. Procedural due process, as guaranteed by both the Fifth and Fourteenth Amendments, addresses the requirements of notice and the opportunity to be heard in the deprivation of life, liberty, or property. *See* BLACK'S LAW DICTIONARY 1203 (6th ed. 1990). Therefore, procedural due process essentially "guarantee[s] those procedures which are required for the 'protection of ultimate decency in a civilized society.'" TRIBE, *supra*, § 10-8, at 678 (quoting Adamson v. California, 332 U.S. 46, 61 (1947) (Frankfurter, J., concurring)). Conversely, substantive due process requires that legislation be reasonable, fair in content, and advance a legitimate governmental objective. *See* BLACK'S LAW DICTIONARY 1429 (6th ed. 1990). Substantive due process involves those rights not explicitly delineated by the United States Constitution itself, but that the Court nevertheless has deemed fundamental. *See* Rosalie Berger Levinson, *Protection Against Government Abuse of Power: Has the Court Taken the Substance Out of Substantive Due Process*, 16 U. DAYTON L. REV. 313, 313-14 (1991). Due process, in the criminal context, protects the interests of a defendant's right to a fair trial. *See* TRIBE, *supra*, § 10-8, at 683-84; *see also* Duncan v. Louisiana, 391 U.S. 145, 149 (1968) (holding that a right to jury trial is "fundamental to the American scheme of justice"). Due process is unjustly disregarded when an individual is divested of liberty "'on a record lacking any relevant evidence as to a crucial element of the offense charged.'" Vachon v. New Hampshire, 414 U.S. 478, 480 (1974) (quoting Harris v. United States, 404 U.S. 1232, 1233 (1971) (Douglas, J., in chambers)).

[2] *See* Donald A. Dripps, *The Constitutional Status of the Reasonable Doubt Rule*, 75 CAL. L. REV. 1665, 1665 (1987); *see also In re* Winship, 397 U.S. 358, 364 (1970) (granting constitutional status to the reasonable doubt standard under principles of due process). Although the *Winship* Court constitutionalized the standard in 1970, the notion of "reasonable doubt" has been perpetuated by American courts since at least 1793. *See* Jessica N. Cohen, *The Reasonable Doubt Jury Instruction: Giving Meaning*

embraced the fundamental principle that the state may procure an accused's conviction only if the accused has committed the wrongful act with a culpable mental state.[5] Indeed, crimes bearing the label

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*to a Critical Concept*, 22 AM. J. CRIM. L. 677, 677 (1995) (observing that, in *State v. Wilson*, 1 N.J.L. 502, 506 (1793), a New Jersey judge instructed the jurors "to follow the 'human rule' and acquit the defendant if they had 'reasonable doubts' about his guilt"). The reasonable doubt standard prohibits any device that effectively shifts the burden of confuting any substantive element of the charged crime to the accused. *See* JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW § 13.4(b), at 520 (5th ed. 1995). Moreover, the *Winship* Court specified certain interests that the standard protects. *See Winship*, 397 U.S. at 363-64. First, the Court noted the inherent disadvantage that would be tantamount to a denial of "fundamental fairness, if [the defendant] could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case." *Id.* at 363. Second, the Court acknowledged the profound societal values that stress the importance of the "good name and freedom of every individual [and thus] should not condemn a man for commission of a crime when there is reasonable doubt about his guilt." *Id.* at 363-64. Finally, the Court recognized that the community must have confidence in, and respect for, the applications of American criminal law. *See id.* at 364. To this end, the Court declared that "[i]t is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned." *Id.*

[5] *See* Deborah M. Weiss, Note, *Scope, Mistake, and Impossibility: The Philosophy of Language and Problems of Mens Rea*, 83 COLUM. L. REV. 1029, 1030 (1983). Common-law crimes, at least from the seventeenth century, have required not only the commission of the act, but also the existence of mens rea. *See* J.W.C. Turner, *The Mental Element in Crimes at Common Law*, 6 CAMBRIDGE L.J. 31, 35 (1938); *see also* BLACK'S LAW DICTIONARY 985 (6th ed. 1990) (defining "mens rea" as "a guilty mind; a guilty or wrongful purpose; a criminal intent"). A strict liability crime, however, does not require the accused to possess a particular mental state. *See* 1 WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., SUBSTANTIVE CRIMINAL LAW § 3.8, at 340 (1986) [hereinafter LAFAVE & SCOTT, SUBSTANTIVE CRIMINAL LAW]. Generally, strict liability crimes do not warrant the imposition of harsh penalties, such as prison sentences. *See id.* at 340-41. Crimes of strict liability are defined as "[u]nlawful acts whose elements do not contain the need for criminal intent or *mens rea*." BLACK'S LAW DICTIONARY 1422 (6th ed. 1990) (emphasis in original); *see also* Kenneth W. Simons, *Rethinking Mental States*, 72 B.U. L. REV. 463, 463 (1992) (observing that the notion of strict liability tolerates the absence of a culpable mental state). In a broad sense, strict liability crimes involve "acts that endanger the public welfare, such as illegal dumping of toxic wastes." BLACK'S LAW DICTIONARY 1422 (6th ed. 1990) (citation omitted). Culpability, on the other hand, "requires a showing that [the criminal] acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense." BLACK'S LAW DICTIONARY 379 (6th ed. 1990) (citation omitted). Accordingly, the most serious culpable mental state is one founded on purpose or intention, followed by knowledge, recklessness, and lastly, negligence. *See* Simons, *supra*, at 463. The characterization of the differing culpable states and their respective levels of severity is significant because "deeply ingrained in our legal tradition is the idea that the more purposeful is the criminal conduct, the more serious is the offense, and therefore, the more severely it ought to be punished." Phyllis L. Crocker, *Concepts of Culpability and Deathworthiness: Differentiating Between Guilt and Punishment in Death Penalty Cases*, 66 FORDHAM L. REV. 21, 39-40 (1997) (citation omitted).

"specific intent"[4] — also referred to as mens rea[5] — necessitate a "knowing" or "purposeful" state of mind.[6] At the core of the concept of purposeful intent is the implicit understanding that one's purpose is fulfilled even when that purpose is merely conditional.[7] Recently, in *Holloway v. United States*,[8] the United States Supreme Court held that the government could satisfy the "specific intent" requirement of

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[4] *See* BLACK'S LAW DICTIONARY 810 (6th ed. 1990). Generally, specific intent is defined as "the intent to accomplish the precise act which the law prohibits." *Id.*

[5] *See* WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., HANDBOOK ON CRIMINAL LAW § 28, at 201 (1972) [hereinafter LAFAVE & SCOTT, HANDBOOK ON CRIMINAL LAW]. Except for strict liability crimes, some sort of discernible mental state is generally viewed as a precondition to guilt. *See id.*

[6] *See* JOHN KAPLAN ET AL., CRIMINAL LAW 235 (3d ed. 1996) [hereinafter CRIMINAL LAW]. The Model Penal Code, in essence, has done away with the label "specific intent" and has replaced it with the terms "knowingly" and "purposely." *See* MODEL PENAL CODE § 2.02(2)(a)(i), (b)(i) (1985) (defining "knowingly" as a person's awareness and "purposely" as a person's conscious object). "General intent" crimes, conversely, implicate the much broader notion of merely intending to commit an act that is prohibited by law. *See* BLACK'S LAW DICTIONARY 810 (6th ed. 1990). Typically, general intent crimes alleviate the government's burden of proving that the accused intended to cause the precise harm or result that occurred. *See id.* Sometimes, general intent is referred to in the same context as "criminal intent." *See* LAFAVE & SCOTT, HANDBOOK ON CRIMINAL LAW, *supra* note 5, § 28, at 201. In that regard, criminal intent, as well as general intent, pertain to the more generalized criminal mental states of negligence or recklessness. *See id.* The Model Penal Code, as with "special intent," has done away with the phrase "general intent" in favor of the terms "recklessly" and "negligently." *See* MODEL PENAL CODE § 2.02(2)(c), (d) (1985). "Recklessly" is defined as when a person "consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct." *Id.* § 2.02(2)(c). The Code defines "negligently" as when a person "should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct." *Id.* § 2.02(2)(d).

[7] *See* MODEL PENAL CODE AND COMMENTARIES § 2.02(6) cmt. 8 (Official Draft 1962 & rev. cmts. 1985). Model Penal Code § 2.02(6) provides:

> Requirement of Purpose Satisfied if Purpose Is Conditional. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.

MODEL PENAL CODE § 2.02(6) (1985). To illustrate, "it is no less a burglary if the defendant's purpose was to steal only if no one was at home or if he found the object he sought." MODEL PENAL CODE AND COMMENTARIES § 2.02(6), cmt. 8 (Official Draft 1962 & rev. cmts. 1985). In this context, the condition does not negate the evil that the statute defining "burglary" was designed to control, regardless of whether the condition occurred or failed. *See id.* Alternatively, "it would not be an assault with the intent to rape, if the defendant's purpose was to accomplish the sexual relation only if the mature victim consented; the condition negatives the evil with which the law has been framed to deal." *Id.* If, however, the defendant's purpose was to force himself upon her in the event that she resisted, then he would be guilty of an assault with the intent to rape. *See id.*

[8] 119 S. Ct. 966 (1999).

the federal carjacking statute[9] by establishing that the defendant possessed the "conditional intent"[10] necessary to perpetrate the act.[11]

Since the nineteenth century, courts have endorsed the conditional intent doctrine as an important device in bridging the purposeful or knowing elements of assault.[12] Conditional intent is best exemplified by an assault during which a defendant merely threatens to inflict injury unless the victim complies with certain demands, but never actually harms the victim.[13] Underlying the sweeping acceptance of the principle is the dangerous probability that the person who expresses an intent to injure to facilitate a criminal act ultimately will act upon the overt threat of harm.[14] Numerous judicial and scholarly endorsements accept the premise that the "specific intent" necessary to commit a criminal act may be merely conditional.[15]

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[9] *See* Anti Car Theft Act of 1992, 18 U.S.C. § 2119 (1998). For further discussion of the Anti Car Theft Act of 1992 and its 1994 amendment, see *infra* note 16 and accompanying text.

[10] *See infra* notes 12-15 and accompanying text (providing broad introductory analysis on "conditional intent").

[11] *See Holloway*, 119 S. Ct. at 972. Specifically, the statute was challenged on its inclusion of the words "with the intent to cause death or serious bodily harm." *Id.* at 969.

[12] *See, e.g.*, State v. Morgan, 25 N.C. 186, 192-94 (3 Ired. 1842) (finding that the conditional intent to deal a blow with an axe was sufficient to demonstrate the "present purpose of doing harm" requisite for assault). Likewise, in *People v. McMakin*, the court explained that

> [w]here a party puts in a condition which must be at once performed, and which condition he has no right to impose, and his intent is immediately to enforce performance by violence, and he places himself in a position to do so, and proceeds as far as it is then necessary for him to go in order to carry out his intention, then it is as much an assault as if he had actually struck, or shot, at the other party, and missed him. It would, indeed, be a great defect in the law, if individuals could be held guiltless under such circumstances.

People v. McMakin, 8 Cal. 547, 548-49 (1857); *see also* 1 B.E. WITKIN & NORMAN L. EPSTEIN, CALIFORNIA CRIMINAL LAW § 416, at 477 (2d ed. 1988) (noting that "a threatened act may amount to an assault even though the threat is conditional or qualified").

[13] *See* 2 CHARLES E. TORCIA, WHARTON'S CRIMINAL LAW § 182, at 427-28 (15th ed. 1994).

[14] *See* ROLLIN M. PERKINS & RONALD N. BOYCE, CRIMINAL LAW 647 (3d ed. 1982). To illustrate, "where a robber orders his victim to put up his hands or be killed, the probability is that he means what he says." *Id.*

[15] *See Holloway*, 119 S. Ct. at 971. Numerous states have incorporated within various penal statutes the well-recognized doctrine of conditional intent, confirming it as an established principle of criminal law. *See, e.g.*, DEL. CODE ANN. tit. 11, § 254 (1995) ("The fact that a defendant's intention was conditional is immaterial unless the condition negatives the harm or evil sought to be prevented by the statute defining the offense."); HAW. REV. STAT. § 702-209 (1993) ("When a particular intent

Specifically, Congress enacted the Anti Car Theft Act of 1992 (Act)[16] in response to the abhorrent nature of the emerging crime of carjacking.[17] With the Act, Congress sought to supplement state carjacking statutes by making carjacking a federal offense.[18] Congress

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is necessary to establish an element of an offense, it is immaterial that such intent was conditional unless the condition negatives the harm or evil sought to be prevented by the law prohibiting the offense."); 18 PA. CONS. STAT. ANN. § 302(f) (West 1998) ("Requirement of intent satisfied if intent is conditional. — When a particular intent is an element of an offense, the element is established although such intent is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.").

[16] *See* 18 U.S.C. § 2119 (1994). The statute provided, in pertinent part:

> 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 —
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> (1) be fined under this title or imprisoned not more than 15 years, or both,
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> (2) if serious bodily injury . . . results, be fined under this title or imprisoned not more than 25 years, or both, and
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> (3) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

*Id.* The Violent Crime Control and Law Enforcement Act of 1994, however, amended the statute in the following manner:

> (14) CARJACKING. — Section 2119(3) of title 18, United States Code, is amended by striking the period after "both" and inserting ", or sentenced to death."; and by striking ", possessing a firearm as defined in section 921 of this title," and inserting ", with the intent to cause death or serious bodily harm".

Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 60003(a)(14), 108 Stat. 1796, 1970 (1994). The statute now provides:

> Whoever, *with the intent to cause death or serious bodily harm* 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 —
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> (1) be fined under this title or imprisoned not more than 15 years, or both,
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> (2) if serious bodily injury . . . 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, or *sentenced to death.*

18 U.S.C. § 2119 (1998) (emphasis added).

[17] *See* F. Georgann Wing, *Putting the Brakes on Carjacking or Accelerating It? The Anti Car Theft Act of 1992*, 28 U. RICH. L. REV. 385, 389 (1994). "Carjacking" is a crime of violence in which "the vehicle is taken from a person by force, violence or intimidation." *Id.* The Department of Justice defines "carjacking" as a theft or attempted theft of a vehicle by threat or use of force. *See* Michael J. Sniffen, *Half of Carjackings Successful*, ASSOCIATED PRESS, Mar. 8, 1999.

[18] *See* Anti Car Theft Act of 1992, Pub. L. 102-519, § 101(b), 106 Stat. 3384, 3384 (1992). This legislation provides:

> (b) FEDERAL COOPERATION TO PREVENT "CARJACKING" AND

was cognizant of the increased number of carjacking incidents nationally[19] and of the detrimental societal effects[20] of carjacking.[21] Acting pursuant to powers granted by the Commerce Clause,[22] yet

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> MOTOR VEHICLE THEFT. — In view of the increase of motor vehicle theft with its growing threat to human life and to the economic well-being of the Nation, the 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 car jacking, and as appropriate and consistent with prosecutorial discretion, prosecute persons who allegedly violate such law and other relevant Federal statutes.

*Id.*

[19] *See* 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, 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.").

[20] *See* Wing, *supra* note 17, at 386. One particularly glaring carjacking account sparked a congressional call for tougher treatment of suspected carjackers. *See "Carjacking" Death Stuns Community — Crime Spurs Congressional Call for Tougher Handling of Suspects in Auto-Theft Cases*, ARIZ. REPUBLIC (Phoenix), Sept. 11, 1992, at A4. Specifically, Pamela Basu, a mother of a 22-month-old girl, had her car taken from her by two men. *See id.* The men forced Basu, while taking her child to preschool, from her car at a stop sign by her home. *See id.* Basu was caught in the seatbelt as the thieves drove away, while her child remained in the car. *See id.* After driving approximately a half-mile, the thieves dropped the 22-month-old off in the middle of road. *See id.* All the while Basu was still being dragged to her death. *See id.* In an attempt to dislodge her lifeless body from the car, "the driver ran up against a fence" after traveling roughly one-and-a-half miles. *Id.* Indeed, Basu's death led Representative Cardiss Collins to remark that "the public has become aware that car theft is not only an economic tragedy, it has become a human tragedy." *House Passes Carjacking Legislation*, HOUSTON CHRON., Oct. 6, 1992, at 6 (internal quotation marks omitted). Likewise, when President George Bush signed the bill into law, he stated that "[w]e cannot put up with this kind of animal behavior" and that "[t]hese people have no place in a decent society. And as far as this president's concerned, they can go to jail, and they can stay in jail, and they can rot in jail for crimes like that." Martin Kasindorf, *Bush Touts Tougher Crime Stance*, NEWSDAY (N.Y.), Sept. 29, 1992, at 5 (internal quotation marks omitted).

[21] *See* Russell G. Donaldson, Annotation, *Validity, Construction, and Application of Anti-Car Theft Act (18 U.S.C. § 2119)*, 140 A.L.R. FED. 249 (1997). The Anti Car Theft Act was enacted to reduce the rising number of carjackings, to diminish the threat to the lives of innocent motorists, and to ensure "the financial well-being of insurers of automobiles in interstate commerce." *Id.*

[22] *See* U.S. CONST. art. I, § 8, cl. 3. The Commerce Clause furnishes Congress with the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." *Id.* "[T]he Commerce Clause [has] evolved into a conduit for national efforts to reform social problems that had not been adequately addressed by the states." Larry E. Gee, Comment, *Federalism Revisited: The Supreme Court Resurrects the Notion of Enumerated Powers by Limiting Congress's Attempt to Federalize Crime*, 27 ST. MARY'S L.J. 151, 168 (1995). The Commerce Clause, the primary source

with respect for traditional state law-enforcement authority,[23] Congress intended to create a powerful statutory deterrent to the commission of this violent crime.[24] In so doing, Congress incorporated a specific intent requirement in a 1994 amendment, specifically targeting car thieves that use violence or the serious threat of violence to accomplish the theft.[25]

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of today's federal power, essentially enables the passage of purportedly crucial social legislation. *See* Richard A. Epstein, *The Proper Scope of the Commerce Power*, 73 VA. L. REV. 1387, 1387 (1987). This clause only requires that, regardless of how remote or indirect, the regulated activity affect, burden, or obstruct interstate commerce. *See id.* Over the years, the Commerce Clause powers have evolved to allow Congress to regulate three broad and distinct categories of activity:

> First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce . . . [and] those activities that substantially affect interstate commerce.

United States v. Lopez, 514 U.S. 549, 558-59 (1995) (citations omitted). After decades of judicial deference to Congress's expansive reliance on the Commerce Clause, which had prohibited the possession of firearms in school zones, the Court, in *Lopez*, for the first time in nearly 60 years struck down federal legislation derived from Commerce Clause power. *See* Nicole Huberfeld, Note, *The Commerce Clause Post-*Lopez*: It's Not Dead Yet*, 28 SETON HALL L. REV. 182, 185 (1997); *see also* Charles B. Schweitzer, Comment, *Street Crime, Interstate Commerce, and the Federal Docket: The Impact of* United States v. Lopez, 34 DUQ. L. REV. 71, 71 (1995) (noting that "*Lopez* is significant because it invalidated a federal law under the Commerce Clause for the first time since 1936"). Specifically, the Court held that the mere possession a gun in a school zone did not, by itself, "substantially affect any sort of interstate commerce." *Lopez*, 514 U.S. at 567. Despite its previous decisions endorsing judicial deference with respect to the implementation of the Clause, the Court refused to perpetuate such sweeping interpretations for fear of encroaching upon the powers of the states under principles of federalism. *See id.* Indeed, the Court observed that an overly expansive interpretation of the Clause would mean that "there will never be a distinction between what is truly national and what is truly local." *Id.* For a further discussion advocating a more restrictive interpretation of the Clause, see generally Epstein, *supra*.

[23] *See* Wing, *supra* note 17, at 412 ("[C]rimes arising out of street violence normally are best handled by state and local law enforcement authorities.").

[24] *See* 140 CONG. REC. E858 (daily ed. May 5, 1992) (statement of Rep. Franks). In amending the Anti Car Theft Act of 1992 (Act) with the Violent Crime Control and Law Enforcement Act of 1994, Representative Gary A. Franks declared that "[w]e must send a message to the criminal that committing a violent crime will carry a severe penalty. This legislation will make an additional 22 crimes including carjacking and driveby shootings, subject to the death penalty." *Id.* Likewise, Senator Joseph Lieberman pronounced that "[t]his amendment will broaden and strengthen that law so our U.S. attorneys have every possible tool available to them to attack the problem." 139 CONG. REC. S15301 (daily ed. Nov. 8, 1993) (statement of Sen. Lieberman).

[25] *See* 18 U.S.C. § 2119 (1998); *see also supra* note 16 and accompanying text

In the recent case of *Holloway v. United States*, the Supreme Court addressed the problem of courts' conflicting application of the Act's intent requirement.[26] The Court concluded that the Act's intent element is satisfied by proof that at the precise moment at which the defendant demanded the victim's automobile, the defendant possessed the requisite conditional intent to cause grievous injury or death, if necessary, to effectuate the theft.[27] In so holding, the Court announced that any other reading of the Act would conflict with the congressional goal of prohibiting carjacking.[28] Further, the Court found it reasonable to assume that, when drafting the Act, Congress was fully conscious of the abundance of supporting legal authority acknowledging that the specific intent to perpetrate a wrongful act may be conditional.[29]

Over the course of two days, beginning on October 14, 1994, the petitioner, François Holloway (also known as Abdu Ali (Ali)) and his accomplice carjacked three automobiles.[30] Pursuant to requests made by a "chop shop"[31] for certain types of vehicles, the defendants

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(reproducing text of the Act).

[26] *See* Holloway v. United States, 119 S. Ct. 966, 969 (1999).

[27] *See id.* at 972. The majority specifically incorporated the statute when it stated:

> The intent requirement of § 2119 is satisfied when the Government proves that at the moment the defendant demanded or took control over the driver's automobile the defendant possessed the intent to seriously harm or kill the driver if necessary to steal the car (or, alternatively, if unnecessary to steal the car).

*Id.*

[28] *See id.* at 971 (noting that the "petitioner's interpretation would exclude from the coverage of the statute most of the conduct that Congress obviously intended to prohibit").

[29] *See id.* (stating that "it is reasonable to presume that Congress was familiar with the cases and the scholarly writing that have recognized that the 'specific intent' to commit a wrongful act may be conditional").

[30] *See* United States v. Holloway, 921 F. Supp. 155, 156-57 (E.D.N.Y. 1996). The defendant, François Holloway, also answered to the name Abdu Ali (Ali). *See id.* at 155. Ali's accomplice, Vernon Lennon, was essentially responsible for Ali's inclusion in the commission of the thefts. *See id.* at 156. Lennon, not knowing how to disengage car alarm systems or "hot wire" cars, could only steal vehicles from their drivers at gunpoint. *See id.* To accomplish the theft, Lennon needed a partner in order to have one person drive the stolen vehicle and the other to drive the pursuit car. *See id.* Consequently, Lennon recruited Ali, whom he had known since they were children. *See id.* On October 14, 1994, the defendants stole the first car, a 1992 Nissan Maxima. *See id.* The following evening, they stole the next two cars, a 1991 Toyota Celica and 1988 Mercedes Benz, respectively. *See id.* The defendants were also suspected in two uncharged crimes. *See id.* at 157 n.2.

[31] Generally, a "chop shop" is defined as

> any 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

located and stalked the designated automobiles and their respective drivers.[32] To steal the vehicles, the defendants waited for the targeted cars to stop and for the drivers to exit.[33] After this sequence of events, Ali and his accomplice brazenly approached, brandishing a firearm and demanding the keys to the cars along with other valuables.[34] The defendants threatened to shoot the victims if they did not comply with the defendants' demands.[35] On all three occasions, Ali and his accomplice planned to leave the victims unharmed.[36] In committing each robbery, the criminals intended to *threaten* use of the gun to steal the vehicle, but did not intend actually to use the gun to kill or to otherwise seriously injure the victim.[37] Ali and his accomplice

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

7A AM. JUR. 2D *Automobiles and Highway Traffic* § 418 (1997).

[32] *See Holloway*, 921 F. Supp. at 156-57. Lennon's father, Teddy Arnold, ran a "chop shop" for which Lennon would provide stolen cars. *See id.* at 156. In particular, Arnold would provide a full description of the vehicles that he wanted, including year and model. *See id.* Lennon and his partner then would attempt to find and steal that car. *See id.*

[33] *See id.* at 156-57 (detailing three separate occasions in which the defendants employed this tactic).

[34] *See id.* In the first instance, the defendants followed the 69-year-old driver of the Maxima to his home. *See id.* at 156. As the driver exited his car, the defendants also got out of theirs. *See id.* Simultaneously, Lennon approached with the gun pointed at the driver, while demanding the car keys and his wallet. *See id.* The next evening, the defendants tracked their second victim to her friend's home, where again, Lennon converged on the victim, with weapon aimed, and, as she exited the vehicle, made the perfunctory demand for her money and keys. *See id.* Likewise, that same evening, the defendants followed the driver of the Mercedes to his home, and yet again, the defendants overtook the driver as he was exiting the vehicle. *See id.* Only this time, the driver, sensing danger, immediately got back in his car, only to hear Lennon's demand, at gun point, to get out of the car. *See id.* at 157. The defendants made the same demands, but the driver hesitated, leading Ali to strike the victim in the face. *See id.* Although the driver ran away, the defendants still managed to steal his car and money. *See id.*

[35] *See id.* at 156-57. During the thefts of the Maxima and Mercedes, Lennon verbally threatened to shoot the drivers if they did not meet his demands. *See id.* For example, one of the victims stated that Lennon threatened, "'Get out of the car or I'll shoot.'" United States v. Arnold, 126 F.3d 82, 84 (2d Cir. 1997). Yet another testified that Lennon said, "'Give me your keys or I will shoot you right now.'" *Id.* With respect to stealing the Celica, Lennon enforced his commands simply by pointing the gun. *See Holloway*, 921 F. Supp. at 156.

[36] *See Holloway*, 921 F. Supp. at 157. Lennon provided testimony in which he professed that the plan was simply to steal the cars without actually harming the victims. *See Arnold*, 126 F.3d at 84.

[37] *See Holloway*, 921 F. Supp. at 157. Lennon, however, did say that, if necessary,

never discharged the firearm during the commission of any of the carjackings.[38]

On February 2, 1995, a federal grand jury indicted Ali on three counts of carjacking and three counts relating to the use of a firearm for carjacking purposes.[39] At his jury trial before the United States District Court for the Eastern District of New York, Ali was convicted on all charges.[40] Following the verdict, Ali moved for a new trial,[41] and in the alternative sought reconsideration of an unsuccessful motion that he had brought during trial, in which he had openly challenged the level of proof necessary to satisfy the Act's intent element by arguing that the statute effectively excluded his actions from its purview.[42] The district court reiterated its denial of the initial motion and denied his post-verdict motion for a new trial.[43] According to the court, Ali's action — using a gun to terrorize drivers into giving up their vehicles — was precisely what Congress intended to ban.[44] More importantly, the court denounced the petitioner's

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he would have fired the gun if any of the victims had resisted or given him "'a hard time.'" *See Arnold*, 126 F.3d at 84.

[38] *See Holloway*, 921 F. Supp. at 157. An experienced criminal is aware that using a gun leads to a lengthier prison term, as opposed to a shorter term received for merely robbing someone of their car. *See id.*

[39] *See id.* at 155. Two of Ali's victims identified him from a police line-up on November 22, 1994. *See Arnold*, 126 F.3d at 84. Just after Ali's identification, the police received Ali's confession regarding his participation in three carjackings. *See id.* Specifically, "[Ali] was charged with conspiring to operate a 'chop shop,' in violation of 18 U.S.C. § 371, operating a chop shop, in violation of 18 U.S.C. § 2322, three counts of carjacking, in violation of 18 U.S.C. § 2119, and three counts of using and carrying a firearm during and in relation to the charged carjackings, in violation of 18 U.S.C. § 924(c)." *Holloway*, 921 F. Supp. at 156-57.

[40] *See Holloway*, 921 F. Supp. at 156. The jury convicted Ali in December 1995. *See id.*

[41] *See id.* The petitioner made his primary motion pursuant to Rule 33 of the Federal Rules of Criminal Procedure, arguing that such relief was required to satisfy the interests of justice. *See id.* Rule 33 states that "[o]n a defendant's motion, the court may grant a new trial to that defendant if the interests of justice so require." FED. R. CRIM. P. 33. The petitioner's alternative motion was brought in accordance with Rule 29 of the Federal Rules of Criminal Procedure. *See Holloway*, 921 F. Supp. at 156.

[42] *See Holloway*, 921 F. Supp. at 156. The district court observed that the issue raised by Ali's motion was also the issue central to the trial, which was "what must the government prove to satisfy the intent element of the carjacking statute . . . ?" *Id.* Attempting to capitalize on an apparent statutory loophole, Ali argued that the statute no longer pertained to his actions — utilizing a gun to effectuate the theft — because the 1994 amendment omitted "possessing a firearm." *See id.*; *see also supra* note 16 (reproducing text of the Act).

[43] *See Holloway*, 921 F. Supp. at 161.

[44] *See id.* at 159-60 (discussing the court's statutory analysis of the defendant's claim).

literalist argument that, under the Act, a perpetrator must unconditionally intend to kill or injure the victims.[45] Maintaining that the concept of conditional intent defeated Ali's flawed assertion, the court found that Ali's intent to use the firearm should the victims have resisted was sufficient to satisfy the statutory intent requirement.[46] Lastly, the court disposed of the petitioner's rule of lenity claim[47] by determining that whether conditional intent satisfies the mens rea element of a carjacking offense is a question of criminal law, rather than a question of statutory construction.[48]

The United States Court of Appeals for the Second Circuit affirmed the dismissal of both of Ali's post-trial motions.[49] In a two-to-one decision, the appeals court concluded that, while the Act's 1994

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[45] *See id.* at 159. The court observed that, under such a reading, the statute would not expressly punish the crimes perpetrated by the defendants, when the intent of the thieves was to steal cars, not to kill or seriously injure people. *See id.* The court recognized that if this were the case, a large majority of carjackers would be insulated from federal prosecution because most carjackers, in general, do not mean to cause bodily harm or to kill, but rather, hope for the victim to give up the car peaceably. *See id.* Acceptance of Ali's interpretation, as noted by the court, would drastically narrow the statute's scope because, in effect, only those carjackers *intending* to not only steal cars, but also to seriously injure or murder the victim, could be prosecuted. *See id.*

[46] *See id.* Specifically, the court stated that "[w]here a crime is defined to require a particular intention, that element is satisfied even if the requisite intent is conditional, unless the condition negatives the evil sought to be prevented by the statute." *Id.* Under this analysis, the court posited that "[t]he evil sought to be prevented by § 2119 is not 'negatived' by the condition, it is the condition. Section 2119 is not a murder or assault statute, it is a car robbery statute." *Id.* at 160; *see also supra* note 16 (reproducing text of the Act).

[47] *See id.* at 160; *see also* BLACK'S LAW DICTIONARY 1332 (6th ed. 1990) (stating that the "rule of lenity" gives the defendant the benefit of the doubt "[w]here the intention of Congress is not clear from the act itself and reasonable minds might differ as to its intention . . . .").

[48] *See Holloway*, 921 F. Supp. at 160. The court provided jury instructions addressing the element of intent with respect to carjacking counts, which stated:

> In some cases, intent is conditional. That is, a defendant may intend to engage in certain conduct only if a certain event occurs. In this case, the government contends that the defendant intended to cause death or serious[ ] bodily harm if the alleged victims had refused to turn over their cars. If you find beyond a reasonable doubt that the defendant had such an intent, the government has satisfied this element of the offense.
>
> If you find that the co-defendant, Vernon Lennon, acted with the intent to cause death or serious bodily injury, that is not sufficient. You must find that the defendant shared in that intent before you can conclude that this element has been satisfied. I remind you that you must consider each count separately.

*Id.* at 160-61.

[49] *See* United States v. Arnold, 126 F.3d 82, 89 (2d Cir. 1997).

amendment clearly limited the scope of its applicability, the statute nevertheless covered Ali's conduct.[50] According to the majority, a reasonable interpretation of the Act, supported by the expressed intentions of the drafters, fully endorses the use of conditional intent to satisfy the statute's specific intent requirement.[51] The court of appeals, which noted the extensive authority relied upon by the district court, ultimately adopted the lower court's well-reasoned application of conditional intent; thus, the court found that the Act proscribed Ali's use of an express threat of violence to facilitate his carjacking.[52]

Recognizing the need to establish a cogent and uniform application of the Act's seemingly ambiguous intent requirement, the United States Supreme Court granted the petitioner's request for certiorari.[53] Justice Stevens, writing for the majority, announced that

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[50] *See id.* at 86, 88. The court commented that, even though Congress intended to broaden the scope of the statute, the actual effect of adding a specific intent element in the 1994 amendment was to severely limit its applicability to only those carjackings in which the criminal intended death or serious injury. *See id.* at 86. Notwithstanding the self-restrictive language, the court validated the district court's ruling that Ali possessed the undisputed conditional intent to inflict harm or death if necessary to complete the carjacking. *See id.* at 88. The dissenting judge, however, postulated that, based on a plain reading of the statute, the district court erred in providing a conditional intent instruction when the statute expressly requires a specific intent and fails to address proof of conditional intent. *See id.* at 90 (Miner, J., dissenting). Moreover, the dissent denounced the majority for its "clear judicial usurpation of congressional authority." *Id.* at 92 (Miner, J., dissenting).

[51] *See id.* at 86-89. In supporting its decision, the court declared that "most importantly, incorporating conditional intent within the specific intent language of the carjacking statute comports with a reasonable interpretation of the legislative purpose of the statute." *Id.* at 88. Moreover, the court addressed the concern that "[t]he alternative interpretation would have the federal carjacking statute covering only those carjackings in which the carjacker's sole and unconditional purpose at the time he committed the carjacking was to kill or maim the victim." *Id.* To adopt such an interpretation, as noted by the court, would drastically limit the statute's intended reach. *See id.* The court then recognized that "'[i]t is well-established that in expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and its object and policy.'" *Id.* at 88-89 (quoting Tomka v. Seiler Corp., 66 F.3d 1295, 1313 (2d Cir. 1995)). As a result, the court announced that it should not adopt a literal interpretation of the statute if its results would be at odds with Congress's intended purpose. *See id.* at 89. The court explained that, while it should not redraft a poorly worded statute, the court has a duty to interpret the statute so as to provide it with a reasonable meaning. *See id.*

[52] *See id.* at 89. Consequently, the court found that the district court did not err in issuing its conditional intent jury instruction. *See id.*

[53] *See* Holloway v. United States, 118 S. Ct. 1558 (1999). The Court recognized the need to resolve an interpretational split among the circuit courts. *See* Holloway v. United States, 119 S. Ct. 966, 966 (1999). Specifically, in *United States v. Randolph*, the Court of Appeals for the Ninth Circuit determined that, in interpreting the Act,

evidence of conditional intent fulfills the Act's specific intent requirement.[54] More specifically, the Court held that Ali's mere conditional intent to execute his proffered threat of violence if necessary to perpetrate the carjacking did, by itself, adequately fulfill the statutory mandate of specific intent.[55] In reaching this conclusion, the Court articulated that, based on the principles of statutory construction, acceptance of Ali's contrary interpretation would subvert Congress's obvious intent to address meaningfully the nation's carjacking crisis.[56] The Court further extrapolated that Congress, fully abreast of supporting authority, embraced the application of the conditional intent concept as it pertained to the Act.[57]

The provenance of conditional intent jurisprudence in the American legal system is traceable to the early eighteen hundreds.[58] In one of the foremost cases, *United States v. Richardson*,[59] the Circuit Court for the District of Columbia returned an indictment for an assault in which an armed defendant entered the home of a victim

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carjacking was a specific intent crime, and as a result, the government failed to present sufficient evidence proving that the carjacker intended to kill or to seriously injure the driver. *See id.* at 969 n.4 (discussing United States v. Randolph, 93 F.3d 656, 664-65 (9th Cir. 1996)). In overturning the defendant's carjacking conviction, the court of appeals stated that neither threatening a driver that "'she would be okay if she [did] what was told of her'" nor "'the brandishing of a weapon, without more'" suffices as an intent to cause grievous bodily injury or death under the statute's 1994 amendment. *Id.* at 969 n.4 (citing *Randolph*, 93 F.3d at 664, 665) (alteration in original); *see also infra* notes 70-75 and accompanying text (discussing the *Randolph* decision). Most importantly, the appeals court stated that "[t]he mere conditional intent to harm a victim if she resists is simply not enough to satisfy § 2119's new specific intent requirement." *Holloway*, 119 S. Ct. at 969 n.4. It is this contention with which the other circuit courts have disagreed. *See id.*; *see, e.g.*, United States v. Williams, 136 F.3d 547 (8th Cir. 1997); United States v. Arnold, 126 F.3d 82 (2d Cir. 1997); United States v. Romero, 122 F.3d 1334 (10th Cir. 1997), *cert. denied*, 118 S. Ct. 1310 (1998); United States v. Anderson, 108 F.3d 478 (3d Cir. 1997), *cert. denied*, 118 S. Ct. 123 (1997). For further discussion of these cases, see *supra* notes 49-52 and *infra* notes 76-91 and accompanying text (providing detailed analysis of the *Arnold*, *Williams*, *Romero*, and *Anderson* decisions).

[54] *See Holloway*, 119 S. Ct. at 972.

[55] *See id.*; *see also supra* note 27 and accompanying text (reproducing the Court's language with respect to this portion of its decision).

[56] *See Holloway*, 119 S. Ct. at 972 ("In short, we disagree with petitioner's reading of the text of the Act and think it unreasonable to assume that Congress intended to enact such a truncated version of an important criminal statute.").

[57] *See id.* at 971; *see also supra* note 29 and accompanying text (reproducing the majority's language referencing this portion of its opinion).

[58] *See, e.g.*, United States v. Myers, 27 F. Cas. 43, 43 (C.C.D.C. 1806) (returning a guilty verdict for assault when a defendant, running toward the witness with clenched fist, threatened "'[i]f you say so again, I will knock you down'").

[59] 27 F. Cas. 798 (C.C.D.C. 1837).

and threatened to strike her if she uttered a word.[60] Finding the defendant guilty, the court declared that he had no right to impose the unjust condition of prohibiting his victim from speaking by evincing a clear intent to strike her had she disobeyed his demand.[61]

Although the federal court system, until recently, had failed to promulgate further guidance, state courts continued to address the merits of conditional intent. In *Hairston v. State*,[62] the Mississippi Supreme Court considered whether a conditional threat of violence is tantamount to establishing an assault with an intent to murder.[63] To find the defendant guilty, the court noted that it must find that the defendant possessed the requisite intent to kill, and not merely an intent to assault.[64] Notwithstanding the recognition that the defendant perpetrated an actionable assault, the court ultimately decided that the defendant was not guilty of intending to commit murder; the court found the defendant not guilty because he had conditioned his threat on a right that he was lawfully entitled to exercise — the repossession of personal property held unlawfully by another.[65]

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[60] *See id.* at 798. The court recounted the fact that the defendant, armed with a club and musket, and after having positioned himself within striking distance, then proffered his declaration of harm. *See id.*

[61] *See id.* The defendant attempted to argue, as the court noted, that there could be no assault without the present intent to strike. *See id.* The court, however, refuted the defendant's claim by analogizing a situation in which "a stranger comes to my house armed, and raises his club over my head, within striking[ ] distance, and threatens to beat me unless I will go out of and abandon my house, *surely that would be an assault.*" *Id.* (emphasis added).

[62] 54 Miss. 689 (1877).

[63] *See id.* at 693. Specifically, Hairston, along with two other men, attempted to repossess personal property being unlawfully held by a plantation owner. *See id.* at 691-92. As the three men exited, having reclaimed the furniture, the owner attempted to stop the wagon by grabbing the mules, thereby committing trespass on Hairston's personal property, and subsequently prompting Hairston to point the gun and threateningly warn that "'I came here to move Charles Johnston, and by G—d I am going to do it, and I will shoot any G—d–d—d man who attempts to stop my mules.'" *Id.* at 691-92. The owner, sensing imminent danger, stepped away, allowing the mules and wagon to proceed. *See id.* at 692.

[64] *See id.* at 693-94. The court observed that the lower court had convicted Hairston of "assault with intent to commit murder." *Id.* at 693. The court, however, noted that Hairston merely made a conditional threat to shoot when his mules were about to be taken unlawfully from his property — a right he could exercise in justly preventing a trespass on his property. *See id.* The court further explained that, while the justice system will not forgive the assault actually committed by the leveling of the firearm, it cannot infer from this act an intent to commit murder. *See id.* at 693-94. More importantly, the court held that "[t]he intent must be actual, not conditional, and *especially not conditioned upon non-compliance with a proper demand.*" *Id.* at 694 (emphasis added).

[65] *See id.* at 693-94. The court summarized that this situation "presents a case of

After nearly forty years, state courts continued to implement the conditional intent doctrine in the assault context, as illustrated by *People v. Connors*.[66] In *Connors*, the Illinois Supreme Court addressed whether threats to kill, made at gun point by members of one labor union to members of another in order to force consolidation of the unions, warranted the imposition of "assault to murder" convictions.[67] Referencing the large body of persuasive legal authority, the court accepted the contention that the defendants' communication of their demands and ensuing threats, coupled with their ability to carry out the threatened harm, effected an assault, even though the victims' submission to the condition averted the commission of the asserted danger.[68] In upholding the defendants' guilty verdicts, the court stressed that the criminal justice system will not tolerate threats of violence used to induce compliance with unlawful demands.[69]

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an intentional offer to commit violence, with an overt act towards its accomplishment, based upon a conditional threat." *Id.* at 692. The court, having postulated various scenarios involving the appropriate measure of force in given situations, determined that the defendant's threat of using a firearm, in the lawful repossession of personal property, far exceeded the justifiable level of force necessary to stop the owner's impediment of his mules. *See id.* at 693. Indeed, the court stated "[t]he means adopted are disproportioned to and not sanctioned by the end sought." *Id.* While noting that Hairston could have been appropriately convicted of assault, the court correctly noted that he was convicted of assault with intent to kill. *See id.* Consequently, the court found that, while the law criminalizes the assault because an assault actually occurred, it cannot punish the intent to kill because such an intent did not exist. *See id.* at 694. Accordingly, the court refused to uphold Hairston's conviction on "assault with intent to kill or murder," finding that pointing a gun, by itself, is insufficient to establish such an intent. *Id.*

[66] 97 N.E. 643 (Ill. 1912).

[67] *See id.* at 643. The defendants, members of a steam-fitters labor union, attempted to absorb a rival labor union by strongarming its members to drop their present union and to enlist with the defendants' own union. *See id.* at 644. In their efforts to bolster their union's membership ranks, the defendants approached a construction site occupied by rival union members and offered union membership by attempting to force some 30 to 40 people, at gun point and under threat of being shot, to strip off their overalls and accept their "new" union membership cards. *See id.* at 644-45.

[68] *See id.* at 647-48. The court applied the rule that "[i]f the threatened injury, coupled with present ability to inflict it, is conditioned upon the party assailed refusing to do something which the assailant has no right to require him to do, it will constitute an assault, even though the conditions are complied with and therefore no violence is used." *Id.* at 647 (citation omitted). In justifying this application, the court enunciated that the law will not condone intimidation or excessive violence to carry out an unlawful or criminal enterprise. *See id.* at 647-48.

[69] *See id.* at 648. The court reasoned that in making a demand, regardless of whether it was impossible to carry out, the act is no less criminal. *See id.* Moreover, as the court stated:

> No one has a right to expect or presume that any one will submit to an illegal demand made upon him, and where, as in the case at bar, a

After some eighty years and the passage of the Anti Car Theft Act of 1992, the federal judiciary finally had the opportunity to revisit conditional intent when the United States Court of Appeals for the Ninth Circuit decided *United States v. Randolph*.[70] Charged with the task of deciding the Act's first significant "specific intent" challenge since the amendment's inception,[71] the *Randolph* court questioned whether the defendant had the requisite intent to inflict serious injury or death such that a court could sustain a carjacking conviction.[72] The appeals court reasoned that, because the Act called

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> violent assault with dangerous and deadly weapons is made upon a person in the peace of the people and a threat to destroy life is made unless the victim complies with some unlawful demand, in determining the guilt or innocence of the accused the case must be determined precisely as though the unlawful demand did not exist.

*Id.* The court subsequently validated the lower court's jury instruction that was issued to this effect and that stated, in pertinent part:

> The court instructs you as to the intent to kill alleged in the indictment that though you must find that there was a specific intent to kill the prosecuting witness . . . , still, if you believe from the evidence beyond a reasonable doubt that the intention of the defendants was only in the alternative — that is, if the defendants, or any of them, acting for and with the others, then and there pointed a revolver . . . with the intention of compelling him to take off his overalls and quit work, or to kill him if he did not — and if that specific intent was formed in the minds of the defendants and the shooting . . . with intent [sic] to kill was only prevented by the happening of the alternative — that is, the compliance . . . with the demand that he take off his overalls and quit work — then the requirement of the law as to the specific intent is met.

*Id.* at 645.

[70] 93 F.3d 656 (9th Cir. 1996).

[71] *See id.* at 657. The court observed that no other federal courts, to date, had construed the statute's new intent element. *See id.* at 661. Referring to the Act's 1994 amendment, which added the phrase "with the intent to cause death or serious bodily harm" in place of the phrase "possessing a firearm as defined in section 921 of this title[,]" the court suggested that this new language effectively converted carjacking into a "specific intent" offense from a "general intent" crime. *Id.* at 660-61 (citing Violent Crime Control and Law Enforcement Act of 1994 § 60003(a)(14), Pub. L. No. 103-322, 108 Stat. 1796, 1970 (1994)); *see also supra* note 16 and accompanying text (reproducing text of the Act).

[72] *See id.* at 657-58. Specifically, Randolph and three friends robbed the victim and ultimately stole the victim's vehicle. *See id.* at 658. In carrying out their heist, the defendants waited for the victim to pull up to an automatic teller machine at a bank, and as the victim was withdrawing money, they pulled alongside her. *See id.* The criminals pointed a rifle at her face and demanded the money. *See id.* More importantly, Randolph, still wielding the rifle, forcibly entered the victim's vehicle, while another defendant ordered her "'to do what was told of her'" and "'she would be okay.'" *Id.* After demanding that the victim withdraw all the money she could, Randolph demanded that she drive out of town. *See id.* Having reached a rural area, Randolph released the victim unharmed and promptly fled the area via the stolen automobile. *See id.* The other defendants, however, beat the victim in an effort to foster faulty memory because they "'didn't want to see this lady go to the cops and

for the specific intent to inflict harm, the government must prove a special mental element beyond the mental state required to steal the vehicle.[73] The court found that, despite the defendant's display of a firearm coupled with a veiled threat, the defendant lacked the requisite intent based on the observations that he never actually harmed or expressly threatened to kill the victim.[74] In reaching this conclusion, the court explained that the Act's new intent element demanded more than a mere threat or simple conditional intent to harm.[75]

Reaching a different result in *United States v. Anderson*,[76] the United States Court of Appeals for the Third Circuit concluded, after a thorough statutory analysis,[77] that the defendant committed a carjacking within the purview of the Act.[78] In furthering Congress's

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tell them what happened to her that night.'" *Id.*

[73] *See id.* at 662. The court established that the "'special mental element'" is the "'intent to cause death or serious bodily harm.'" *Id.* (quoting 18 U.S.C. § 2119 (1994)). Therefore, the court postulated that the central issue of the appeal turned on whether Randolph took the car intending to cause serious injury or death. *See id.*

[74] *See id.* at 664. In distinguishing other similar situations, the court stated that the difference "between this case and federal cases sustaining convictions for analogous specific intent offenses is that Randolph did not personally harm [the victim], even though he was armed and clearly capable of harming her." *Id.* at 663. The court suggested that Randolph's intent in brandishing the firearm merely was to intimidate the victim into relinquishing her car and money. *See id.* at 664. Indeed, the court indicated that, when Randolph dropped the victim off unharmed, he demonstrated that he had no intent to harm or kill. *See id.* Moreover, the court discerned that the threat itself was not vested with a subjective intent to inflict serious injury or death. *See id.*

[75] *See id.* at 665. The court based its decision on the structure and language of the amended statute. *See id.* The court reasoned that, while Randolph technically satisfied the "taking" element of the statute, which is taking a car from another "'by force and violence or by intimidation[,]'" he failed the second statutory mandate, which required the intent to cause harm or death. *Id.* Based on this line of reasoning, the court opined that "[t]o construe a mere threat as conclusive evidence of the new intent element would be to eliminate that additional intent element." *Id.* Consequently, the court determined that a mere threat is not sufficient to satisfy the specific intent to harm or kill. *See id. But see* Shaffer v. United States, 308 F.2d 654, 655 (5th Cir. 1962) (sustaining a defendant's conviction for assault with "intent to do bodily harm" when, in order to effectuate his escape, he threatened to kill a guard and fellow prisoners with a shotgun he had just taken from the guard).

[76] 108 F.3d 478 (3d Cir. 1997), *cert. denied*, 118 S. Ct. 123 (1997).

[77] *See id.* at 480-83. Similar to the *Randolph* court, the appeals court began by embarking on a substantive analysis of the statute, laboring over the statute, its amendment, and its legislative history. *See id.*

[78] *See id.* at 485. Anderson became involved in a dispute in which he ultimately drew and discharged the firearm that he was carrying. *See id.* at 479. Upon fleeing the scene, Anderson, still waiving the gun, ran in front of a marked police car, which gave chase. *See id.* Trying to further his escape, the defendant approached the victim from behind, placed the gun on the back of the victim's neck, and stated,

intent to expand the Act's application, the court determined that the Act's intent element is satisfied when the prosecution has shown that the defendant intended to inflict harm if the driver resisted relinquishing the vehicle.[79] Accordingly, the court held that the defendant's claim that he must have intended to kill or injure the victim while taking the car lacked merit because of the incorporation of conditional intent into the Act.[80] More significantly, the court, in refuting the *Randolph* holding, explained that Congress's expressed intent would be defeated if the infliction of harm was the necessary

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"'The police [are] after me, I'm taking the car.'" *Id.* at 479-80 (alteration in original). Although the victim temporarily complied, he attempted to stop Anderson by running around to the driver's side. *See id.* at 480. Anderson, however, pointed the gun out the window, and while speeding off, fired a single shot. *See id.* The victim, uninjured, immediately contacted the police, who apprehended Anderson after the vehicle stalled. *See id.* The court upheld the defendant's carjacking conviction. *See id.* at 485.

[79] *See id.* The court explained in relevant part:

> [T]he question becomes not whether a defendant's conditional intent is sufficient to satisfy an intent element of a statute, but which conditions negative the harm sought to be prevented by a statute and which will not. This analysis can be readily applied to the carjacking statute. The determination of whether a defendant's intent to kill or cause serious bodily harm if the victim does not relinquish his or her car is sufficient to establish the requisite "intent to kill or cause serious bodily harm" within the meaning of the statute, requires us to ascertain the nature of the condition attached to the intent. When this intent is phrased slightly differently — the intent to kill or cause serious bodily harm to the victim unless the victim parts with his or her car — the condition — unless the victim parts with his or her car — becomes apparent. If, in fact, the condition is not met and the victim relinquishes his or her vehicle, is the harm sought to be prevented by the carjacking statute negated? We think not.

*Id.* at 484; *see also supra* note 7 (reproducing MODEL PENAL CODE § 2.02(6)). Relying on this contextual analysis, the court proffered that

> [t]he fact that a defendant is able to achieve the goal of obtaining the car without resorting to the infliction of death or serious bodily harm obviously does not negate the intent to cause such harm in order to obtain the car. Whether the harm sought to be prevented by the statute is the theft of cars, the threat to cause death or serious bodily harm in order to obtain another's car, or the causing of death or serious bodily harm, the intervening event of the victim giving up his or her car in order to avoid serious injury in no way negatives the harm sought to be prevented by the statute. Indeed, the fact that the victim opted to turn over his or her car in the hope of avoiding serious harm does not alter the fact that the defendant possessed an intent to cause death or serious bodily harm in order to obtain the car.

*Id.*

[80] *See id.* at 485 ("Accordingly, we hold . . . it is sufficient for the government to establish that the defendant intended to cause death or serious bodily harm if the victim refused to relinquish his or her car.").

prerequisite to a carjacking conviction.[81]

Continuing the trend of embracing conditional intent as sufficient to fulfill the Act's intent requirement, the United States Court of Appeals for the Tenth Circuit, in *United States v. Romero*,[82] addressed the issue of whether the government had met the requisite level of intent needed to sustain the defendant's carjacking conviction.[83] Because the evidence clearly indicated that the defendant intended to cause harm if necessary to perpetrate the commission of his crimes,[84] the court determined that the existence of his conditional intent substantiated his guilty verdict.[85] As in *Arnold*, the court voiced its disapproval of *Randolph* and ultimately held that conditional intent fulfills the Act's intent requirement.[86]

Only months later, in *United States v. Williams*,[87] the United States Court of Appeals for the Eighth Circuit reaffirmed the Act's implicit integration of conditional intent when it upheld the carjacking conviction of a defendant who had enhanced his violent behavior by using a firearm.[88] The court determined that, because of the

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[81] *See id.* at 483. The court buttressed its criticism of the *Randolph* decision by stating, "Rarely will there be a case where there will be evidence of a defendant's unconditional intent to cause death or serious bodily harm whether or not the victim relinquishes his or her car, yet the victim sustains no injuries." *Id.* The court averred that Congress did not mean for death or grievous bodily harm to be the prerequisite to each and every carjacking conviction. *See id.*

[82] 122 F.3d 1334 (10th Cir. 1997), *cert. denied*, 118 S. Ct. 1310 (1998).

[83] *See id.* at 1335.

[84] *See id.* at 1336-37. Romero was indicted on several criminal charges stemming from an attempted robbery. *See id.* at 1337. Romero overtook the victims — a mother, father, and their handicapped daughter — at their home as they exited their vehicle. *See id.* at 1336. Pinning the father to the floor and placing a gun to the back of his head, Romero demanded to know where the safe was located or he would "'blow a hole in [the father's] head.'" *Id.* The father, however, indicated that the safe was not at the house, but instead at a restaurant in town. *See id.* Romero then commandeered the victim's vehicle and took the father to the restaurant. *See id.* Romero's subsequent robbery was foiled by the police, however, and he was indicted for carjacking, among other crimes. *See id.* at 1337.

[85] *See id.* at 1339. The court accepted that "as a general rule, 'conditional intent is still intent.'" *Id.* at 1338 (quoting United States v. Arrellano, 812 F.2d 1209, 1211 n.2 (9th Cir. 1987), *opinion corrected by*, 835 F.2d 235 (1987)). In essence, the court, justifying the implementation of conditional intent, endorsed the holding and accompanying reasoning of the *Anderson* court. *See id.* at 1338-39.

[86] *See id.* at 1339. In disagreeing with *Randolph*, the court determined that there was only one intent element, as opposed to the two promulgated by *Randolph*. *See id.* at 1338-39. While *Randolph* concluded that the act of taking the vehicle and the intent to cause harm or death were two distinct and separate intent elements, the Tenth Circuit ruled in *Romero* that the taking was the act, and that the intent to inflict injury or death was the mens rea, of carjacking. *See id.* 1338-39.

[87] 136 F.3d 547 (8th Cir. 1998).

[88] *See id.* at 552, 554 (denying the defendant's arguments regarding the intent

persuasive interpretation promulgated by the majority of other circuit courts addressing this issue,[89] the Act intended to punish the use of the mere threat of harm and accompanying conditional intent to cause that harm if necessary to achieve the crime.[90] The court further held that it is irrelevant that, because of the victim's compliance with the demand, the threatened harm never actually occurred.[91]

Faced with the circuit courts' conflicting interpretations of the Act, the United States Supreme Court, in *Holloway*, reviewed the level of intent necessary to satisfy the Act's mens rea requirement.[92] In a seven-to-two opinion, the Court declared that the Act's intent requirement is fulfilled when the prosecution produces evidence that the petitioner, at the exact moment at which he demanded his victims' vehicles, exhibited the necessary conditional intent to inflict — if necessary to accomplish the theft — serious bodily harm or even death.[93] In so holding, the Court stated that Congress intended the

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required for carjacking, and denying the sufficiency of the prosecution's evidence in his case). Williams was charged with two counts of carjacking stemming from two separate incidents. *See id.* at 549. In the first incident, Williams entered a parked vehicle occupied by a mother and her young son. *See id.* Williams pointed the gun at the child, uttered a "'few choice dirty words[,]'" and then ordered them to leave, which they hurriedly did. *Id.* The second carjacking occurred when Williams approached a driver from behind as she was unloading items from the car and forcibly pushed her to the seat. *See id.* The driver, fearing death, instinctively screamed, which, in addition to a passing car, was enough to force Williams to flee with just the driver's briefcase. *See id.*

[89] *See id.* at 551. The court fortified its decision by relying on the principles of statutory construction to interpret the Act. *See id.* at 550. The court noted the importance of not overemphasizing one particular sentence, but rather, that the court must look at the law as a whole, in addition to the law's object and professed policy. *See id.* The court acknowledged the well-reasoned findings of three of the four circuit courts that had previously faced this issue, and declared that "conditional intent is sufficient to satisfy the intent requirement of § 2119." *Id.* at 551. The court declined to accept the holding reached in *Randolph*. *See id.*

[90] *See id.* at 551. The court stated:

> By looking at § 2119 as a whole, including the enhanced penalties for carjackers whose actions actually cause death or physical injury, it is clear Congress did not intend to limit the reach of the federal carjacking statute to those situations where a defendant unconditionally intends death or serious bodily injury regardless of whether the victim surrenders the vehicle.

*Id.*

[91] *See id.* at 551-52.

[92] *See* Holloway v. United States, 119 S. Ct. 966, 969 (1999).

[93] *See id.* at 972. The Court prefaced its final conclusion regarding the intent element by stating: "In short, we disagree with the petitioner's reading of the text of the Act and think it unreasonable to assume that Congress intended to enact such a truncated version of an important criminal statute." *Id.*

Act to broadly prohibit carjacking.[94] Continuing along this line of reasoning, the Court maintained that it is a fair assumption that Congress was fully cognizant of the prevailing judicial and scholarly opinions endorsing conditional intent, such that Congress implicitly accepted the doctrinal underpinning that purposeful intent may be conditional as well.[95]

Justice Stevens, writing for the majority,[96] began the analysis by recalling that the principles of statutory construction suggest a focus on the initial words that the drafters chose.[97] The justice further explained that, while the meaning of critical words or phrases are crucial to a statute's interpretation, the placement and purposes of those key terms and phrases within the statutory scheme are equally compelling.[98]

Justice Stevens proceeded to uncover Congress's intent in incorporating the catalytic phrase "with intent to cause death or serious bodily harm."[99] To be more precise, the majority phrased the ultimate question: whether a perpetrator who points a firearm at a driver, having determined to shoot if the driver does not act in

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[94] *See id.* at 971.

[95] *See id.* ("[I]t is reasonable to presume that Congress was familiar with the cases and scholarly writing that have recognized that the 'specific intent' to commit a wrongful act may be conditional.").

[96] *See id.* at 967. Justice Stevens's opinion was joined by Chief Justice Rehnquist and Justices O'Connor, Kennedy, Souter, Ginsburg, and Breyer. *See id.*; *see also infra* notes 97-129 and accompanying text (providing a full analysis of the majority's opinion). Justice Scalia and Justice Thomas authored dissenting opinions. *See Holloway*, 119 S. Ct. at 972 (Scalia, J., dissenting) and 977 (Thomas, J., dissenting); *see also infra* notes 130-52 and accompanying text (providing a full analysis of the dissenters' opinions).

[97] *See id.* at 969. The Court relied on Justice White's opinion in *United States v. Turkette*, 452 U.S. 576 (1981), in which the Justice suggested that the language of congressional statutes provides "'the most reliable evidence of [Congress's] intent.'" *Id.* (citing *Turkette*, 452 U.S. at 593). Indeed, the Court remarked that if the pertinent language is unambiguous and there is an absence of contrary legislative intent, then that language generally must be regarded as conclusive. *See Turkette*, 452 U.S. at 580.

[98] *See id.* at 969; *see also* K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 291 (1988) (reiterating that "[i]n ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, *as well as the language and design of the statute as a whole*") (emphasis added). The Court, however, has found that, while a statute's plain language may appear to settle the issue presented, the Court will invariably examine the legislative history of the statute only to ascertain whether obvious legislative history contradicts that language; in that event, such contradictory language compels a court to question the presumption that Congress expressed its intent based on the language it chose. *See* 2 AM. JUR. *Administrative Law* § 525, at 513 (1994) (referencing INS v. Cardoza-Fonesca, 480 U.S. 421 (1987)).

[99] *Holloway*, 119 S. Ct. at 969; 18 U.S.C. § 2119 (1998); *see also supra* note 16 and accompanying text (reproducing the relevant text of the Act as later amended).

accordance with a demand to relinquish the vehicle's keys, possesses the requisite intent at that exact moment to seriously injure the driver.[100] The Justice announced that at the relevant time the offender proffers his demand, he plainly possesses the forbidden intent, regardless of whether the victim ultimately complied.[101]

The Court, relying on the accuracy of previous decisions addressing the issue, observed that a carjacker's intent to hurt his victim could be classified as either "conditional" or "unconditional."[102] As a result, the majority deduced that the statutory phrase in question theoretically might represent either one of those characterizations, or, quite conceivably, both.[103] The Court noted that, according to the petitioner's argument, a "plain text" reading would compel the Court to interpret the Act as requiring "unconditional" intent, which, in effect, would mean that the petitioner, Ali, must have actually intended to kill or harm the drivers regardless of how they responded.[104]

The Court, however, determined that a more sensible examination of the Act reveals that Congress intended to criminalize a wider range of conduct, as opposed to merely criminalizing attempts to murder or assault in the course of car robberies.[105] The majority noted that, when Ali's argument was viewed in context of the Act, his proposed construction of the Act's intent element ignored the significance of that element's placement in the Act.[106] More specifically, the Court maintained that the Act, in essence, is aimed at

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[100] *See Holloway*, 119 S. Ct. at 969.

[101] *See id.*

[102] *See id.* at 970; *see also supra* notes 76-81 and 87-91 and accompanying text (discussing United States v. Anderson, 108 F.3d 478 (3d Cir. 1997), *cert. denied*, 118 S. Ct. 123 (1997), and United States v. Williams, 136 F.3d 547 (8th Cir. 1998), respectively).

[103] *See Holloway*, 119 S. Ct. at 970.

[104] *See id.* The Court acknowledged that Ali's version of the statute would have required that the defendant possess an unconditional intent to kill or harm the driver in order to perpetrate a "carjacking" as envisioned by the Act. *See id.* In furtherance of this claim, the petitioner insisted "that Congress would have had to insert the words 'if necessary' into the disputed text in order to include the conditional species of intent within the scope of the statute." *Id.* (citation omitted). Ali argued that, because it failed to include those particular words, Congress must have meant to penalize only those carjackings in which the offender *actually* tried to kill or inflict harm on the driver. *See id.*

[105] *See id.* The Court reiterated that "'the meaning of statutory language, plain or not, depends on context.'" *Id.* (quoting Brown v. Gardner, 513 U.S. 115, 118 (1994)); *see also supra* notes 97-98 and accompanying text (discussing principles of statutory construction).

[106] *See Holloway*, 119 S. Ct. at 970 ("[P]etitioner's argument . . . overlooks the significance of [the intent] element's placement in the statute.").

federally penalizing a certain type of robbery.[107] Consequently, Justice Stevens observed that the Act's mens rea component, based on its location in the statute, modifies the act of stealing or "taking" the automobile.[108] The element's placement, the majority maintained, requires the trier of fact to focus on the offender's state of mind at the exact moment that he took control over or demanded the vehicle via intimidation, force, or violence.[109] According to the Court, if the offender has the forbidden state of mind at that critical moment, then the Act's scienter element is satisfied.[110]

In reviewing the petitioner's interpretation of the intent element, the Court posited that such a reading would improperly alter the mens rea component from a mere modifier into an another actus reus[111] element of the Act.[112] The majority reasoned that such an alteration would unjustly shift the Act's focus onto an attempt to injure or kill a person during the commission of the robbery.[113] Rejecting the petitioner's assertion that only the inclusion of certain words could contravene the Act's unconditional intent requirement,[114] the Court submitted that, because the text of the Act neither specifies nor expressly excludes either species of intent, the most natural reading of the Act encompasses both conditional and unconditional intent.[115] Consequently, Justice Stevens concluded that

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[107] *See id.* ("The carjacking statute essentially is aimed at providing a federal penalty for a particular type of robbery.").

[108] *See id.*

[109] *See id.* ("[The element's placement] directs the factfinder's attention to the defendant's state of mind at the precise moment he demanded or took control over the car 'by force and violence or by intimidation.'").

[110] *See id.*

[111] "Actus reus," or the "guilty act," is defined as "[a] wrongful deed which renders the actor criminally liable if combined with mens rea. The *actus reus* is the physical aspect of a crime, whereas the *mens rea* (guilty mind) involves the intent factor." BLACK'S LAW DICTIONARY 36 (6th ed. 1990).

[112] *See Holloway*, 119 S. Ct. at 970.

[113] *See id.*

[114] *See id.* The Court refuted the petitioner's contention that only the inclusion of the words "if necessary" could have successfully amended the Act's intent requirement from unconditional to conditional. *See id.* The majority substantiated this finding by stating that even "if Congress had used words such as 'if necessary' to describe the conditional species of intent, it would also have needed to add something like 'or even if not necessary' in order to cover both species of intent to harm." *Id.* Upon this showing, the majority rejected the petitioner's entire line of reasoning that only certain "magic words" in the statute could authorize the concept of conditional intent. *See id.*

[115] *See id.* ("Given the fact that the actual text does not mention either species separately — and thus does not expressly exclude either — that text is most naturally read to encompass the mens rea of both conditional and unconditional intent . . . .").

the Act does not merely govern those crimes involving the added actus reus of an actual attempt to harm or kill.[116]

The Court justified its ultimate conclusion with two considerations, each of which supports the contention that a plain reading of the Act is entirely consistent with the congressional intention of incorporating both species of intent.[117] First, the Court asserted that the Act, in its entirety, reflects a pervasive intent to federalize prosecutions, thus effecting a substantial deterrent against a particular criminal activity that had prompted critical national concern.[118] With this in mind, Justice Stevens explained that a reasonable interpretation of the Act's specific language reveals that its desired purpose is best served by construing the Act to encompass both the conditional and unconditional species of proscribed intent.[119]

Second, Justice Stevens enunciated that the Court could reasonably assume Congress's familiarity with the abundance of case law and scholarly authority that has accepted that "specific intent" to perpetrate a criminal act may be conditional.[120] In reaching this position, the majority recalled the seminal case of *People v. Connors*[121] as a cornerstone to support its conclusion.[122] Due in part to the striking similarity of the facts,[123] the Court embraced the *Connors* jury instruction that specific intent to murder could exist even though the intent was conditioned on whether the victim complied with the demand.[124] The Court then asserted that this proposition typifies the

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[116] *See id.*

[117] *See id.* at 970.

[118] *See Holloway*, 119 S. Ct. at 970. In supporting this contention, the Court identified the existing sources of legislative history that supported the conclusion that the legislative intent of the Act was to serve a broad deterrent purpose. *See id.* at 971 n.7; *see also supra* note 24 and accompanying text (discussing the comments levied by certain legislators in support of the Act). Indeed, the Court recognized that nothing in the legislative history accompanying the 1994 amendment purported to limit the Act to the minority of carjackings in which the offender actually intended to cause harm or death. *See Holloway*, 119 S. Ct. at 971 n.7.

[119] *See Holloway*, 119 S. Ct. at 970-71. The Court explained that the adoption of the petitioner's reading would effectively exclude most of the conduct that Congress had explicitly intended the Act to prohibit. *See id.* at 971.

[120] *See id.*

[121] 97 N.E. 643 (Ill. 1912); *see also supra* notes 66-69 and accompanying text (discussing the *Connors* opinion).

[122] *See Holloway*, 119 S. Ct. at 971.

[123] *Compare supra* notes 30-38 and accompanying text *with* note 67 and accompanying text (discussing the particular facts of *Holloway* and *Connors*, respectively).

[124] *See Holloway*, 119 S. Ct. at 971; *see also supra* note 69 and accompanying text (discussing and providing the *Connors* jury instruction in full).

majority of all other existing legal authorities addressing the issue.[125] Furthermore, the Court imparted that the fundamental principle emerging from these varying sources is that an offender may not negate wrongful intent by forcing the victim to adhere to a condition that the offender lacks authority to impose.[126]

Finally, the majority dismissed the petitioner's claim that the Court's interpretation would render the Act's specific intent component superfluous.[127] In so doing, the Court pointed out that this reading of the Act afforded defendants a safeguard by still requiring the government to prove beyond a reasonable doubt that an offender would have at least tried to seriously injure or kill the driver if necessary to accomplish the taking of the vehicle.[128] Justice Stevens concluded by reiterating that the Act's specific intent element is fulfilled by proving that at the exact moment that the petitioner demanded the vehicle or asserted control over the vehicle, he possessed the conditional intent to kill or inflict harm on the driver if required to perpetrate the car robbery.[129]

Justice Scalia authored a dissenting opinion[130] and immediately challenged the Court's connotation of "intent" and its multidimensional meanings.[131] In support of this argument, the

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[125] *See Holloway*, 119 S. Ct. at 971; *see also* Eby v. State, 290 N.E.2d 89, 95 (Ind. Ct. App. 1973) (affirming a conviction for burglary with intent to commit violence, when violence did not actually occur, stating "[t]hat he also had, or may have had, a different purpose or reason for breaking and entering would subtract nothing from the reasonability of inferring the concurrent intent to do violence if confronted"); Beall v. State, 101 A.2d 233, 236 (Md. 1973) (finding assault with intent to commit murder when the defendant, armed with a loaded revolver, threatened to kill the victims unless they did what the defendant instructed); People v. Vandelinder, 481 N.W.2d 787, 789 (Mich. Ct. App. 1992) (endorsing the holding of the *Connors* court that "[g]enerally, a qualified threat or conditional intent is sufficient to establish assault with intent to kill"); LAFAVE & SCOTT, SUBSTANTIVE CRIMINAL LAW, *supra* note 3, § 3.5(d), at 312; PERKINS & BOYCE, *supra* note 14, at 646-47, 835.

[126] *See Holloway*, 119 S. Ct. at 971-72. The Court reiterated that "'[a]n intent to kill, in the alternative, is nevertheless an intent to kill.'" *Id.* (quoting PERKINS & BOYCE, *supra* note 14, at 647).

[127] *See id.* at 972. The Court addressed the petitioner's concern by stating that "[w]hile an empty threat, or intimidating bluff, would be sufficient to satisfy the latter element, such conduct, standing on its own, is not enough to satisfy § 2119's specific intent element." *Id.*; *see also supra* notes 62-65 and accompanying text (discussing the holding of Hairston v. State, 54 Miss. 689 (1877)).

[128] *See Holloway*, 119 S. Ct. at 972.

[129] *See id.*

[130] *See id.* (Scalia, J., dissenting).

[131] *See id.* Justice Scalia disagreed with the central passage of the majority's opinion. *See id.* The Justice identified the specific passage as: "A carjacker's intent to harm his victim may be either 'conditional' or 'unconditional.' The statutory phrase at issue theoretically might describe (1) the former, (2) the latter, or (3) both

Justice asserted that the customary usage of the word "intent" does not connote a purpose that is conditional upon the occurrence of some event so remote that it is effectively nonexistent.[152] The Justice further declared that the concept of "intent" has never embodied purposes subject to conditions that the speaker wishes will not happen.[153] In other words, the Justice opined "[o]ne can hardly 'seek to accomplish' a result he *hopes* will not ensue."[154] Because Justice Scalia found the majority's conceptualization of "conditional intent" obscure and illogical, the Justice argued that the modifying term "conditional" does nothing to enhance the unmodified word "intent".[155] The Justice then asserted that, because of the normal English usage of the word intent,[156] no method of rationalization

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species of intent." *Id.* (quoting *Holloway*, 119 S. Ct. at 970); *see also supra* notes 102-04 and accompanying text (discussing this particular passage of the majority opinion).

[152] *See Holloway*, 119 S. Ct. at 972 (Scalia, J., dissenting).

[153] *See id.* at 972-73 (Scalia, J., dissenting). The Justice explained that he was referencing "conditional intent," and, in addition, recognized it as the primary issue in the case. *See id.* at 973 (Scalia, J., dissenting). Moreover, Justice Scalia stated that the definition of "intent" is "'[a] state of mind in which a person seeks to accomplish a given result through a course of action.'" *Id.* (citation omitted) (alteration in original).

[154] *Id.* (emphasis added).

[155] *See id.* The Justice noted the majority's characterization of intent as being either conditional or unconditional and remarked that such a characterization is "mak[ing] the unreasonable seem logical." *Id.* In suggesting the possible idiosyncrasies of devising two distinct categories, Justice Scalia hypothesized adding the third category of "feigned intent." *See id.* The Justice, however, explained that the words "condition" and "feigned" are simply not "conveyed by the word 'intent.'" *Id.* The Justice reasoned that "[t]here is intent, conditional intent, and feigned intent, just as there is agreement, conditional agreement, and feigned agreement — but to say that in either case the noun alone, without qualification, 'theoretically might describe' all three phenomena is simply false." *Id.* In colorfully supporting this line of reasoning, Justice Scalia remarked that "[c]onditional intent is no more embraced by the unmodified word 'intent' than a sea lion is embraced by the unmodified word 'lion.'" *Id.*

[156] *See id.* The Justice illustrated the "normal" usage of intent by explaining:

> If I have made a categorical determination to go to Louisiana for the Christmas holidays, it is accurate for me to say that I "intend" to go to Louisiana. And that is so even though I realize that there are some remote and unlikely contingencies — "acts of God," for example — that might prevent me. (The fact that these remote contingencies are always implicit in the expression of intent accounts for the humorousness of spelling them out in such expressions as "if I should live so long," or "the Good Lord willing and the creek don't rise.") It is less precise, though tolerable usage, to say that I "intend" to go if my purpose is conditional upon an event which, though not virtually certain to happen (such as my continuing to live), is reasonably likely to happen, and which I hope will happen.

*Id.*

could change its plain meaning to accommodate the majority's final interpretation.[137]

Next, Justice Scalia discredited the majority's reliance on legal authorities that endorse the acceptance of conditional intent as fundamental to criminal law.[138] On the contrary, the Justice, relying on jurisprudence that has rejected the conditional intent rule,[139] argued the absurdity of allowing "intent" to indulge different meanings depending on the particular criminal statute at issue.[140] Noting the wide spectrum of federal criminal statutes featuring an intent requirement,[141] Justice Scalia underscored the impracticality of conditional intent's broad "across-the-board" application to the criminal code.[142] The Justice forewarned that if intent, as the majority

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[137] *See id.* Justice Scalia recounted that a carjacker's intent generally is based on the level of resistance. *See id.* Emphasizing that the intent is to kill only if resisted, the Justice posited that the carjacker, therefore, does not have the mislabeled "intent to kill." *See id.*

[138] *See Holloway*, 119 S. Ct. at 973-74 (Scalia, J., dissenting). Justice Scalia noted the majority's reference to five state cases in which courts held that conditional intent was sufficient to satisfy the intent requirement. *See id.*; *see also supra* note 125 (discussing several of these state cases).

[139] *See id.* at 974 (Scalia, J., dissenting); *see also* McArdle v. State, 372 So. 2d 897, 901 (Ala. Crim. App. 1979) (reversing an assault-with-intent-to-murder conviction, noting that "[a] conditional offer of violence does not constitute an assault in Alabama, the criminal intent of the assailant being the essence of the crime and not the mere fact of unlawfully putting one in fear, creating alarm in the mind or causing apprehension of immediate battery"); Craddock v. State, 37 So. 2d 778, 778 (Miss. 1948) (remanding an assault-with-intent-to-kill conviction upon the reasoning that when the defendant's intent to kill is conditioned upon the occurrence of another event — which may never occur — the real intent never comes into existence); State v. Irwin, 285 S.E.2d 345, 349 (N.C. Ct. App. 1982) (rejecting the concept of conditional intent and finding that, in order to prove assault with intent to murder, there must be an "actual, existing, and present intent to kill"); State v. Kinnemore, 295 N.E.2d 680, 683 (Ohio Ct. App. 1972) (reducing an assault-with-intent-to-murder conviction, stating that "[t]he threat was conditional, where as an assault coupled with a present intent to kill necessarily involves continuous, sequential, and uninterrupted conduct").

[140] *See Holloway*, 119 S. Ct. at 974 (Scalia, J., dissenting). Justice Scalia interpreted the majority's opinion to embrace a form of "intent," which, depending on the criminal statute in question, may include conditional intent. *See id.*

[141] *See id.* In particular, Justice Scalia identified 18 U.S.C. § 2113's intent to steal, § 152(5)'s intent to defeat the Bankruptcy Code's provisions, § 962's intent to use a vessel in hostilities levied against a friendly nation, and finally, § 1204's intent to obstruct a parent from lawfully exercising his or her rights. *See id.*

[142] *See id.* The Justice provided two examples illustrating the shortcomings of conditional intent's incorporation into the criminal code. *See id.* First, Justice Scalia focused on 21 U.S.C. § 841, which criminalizes the possession of certain narcotics with an intent to distribute them. *See id.* Justice Scalia then hypothesized a situation in which a person buys a small amount of cocaine solely for his personal use. *See id.* Justice Scalia assumed further that, when the person purchased the drug, he expressed to his wife that if they needed the money, he could simply resell it. *See id.*

asserts, varies from being sometimes conditional to other times not, the Court would ultimately have to "sift through . . . many statutes one-by-one[,] making [its] decision on the basis of such ephemeral indications of 'congressional purpose' as . . . used in this case."[143]

Justice Scalia also commented on the majority's overriding justification that the Act's cardinal purpose — carjacking deterrence — dictates a blanket interpretation of criminal intent.[144] The Justice argued that, rather than relying on vague and uninformative legislative history to uncover the legislature's purpose, the Court should focus on the Act's actual words.[145] With this in mind, Justice Scalia chastised the majority's incorporation of "conditional intent" when Congress neither used nor mentioned such phraseology within the Act.[146] Absent the inclusion of more encompassing language

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In demonstrating the fallacy of conditional intent, the Justice concluded that, if conditional intent were sufficient, then this person, who never sold or ever "intended" to sell drugs in the normal sense, would, nevertheless, be "guilty of possession with intent to distribute." *Id.* In his second example, Justice Scalia focused upon 18 U.S.C. § 2390, which criminalizes enlisting within the United States "'with intent to serve in armed hostility against the United States.'" *Id.* (citing 18 U.S.C. § 2390 (1992)). Here, the Justice imagined a Canadian citizen enlisted in the Canadian armed forces while in the United States, intending to fight in each of Canada's wars, including, if need be, against the United States. *See id.* Justice Scalia declared that, under the auspices of the majority's concept of conditional intent, the enlistee would be guilty. *See id.* Moreover, Justice Scalia scoffed at the single case, after nearly two hundred years of federal criminal litigation, involving the interpretation of a federal statute that applied the conditional intent rule. *See id.* (citing Shaffer v. United States, 308 F.2d 654, 655 (5th Cir. 1962)). Indeed, the Justice remarked that the application of real intent would have sufficed in that case. *See id.*

[143] *Id.* at 974-75 (Scalia, J., dissenting).

[144] *See Holloway*, 119 S. Ct. at 975 (Scalia, J., dissenting). In describing the majority's reliance on the congressional purpose to deter carjacking, the Justice referred to the majority's assertion that it "'is better served by construing the statute to cover both the conditional and the unconditional species of wrongful intent.'" *Id.* (quoting *Holloway*, 119 S. Ct. at 971).

[145] *See id.* Justice Scalia obliquely referred to the two legislators' statements, which spoke generally about broadening and strengthening the carjacking statute as well as severely punishing carjackers. *See id.*; *see also supra* note 24 (providing the statements of Representative Franks and Senator Lieberman). The Justice warned that every act hopes to achieve the enunciated policy objectives, but only by the means specified. *See id.* The Justice found that "[l]imitations upon the means employed to achieve the policy goal are no less a 'purpose' of the statute than the policy goal itself." *Id.* In supporting this argument, the Justice reasoned that the obvious way to determine Congress's true meaning is not by intuition, but rather by looking at the words enacted, which here specifically required an intent to kill. *See id.*

[146] *See id.* at 976 (Scalia, J., dissenting). The Justice warned that the majority's creation of words sends a confusing signal to juries and courts. *See id.* Consequently, the Justice observed that "[i]t is difficult enough to determine a defendant's actual intent; it is infinitely more difficult to determine what the defendant planned to do

characterizing a broader scope of carjacking coverage, the Justice concluded that the only plausible interpretation is that Congress solely focused on the carjacker's intent to kill.[147] Finally, Justice Scalia argued that, although the Act is entirely unambiguous, even if it were ambiguous, the rule of lenity would compel a finding on Ali's behalf.[148]

Justice Thomas, dissenting, refuted the majority's interpretation of the term "intent" in that it included the notion of "conditional" intent.[149] Significantly, the Justice noted the omission of a definition that expressly enunciates the meaning of "intent."[150] Furthermore, Justice Thomas remarked that, although the majority cited *some* authority accepting the conditional intent doctrine, this authority clearly did not establish that the acceptance of conditional intent was well-settled.[151] Accordingly, the Justice concluded that the Court could not presume congressional awareness of the conditional intent rule, and, as a result, the Court could not read the Act to incorporate conditional intent.[152]

With *Holloway*, the Supreme Court formally validated the concept of conditional intent, which had lacked the ceremonious endorsement that has been provided to a host of other American legal doctrines.[153] Notwithstanding the comprehensive legal support that marked the conditional intent doctrine as an entrenched aspect

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upon the happening of an event that the defendant hoped would not happen, and that he himself may not have come to focus upon." *Id.*

[147] *See id.* The Justice explained:

> Had Congress meant to cast its carjacking act so broadly, it could have achieved that result . . . by defining the crime as "carjacking under the threat of death or serious bodily injury." Given the language here, I find it much more plausible that Congress meant to reach — as it said — the carjacker who intended to kill.

*Id.*

[148] *See id.*; *see also supra* notes 47 (defining the rule of lenity) and 48 and accompanying text.

[149] *See Holloway*, 119 S. Ct. at 977 (Thomas, J., dissenting).

[150] *See id.* Justice Thomas asserted that "[t]he central difficulty in this case is that the text is silent as to the meaning of 'intent' — the carjacking statute does not define that word, and Title 18 of the United States Code, unlike some state codes, lacks a general section defining intent to include conditional intent." *Id.*

[151] *See id.* ("[T]hat authority does not demonstrate that such a usage was part of a well-established historical tradition.").

[152] *See id.*

[153] *See, e.g.*, *In re* Winship, 397 U.S. 358, 364 (1970) (providing constitutional status to the reasonable doubt rule under the auspices of due process); Duncan v. Louisiana, 391 U.S. 145, 149 (1968) (concluding that a "trial by jury in criminal cases is fundamental to the American scheme of justice"); *see also supra* note 2 (discussing the reasonable doubt standard and the *Winship* decision).

of American criminal law, the Court was compelled to substantiate its ultimate conclusion with weaker supporting rationales. Indeed, the Court's legitimation of conditional intent demanded a thorough discussion to bolster its validity and to systematically defuse potential objections. Conversely, the dissents' capitalization on the perceived shortcomings of the majority's opinion reflects an indifference to the widespread acceptance of an entrenched legal theory. Driving the dissenting justices is their strict adherence to "textualism," a much-maligned interpretive method.[154]

The pure textualist approach to statutory interpretation embraces a refusal to consider anything beyond the "plain meaning" of a statute as derived solely from the ordinary understanding or comprehension of its explicit words and overall structure.[155] Noticeably absent from this interpretive approach is the examination of the legislative process and history underlying the statute's inception.[156] Pure textualists argue that all external statutory factors are irrelevant and that the text of the statute, standing alone, is sufficient to provide a reasonable interpretation.

Textualism has been denounced on numerous grounds. The primary shortcoming of this methodology is its failure to consider context-dependent factors that play an indelible part in a statute's evolution.[157] Indeed, Justice Souter has responded that, when deciphering a statute's meaning and intended purpose, any resulting inquiry must factor in the process that gave rise to the statute's creation and, therefore, extend beyond the four corners of the text.[158] Additionally, textualism suffers from a presumption that a statute — complex in nature and facially ambiguous — is capable of being

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[154] *See infra* notes 155-60 and accompanying text (providing a detailed discussion of "textualism" and its approach to statutory interpretation).

[155] *See* Patricia M. Wald, *The Sizzling Sleeper: The Use of Legislative History in Construing Statutes in the 1988-89 Term of the United States Supreme Court*, 39 AM. U. L. REV. 277, 285 (1990) ("[T]he textualist view logically points to a full-scale attack on the use of any and all extra-statutory materials under any and all circumstances.").

[156] *See* Wald, *supra* note 155, at 285. Textualists do not believe that legislative history is less authoritative compared to explicit statutory language. *See id.* "Rather, much of the textualists' critique attacks reliance on materials other than statutory text because Congress has a voice as a constitutional player only through its finally enacted statutes, not through any supplementary explanation thereof." *Id.*

[157] *See* Bradley C. Karkkainen, *"Plain Meaning": Justice Scalia's Jurisprudence of Strict Statutory Construction*, 17 HARV. J.L. & PUB. POL'Y 401, 405-06 (1994). Judge Richard Posner argues that the textualist, or plain meaning view, neglects to consider the "external ambiguities" that are intended to be a part of the meaning of the text. *See id.*

[158] *See* Karkkainen, *supra* note 157, at 406.

construed in a single plausible interpretation.[159] Notwithstanding the reasonable misgivings overshadowing the textualist ideal, Justice Scalia has vigorously spearheaded a revival of this once seemingly dormant approach.[160]

Although Justice Scalia has not espoused pure textualism, his version[161] nevertheless seeks the bright-line exclusion of legislative history as a primary means for interpreting a statute.[162] Justice Scalia's departure from true textualism lies in his willingness to consider some external factors, which essentially acknowledges that a statute must be read in context.[163] Despite Justice Scalia's mitigated application of textualism, the majority has continuously demonstrated its general rejection of the textualist doctrine by

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[159] *See* Karkkainen, *supra* note 157, at 475 (identifying as one of textualism's vulnerabilities "that a complex, apparently ambiguous, and possibly inartfully drafted statutory text is capable of only a single plausible construction").

[160] Many observers believed that the plain meaning standard was effectively rendered void in 1940 when Justice Reed stated, in *United States v. American Trucking Ass'ns*, that "[w]hen aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'" Karkkainen, *supra* note 157, at 436 (citing United States v. American Trucking Ass'ns, 310 U.S. 534, 543-44 (1940)). The Court, however, has never strictly relied on this holding. *See id.*

[161] Justice Scalia's version of textualism has been labeled "new textualism." *See* William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621, 623 (1990). This interpretive theory proffers that once the plain meaning of a statute has been determined, then its legislative history is rendered irrelevant. *See id.* In fact, irrespective of the situation, legislative history is deemed useless in the process of ascertaining the statute's meaning. *See id.* Rather, the statutory text and structure, along with the assistance of the canons of statutory construction, are to act as the guideposts for the statute's interpretation. *See id.* at 623-24.

[162] *See* Karkkainen, *supra* note 157, at 433. Justice Scalia continually opposes the use of legislative history as evidence of congressional intent; instead, the Justice promotes the literal construction of statutes governed by unambiguous interpretative rules legislated by Congress. *See id.* The cardinal rule, for Justice Scalia, is the "Plain Meaning Rule," which allows courts to abstain from recognizing legislative history if the import of the statute is clear or plain on its face. *See id.*

At least one author has criticized Justice Scalia's erroneous use of the "Plain Meaning Rule," stating that this standard does not act as a blanket prohibition to the utilization of legislative history regardless of the circumstances. *See id.* at 436-37. On the contrary, the plain meaning standard "explicitly endorses the use of legislative history to resolve ambiguities and interpretive doubts in a statutory text." *Id.* The rule was created to prohibit the consideration of legislative history only when the statute was so plain and clear on its face that a search of its subsequent history was unnecessary. *See id.* at 435.

[163] *See* Karkkainen, *supra* note 157, at 408. Although Justice Scalia forswears reliance on legislative history, "other kinds of extratextual historical and factual evidence are within the bounds of interpretation. Use of this kind of external contextual evidence is inconsistent with a purely textualist approach to statutory interpretation." *Id.* Additionally, the surrounding body of law and legal context, in Justice Scalia's view, are also pertinent to the understanding of a statute. *See id.*

placing legislative history at the forefront of statutory interpretation.[164] This is not to say, however, that Justice Scalia's textualist approach has not made an impact. To be sure, since Justice Scalia's appointment in 1986, the Court has, to some degree, minimized its overall reliance on legislative history as a tool for ascertaining a statute's meaning.[165] It is also not surprising that Justice Scalia is able to depend on the support of Justice Thomas, who similarly has echoed the textualist approach.[166] True to form, both Justice Scalia and Justice Thomas have continued to advance the textualist argument, as evidenced by their dissenting opinions in *Holloway*.[167]

The glaring criticisms of the textualist methodology clearly surface upon analysis of the dissenters' opinions in *Holloway*. To illustrate, Justice Scalia implemented a perceived common understanding of the word "intent" to refute the possibility that it may encompass differing meanings.[168] Because adherents of textualism often employ a narrow and arbitrarily chosen dictionary definition to foreclose varying interpretations,[169] critics properly advise that such an approach ignores the reality that crucial terms, in some statutory instances, are meant to embrace broad, multi-dimensional meanings.[170] That being said, the concept of conditional

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[164] *See* Karkkainen, *supra* note 157, at 401. Justice Scalia's approach has not received the general support of the Court. *See id.* As evidence, the Court has never openly endorsed Justice Scalia's interpretive approach in a majority opinion. *See id.*

[165] *See* Michael H. Koby, *The Supreme Court's Declining Reliance on Legislative History: The Impact of Justice Scalia's Critique*, 36 HARV. J. ON LEGIS. 369, 369 (1999) (explaining that "there has been a significant decrease in the Supreme Court's reliance on legislative history documents, attributable at least in part to Justice Scalia's criticism of its use").

[166] *See* Karkkainen, *supra* note 157, at 401. Interestingly, Justice Kennedy has also subscribed to Justice Scalia's textualist approach. *See id.*

[167] *See* Holloway v. United States, 119 S. Ct. 966, 972-77 (1999); *see also supra* notes 130-52 and accompanying text (discussing the dissenting opinions of Justices Scalia and Thomas).

[168] *See id.* at 972-73. Justice Scalia invoked the "customary English usage" of "intent" to rule out the possibility that it may be construed as conditional. *See id.* Additionally, the Justice provided the dictionary definition of "intent" to support the contention that the term "conditional" never appears. *See id.* at 973; *see also* note 133 (reproducing Justice Scalia's dictionary definition of "intent").

[169] *See* Karkkainen, *supra* note 157, at 439-40. While adhering to the precise statutory text is crucial, Justice Scalia, when given a choice, typically chooses to interpret the statute narrowly, instead of liberally. *See id.* To accomplish this, the Justice "appeals to a narrow dictionary definition of a crucial word or phrase to reach what he claims is the definitive plain meaning of the larger text." *Id.* at 440.

[170] *See* Karkkainen, *supra* note 157, at 440. The plain meaning standard does not compel, as Justice Scalia would otherwise argue, the implementation of the narrowest possible definition of a crucial statutory term. *See id.* On the contrary, judges could

intent historically has arisen to satisfy the mens rea element of assault.[171] Although criminal statutes rarely explained or defined intent as being purposeful as well as conditional, the legal system recognized the two versions as inextricably linked, and, therefore, the term "intent" included both possibilities.[172] Not unlike other assault-oriented statutes, the Anti Car Theft Act of 1992 undoubtedly contemplated an expansive interpretation of "intent." The majority, guided by legislative history and a recognition of the validity of conditional intent, and unfettered by constraints of textualism that would shackle Justices Scalia and Thomas, rightly gave judicial credence to the Act, and more significantly, to the concept of conditional intent.[173]

*Samuel E. Peckham*

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insist on expansive readings of the "statutory text" to determine its "plain meaning." *See id.*

[171] *See supra* notes 12-15 and accompanying text (discussing the concept of conditional intent and its evolution).

[172] *See supra* notes 12-15 and accompanying text (discussing the concept of conditional intent and its evolution).

[173] Ironically, Justice Scalia's textualist approach appears to inadvertently countermand the conservative dogma his opinions historically champion. *See generally* Richard A. Brisbin, Jr., *The Conservatism of Antonin Scalia*, 105 POL. SCI. Q. 1 (1990) (detailing Justice Scalia's conservative policy stance). Indeed, the Justice's position on the Act's interpretation errs on the side of individual liberties, while notably attempting to deprive or lessen the effectiveness of a much-needed statutory tool to law enforcement. Temporarily abandoning their traditionally conservative roles on the Court, Justice Scalia's and Thomas's insistence that textualism is the proper interpretative methodology, regardless of the practical effect, ostensibly undermines their own stated doctrinal teachings. While the term "liberal" has never been freely associated with either of the Justices, that is precisely the word which describes the product of their unabashed support for textualism. *See* Emery G. Lee III et al., *Context and the Court: Sources of Support for Civil Liberties on the Rehnquist Court*, 24 AM. POL. Q. 377, 393 n.1 (1996) ("Cases in which the Court finds for the individual (prodefendant, prominority, pro-under dog," etc.) and/or against the state are coded as "liberal" in direction . . . .").