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Double-Barreled Prosecution: Linking Multiple Section 924(c) Violations to a Single Predicate Offense

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Double-Barreled Prosecution: Linking Multiple Section 924(c) Violations to a Single Predicate Offense

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I. INTRODUCTION

Violent crime involving the use of firearms has risen dramatically during the past few decades.¹ Recent congressional efforts to address this problem have focused almost exclusively on gun control as the appropriate solution, leading to the imposition of waiting periods for the purchase of firearms and complete bans on the production of certain assault weapons. Attempting to remove firearms from the hands of criminals, however, is not an exclusive remedy.

One of the natural companion measures to gun control is the imposition of severe sentences for the use of firearms during the commission of violent felonies. Congress adopted this approach with

1. FBI crime statistics show that the number of murders, aggravated assaults, and robberies committed with firearms increased 97.9% between 1974 and 1994. Federal Bureau of Investigation, Program Support Section of the Criminal Justice Information Services Division, *Uniform Crime Reporting Database* (data on file with the Author).

the enactment of 18 U.S.C. section 924(c)² as part of the Gun Control Act of 1968. Section 924(c) could be an important weapon in the prosecutor's legal arsenal, but disagreement over key provisions of the statute has reduced its effectiveness. Congress has amended the statute six times,³ and disagreements over its interpretation have reached the Supreme Court on five occasions.⁴

2. The statute in its current form provides:

Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for five years, and if the firearm is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, to imprisonment for ten years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to imprisonment for thirty years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to life imprisonment without release. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried.

18 U.S.C. § 924(c)(1) (1994 ed.).

3. Congress amended section 924(c) in 1971, 1984, 1986, 1988, 1990, and 1994. The 1971 amendments reduced the minimum sentence for a second or subsequent offense from five to two years, and provided that a sentence could not run concurrently with any sentence imposed for the underlying offense. Omnibus Crime Control Act of 1970, Pub. L. No. 91-644, tit. II, § 13, 84 Stat. 1890 (1971). The 1984 amendments clarified that section 924(c) applies even where the penalties for the underlying crime may be enhanced when the crime is committed with a firearm, specifically responding to the Supreme Court's holdings in *Simpson v. United States* and *Busic v. United States*, see note 4; imposed uniform sentences of five years for a first conviction and ten years for a second or subsequent conviction; and provided that a court may not place on probation or suspend the sentence of any person convicted under section 924(c). Continuing Appropriations, 1985—Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, ch. 10, § 1005(a), 98 Stat. 2138-39 (1984). The 1986 amendments increased the penalties and broadened the application of section 924(c) to include drug trafficking crimes and crimes committed with machine guns and silencers. Firearm Owners' Protection Act, Pub. L. No. 99-308, § 104(a)(2), 100 Stat. 457 (1986). The 1988 amendments increased the penalties for a section 924(c) violation. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 6460, 102 Stat. 4181, 4373. The 1990 amendments also increased penalties and added short-barreled rifles, sawed-off shotguns, and destructive devices to the list of penalized firearms. Crime Control Act of 1990, Pub. L. No. 101-647, §§ 1101, 3527, 104 Stat. 4829, 4924 (1990). The 1994 amendment added semiautomatic assault weapons to the list of specifically identified firearms. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, tit. XI, § 110102(c)(2), 108 Stat. 1998 (1994).

4. *Simpson v. United States*, 435 U.S. 6, 12-13 (1978) (holding that the government could not charge a defendant for violating the original section 924(c) where the statute proscribing the predicate offense already provided for increased penalties when the offense was committed with a firearm); *Busic v. United States*, 446 U.S. 398, 404-05 (1980) (holding that where the statute proscribing the predicate offense provided for increased penalties when the offense was committed with a firearm, the defendant must be sentenced under that statute and not section 924(c)); *Deal v. United States*, 508 U.S. 129, 137 (1993) (holding that convictions and sentences

Recently, a new question regarding the interpretation of section 924(c) has split the federal circuit courts. That divisive question is the meaning of the statutory phrase "whoever, during and in relation to any crime of violence or drug trafficking crime . . . uses or carries a firearm."⁵ This language "may mean either that (1) *each time* a defendant uses [or carries] a firearm in relation to a crime he commits a separate crime, or (2) that if during the course of a crime a defendant uses [or carries] a firearm *at any time*, he commits a [single] separate crime."⁶ The resolution of this issue has obvious implications for the effectiveness of section 924(c) as a deterrent to firearm use, especially since the penalties for violating section 924(c) become more severe as the act is repeated.⁷

This Note argues that the majority of circuit courts misinterpret section 924(c), preventing the statute from having its full deterrent effect. Part II briefly discusses the origin of the statute. Part III outlines the various approaches that the circuit courts have taken when determining whether multiple section 924(c) violations may be linked to a single predicate offense. Part IV analyzes these approaches, considering especially the statutory text and the purpose of the statute, and concludes that section 924(c) proscribes, as a distinct criminal offense, each separate use of a firearm during and in relation to the commission of a federal felony.

II. AN ENIGMATIC ENACTMENT

A dramatic increase in the number of crimes committed with firearms during the late 1960s⁸ produced a congressional consensus

for second and subsequent violations of section 924(c) may be imposed during the same prosecution); *Smith v. United States*, 508 U.S. 223, 238 (1993) (holding that exchanging a firearm for drugs constitutes a use of the firearm within the meaning of section 924(c)); *Bailey v. United States*, 116 S. Ct. 501, 507-08, 133 L. Ed. 2d 472 (1995) (holding that only conduct involving the active employment of a firearm constitutes a use of the firearm within the meaning of section 924(c)).

5. 18 U.S.C. § 924(c).

6. *United States v. Anderson*, 59 F.3d 1323, 1326 (D.C. Cir. 1995) (internal quotation marks omitted), cert. denied, 116 S. Ct. 542, 133 L. Ed. 2d 445 (1995).

7. 18 U.S.C. § 924(c).

8. See State Firearms Control Assistance Act of 1968, H.R. Rep. No. 90-1577, 90th Cong., 2d Sess. 7 (1968), reprinted in 1968 U.S.C.C.A.N. 4410, 4413 ("Handguns, rifles, and shotguns have been the chosen means to execute three-quarters of a million people in the United States since 1900. The use of firearms in violent crimes continues to increase today. Statistics indicate that 50 lives are destroyed by firearms each day. In the 13 months ending in September 1967 guns were involved in more than 6,500 murders, 10,000 suicides, 2,600 accidental deaths,

that greater federal involvement in law enforcement and gun control was necessary. Congress therefore enacted the Omnibus Crime Control and Safe Streets Act of 1968.⁹ Ironically, the Omnibus Act passed on the day of Robert F. Kennedy's assassination, a coincidence which strengthened the demand to impose stronger sentences on those who used firearms to commit crimes.¹⁰ Just four days later, Congress amended Title IV of the Omnibus Act, which contained a new chapter of the United States Code dealing with firearms, with the Gun Control Act of 1968.¹¹

The provision that became section 924(c) was inserted as a substitute floor amendment to the Gun Control Act during final passage in the House.¹² It focused on the use of firearms in the commission of federal crimes and provided in part:

Whoever—

- (1) uses a firearm to commit any felony which may be prosecuted in a court of the United States, or
- (2) carries a firearm unlawfully during the commission of any felony which may be prosecuted in a court of the United States,

shall be sentenced to a term of imprisonment¹³

Soon after the House passed the amendment, a similar amendment was offered in the Senate.¹⁴ Though it apparently ad-

43,500 aggravated assaults, and 50,000 robberies. No civilized society can ignore the malignancy which this senseless slaughter reflects.").

9. Pub. L. No. 90-351, 82 Stat. 197 (1968), codified as amended in scattered sections of the U.S. Code.

10. See *Simpson*, 435 U.S. at 18 (Rehnquist, J., dissenting) (commenting that "Senator Kennedy's assassination . . . obviously focused the attention of Congress on the problem of firearms control"); *United States v. Hill*, 971 F.2d 1461, 1472 (10th Cir. 1992) (Moore, J., dissenting) (stating that following Senator Kennedy's assassination, the demand for harsher penalties "became more urgent").

11. Pub. L. No. 90-618, 82 Stat. 1213 (1968).

12. The substitute amendment was offered by Representative Poff, who sought to strengthen a gun control measure already presented on the House floor. 114 Cong. Rec. 22,231 (July 19, 1968).

13. The original version of section 924(c) incorporated this language verbatim. It stated:

Whoever—

- (1) uses a firearm to commit any felony which may be prosecuted in a court of the United States, or
- (2) carries a firearm unlawfully during the commission of any felony which may be prosecuted in a court of the United States,

shall be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than [twenty-five] years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.

Gun Control Act of 1968, 82 Stat. at 1224.

dressed the same concerns as the House amendment, the language and approach of the Senate measure differed markedly, emphasizing the commission of the underlying felony. It provided in part: "Whoever, while engaged in the commission of any offense which is a crime of violence punishable under this title, is armed with any firearm, may in addition to the punishment provided for the crime be punished by imprisonment . . ." ¹⁵

The hurried consideration and insertion of these amendments resulted in the absence of committee hearings or reports on either measure. Other than statements made by legislators on the floor, the report of the Conference Committee provides the only information concerning the enactment of section 924(c). The report states that the conference substitute is identical to the measure that originated in the House.¹⁶ However, neither the statements of the legislators nor the conference committee report directly addresses whether section 924(c) allows multiple convictions and sentences in relation to a single underlying felony.

III. INTERPRETIVE INCONSISTENCY

The federal courts of appeal that have directly confronted this issue have settled into two opposing groups. Each group, in turn, has articulated two interpretations of section 924(c) to support its conclusion.

14. Senator Dominick sponsored this amendment and emphasized the "commonsense of [its] approach" to the imposition of penalties for the criminal use of a firearm. 114 Cong. Rec. 27,142 (Sept. 17, 1968).

15. *Id.*

16. Gun Control Act of 1968, H.R. Conf. Rep. No. 90-1956, 90th Cong., 2d Sess. 32 (1968), reprinted in 1968 U.S.C.A.N. 4426, 4431. The version of section 924(c) adopted by the Conference Committee differed from the Poff Amendment in two respects. The prohibitions on suspension of sentence and probation were applicable only to second and subsequent convictions, and concurrent sentencing was not prohibited. *Id.* This pronouncement by the Conference Committee is especially significant because "[t]he report of a joint conference committee of both Houses of Congress . . . is accorded a good deal more weight than the remarks even of the sponsor of a particular portion of a bill on the floor of the chamber." *Simpson*, 435 U.S. at 17 (Rehnquist, J., dissenting). See Part IV.

A. *The Predicate Offense Test and the Rule of Lenity*

The majority of federal courts advocate what is loosely termed the "predicate offense test." This view holds that a single underlying felony can serve as the basis of only one section 924(c) violation and conviction.¹⁷

Some of the predicate offense courts reason that section 924(c) focuses on firearms only to the extent that a defendant uses them "during and in relation to" the underlying felony.¹⁸ They conclude that because the statute emphasizes the relationship between the firearms and the underlying felony, the underlying felony is the proper unit of prosecution.¹⁹ Thus, the number of times a single firearm is used during the commission of the predicate offense is irrelevant. The number of firearms used likewise has no bearing on the application of section 924(c) under this line of reasoning.²⁰

Other courts conclude that it is unclear whether Congress intended to punish a defendant multiple times for each firearm possessed or each separate firearm use, or to punish the defendant only once for the continuing act of using firearms during the commission of the underlying offense.²¹ Because section 924(c) imposes severe penalties in multiple convictions, these courts apply the rule of lenity in favor of the defendant.²²

17. See, for example, *United States v. Lindsay*, 985 F.2d 666, 676 (2nd Cir. 1993); *United States v. Privette*, 947 F.2d 1259, 1262-63 (5th Cir. 1991); *United States v. Henry*, 878 F.2d 937, 942-45 (6th Cir. 1989); *United States v. Nabors*, 901 F.2d 1351, 1357-58 (6th Cir. 1990); *United States v. Clark*, 928 F.2d 733, 737-38 (6th Cir. 1991); *United States v. Sims*, 975 F.2d 1225, 1233 (6th Cir. 1992); *United States v. Taylor*, 13 F.3d 986, 992-93 (6th Cir. 1994); *United States v. Cappas*, 29 F.3d 1187, 1189 (7th Cir. 1994); *United States v. Jackson*, 65 F.3d 631, 634 (7th Cir. 1995); *United States v. Smith*, 924 F.2d 889, 894-95 (9th Cir. 1991); *United States v. Henning*, 906 F.2d 1392, 1398-99 (10th Cir. 1990); *United States v. Rogers*, 921 F.2d 1089, 1092-93 (10th Cir. 1990); *United States v. Moore*, 958 F.2d 310, 314 (10th Cir. 1992); *United States v. Hamilton*, 953 F.2d 1344, 1345-46 (11th Cir. 1992).

18. *Lindsay*, 985 F.2d at 675; *Taylor*, 13 F.3d at 993.

19. *Lindsay*, 985 F.2d at 673.

20. *United States v. Anderson*, 39 F.3d 331, 359 (D.C. Cir. 1994) (panel decision) (Silberman, J., dissenting in part).

21. *Lindsay*, 985 F.2d at 675.

22. *Id.* at 676. The essence of the predicate offense test is that a person cannot be punished more than once for violating section 924(c). The concern, therefore, appears to be connected with double jeopardy principles. The Supreme Court has held that "[w]ith respect to cumulative sentences imposed in a single trial, the Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended." *Missouri v. Hunter*, 459 U.S. 359, 366 (1983). Double jeopardy concerns, then, are not independent of the statutory interpretation involved. A determination of the proper unit of prosecution will also resolve any double jeopardy issues in sentencing under section 924(c).

B. Separate Guns and Separate Uses

Courts adopting the minority view allow multiple violations of section 924(c) to be linked to a single underlying felony.²³ These courts find no ambiguity in the statute and reject the predicate offense test as illogical.²⁴

One circuit has held that section 924(c) clearly establishes the firearm as the object of the statute and, therefore, the appropriate unit of prosecution.²⁵ According to this analysis, a statute that prefaces the object of the offense with the word "a" unambiguously authorizes only singular units of prosecution.²⁶ A defendant, then, violates section 924(c) as many times as he possesses an additional gun during and in relation to a single underlying felony.²⁷

Other courts have held that the language of section 924(c) criminalizes neither the underlying felony nor the simple possession of a firearm.²⁸ They reason that the statute proscribes, as a separate offense, the use of a firearm during and in relation to the predicate offense.²⁹ According to this analysis, each separate deployment of a firearm is a violation of section 924(c), even where all such deployments occur during the course of a single continuing underlying felony.³⁰ These courts stress that only the separate use approach achieves the asserted purpose of section 924(c) and enables the statute to create its full deterrent effect.³¹

23. See, for example, *United States v. Camps*, 32 F.3d 102, 106 (4th Cir. 1994), cert. denied, 115 S. Ct. 1118, 130 L. Ed. 2d 1082 (1995); *United States v. Lucas*, 932 F.2d 1210, 1222-23 (8th Cir. 1991); *United States v. Freisinger*, 937 F.2d 383, 388-90 (8th Cir. 1991).

24. See *Freisinger*, 937 F.2d at 389 ("The plain language of [section 924(c)] lead[s] inexorably to the conclusion that the statute suffers from no ambiguity, either real or contrived."); *Camps*, 32 F.3d at 109 (stating that the "view that [section 924(c)] is ambiguous on the question must fail as well, since ambiguity certainly cannot be created by imposing on a statute a reading unsupported by either text or logic").

25. *Freisinger*, 937 F.2d at 390.

26. *Id.* at 389. *Freisinger* appears to be an anomaly. No other circuit has ever concluded that the firearm is the object, or appropriate unit of prosecution, of section 924(c). The Eighth Circuit itself, though not overruling the decision, has never cited it as authority in a later case. In fact, it does not appear that *Freisinger* has ever been cited with approval.

27. *Id.* at 390.

28. *Camps*, 32 F.3d at 108; *Lucas*, 932 F.2d at 1222-23.

29. *Camps*, 32 F.3d at 107; *Lucas*, 932 F.2d at 1223.

30. *Camps*, 32 F.3d at 107.

31. *Id.* at 108.

C. *The Latest Word: United States v. Anderson*

The United States Court of Appeals for the District of Columbia, sitting en banc, recently addressed this specific question of interpretation in *United States v. Anderson*.³² Its opinions provide the most detailed and sophisticated consideration of section 924(c).

1. The Facts of the Case

For years, Marcos Anderson spearheaded an extensive narcotics distribution network in the Washington, D.C. area.³³ He bought drugs from suppliers in cities throughout the country and controlled five distribution centers in Washington D.C., Maryland, and Virginia.³⁴ On two separate occasions Anderson sent armed co-conspirators to Los Angeles to rob one of his cocaine suppliers.³⁵ Both robbery attempts failed when FBI agents intercepted and arrested the men.³⁶ Two months after the second robbery attempt, the police raided two of Anderson's distribution centers, arrested Anderson, and seized guns from both locations.³⁷

At trial, Anderson was convicted of conspiracy to distribute and possession with intent to distribute cocaine.³⁸ He was also convicted of four violations of section 924(c), all linked to the same underlying drug conspiracy.³⁹ A divided panel of the appellate court rejected Anderson's double jeopardy challenge to the multiple section 924(c) convictions and affirmed his sentence.⁴⁰ After a rehearing en banc, limited to the question of whether multiple section 924(c)

32. 59 F.3d 1323 (D.C. Cir. 1995) (en banc), cert. denied, 116 S. Ct. 542, 133 L. Ed. 2d 445 (1995).

33. *Id.* at 1335 (Ginsburg, J., dissenting).

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* at 1324.

39. Two of the section 924(c) counts related to the firearms seized during the unsuccessful robbery attempts. The other two were based on firearms recovered from each of the distribution centers raided by the police. *Id.* at 1324-25.

40. The majority adopted the separate use approach:

We begin, therefore, with the text of the statute, which is quite clear: it proscribes the use or carrying of a firearm during and in relation to a drug trafficking offense. Anderson used a firearm in relation to a drug trafficking offense on at least four separate occasions, to further four distinct purposes. No amount of sophisticated analysis can avoid the conclusion that he thereby violated [section 924(c)] four times, and therefore can be convicted and sentenced four times.

Anderson, 39 F.3d at 354 (panel decision).

violations may be linked to a single predicate offense, however, the court reversed all but one of Anderson's convictions.⁴¹

2. The Majority Opinion

The *Anderson* majority observed that section 924(c) constitutes a separate and distinct offense, rather than a penalty enhancement.⁴² It rejected the notion, however, that as separate offenses, multiple section 924(c) violations automatically could be linked to a single underlying felony. Instead, it held that the statute has a hybrid character,⁴³ and that it creates a distinct crime proscribing a course of conduct or the state of being armed.⁴⁴ Consequently, the court reasoned, a defendant can violate section 924(c) only once during and in relation to a single predicate offense.

The majority's sophisticated analysis relied upon both textual arguments and interpretations of the sparse legislative history of section 924(c). First, it noted the juxtaposition of "uses" with "carries" in the statute and stated that "carries" implies a continuing activity.⁴⁵ The majority reasoned that if Congress did not intend a section 924(c) violation to occur each time a defendant carried a firearm during a single underlying felony, it would not have intended each deployment of a firearm in the same context to be a violation of the statute.⁴⁶ Therefore, "use" for purposes of section 924(c) must mean use at any time during the commission of the predicate offense.⁴⁷

The majority also emphasized the use of definite articles in the statute. For example, one clause provides for increased penalties "if *the* firearm is a machinegun."⁴⁸ According to the majority, Congress employed definite articles in drafting section 924(c) because it did not regard as significant either the number of firearms used or the number of times a single firearm was used during a single predicate

41. *Anderson*, 59 F.3d at 1333, 1334.

42. *Id.* at 1326 ("[A] [section 924(c)] conviction stands on its own.").

43. *Id.* This "hybrid character" arises from the fact that the government must present sufficient evidence to prove the predicate offense as an element of the section 924(c) violation, even if the defendant is eventually acquitted of that predicate offense. *Id.*

44. *Id.* at 1331.

45. *Id.* at 1327.

46. *Id.*

47. The court stated that the specific act interpretation of "uses" "would be stronger if the statute employed 'use' as a noun, such that 'a use' of a gun in relation to a drug crime would be a violation of [section 924(c)]." *Id.* at 1326.

48. *Id.* at 1327.

crime.⁴⁹ Instead, Congress envisioned a single section 924(c) violation once a defendant used a firearm at any time during the commission of the underlying felony.⁵⁰ The purpose of section 924(c), therefore, is to punish a defendant more severely for an underlying crime whose character irrevocably changes once the defendant uses a firearm.⁵¹

The majority next sought to buttress its textual analysis with the legislative history of section 924(c) and statements made by Representative Poff, the statute's sponsor. Representative Poff stated that the "prosecution for the basic felony and the prosecution under [section 924(c)] would constitute one proceeding out of which two separate penalties may grow."⁵² Because the statute's sponsor only mentioned the existence of two penalties, the majority concluded that a defendant can violate section 924(c) only once during a single crime. The majority also noted Representative Poff's remark that section 924(c) was designed to "persuade the man who is tempted to commit a Federal felony to leave his gun at home."⁵³ Consequently, a complete section 924(c) violation occurs—the persuasion fails—once the defendant uses a firearm.⁵⁴

Despite the force of its arguments in favor of the predicate offense test,⁵⁵ the majority ultimately concluded that section 924(c) is ambiguous.⁵⁶ It therefore applied the rule of lenity and held that only one section 924(c) violation may be charged in relation to a single underlying felony.⁵⁷

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* (quoting 114 Cong. Rec. 22,232 (July 19, 1968)).

53. *Id.* at 1327-28 (quoting 114 Cong. Rec. 22,231 (July 19, 1968)).

54. *Id.* at 1328.

55. The majority also attacked the viability of the separate use analysis, stating that it would "prove devilishly difficult analytically to determine on which occasions and in what circumstances during an ongoing conspiracy . . . a defendant was guilty of another separate and distinct 'use' or 'carry.'" This analytical difficulty would be avoided if "Congress intended [the court] to ask only whether the defendant at any time used or carried a firearm," because, in that case, section 924(c) would be properly applied without regard to a determination of when a separate use occurred. *Id.* at 1331-33.

56. *Id.* at 1333.

57. *Id.* at 1334. Although they signed the court's opinion, two judges concurred in the result, clearly invoking the rule of lenity. This highlights the fact that only the decision to apply the rule of lenity received the support of a majority of the court. One concurring opinion stated that there was no apparent "principled basis upon which to choose between [the] competing interpretations," and that "the rule of lenity provides the only basis for decision." *Id.* at 1334 (Buckley, J., concurring). The second concurrence commented:

The Oracle at Delphi would have been proud of [section 924(c)]. The statute yields barely a clue about how to apply it to drug dealers who routinely arm themselves as they go about their awful business and, when caught, are charged only with one continu-

3. The Dissent

The dissent also began its analysis by determining that section 924(c) is not merely a penalty enhancement, but a separate offense that criminalizes the use of a firearm during the commission of the predicate offense.⁵⁸ Because the statute defines a separate and distinct criminal act, a defendant necessarily commits a new section 924(c) violation each time he engages in the proscribed conduct.⁵⁹ The dissent acknowledged that the firearm must be used in connection with the underlying felony but held that this requirement did not alter the appropriate unit of prosecution from the use of a firearm to the predicate offense.⁶⁰

The dissent supported its interpretation of section 924(c) with a number of decisions dealing with the question of precisely what act a statute criminalizes.⁶¹ It concluded that the determining factor is

ing drug offense. Reading and rereading my colleagues' skillful efforts to parse the language only plunges me deeper into the fog [and] the rule of lenity is . . . the one path out. *Id.* at 1335 (Randolph, J., concurring).

58. *Id.* at 1336 (Ginsburg, J., dissenting).

59. *Id.* (Ginsburg, J., dissenting).

60. *Id.* at 1338 (Ginsburg, J., dissenting). The dissent argued that the "rule that a crime is committed each time a defendant performs the proscribed act is so obvious that courts rarely pause to comment upon it." *Id.* (Ginsburg, J., dissenting). The dissent then used the following hypothetical to prove its point:

Consider a variation on [section 924(c)] simply making the use of a firearm a crime; the proposition that each separate use would be a separate violation of the statute would scarcely warrant any mention. That [section 924(c)] narrows the prohibited conduct to the use of a firearm in connection with another criminal offense does not alter the appropriate unit of prosecution [T]he requirement that the defendant's use of a firearm take place in connection with a drug-trafficking crime merely reflects the Congress's intention to single out as federal offenses those uses of a gun . . . and not others.

Id. (Ginsburg, J., dissenting).

61. *Id.* at 1337 (Ginsburg, J., dissenting). The dissent relied on a long line of older Supreme Court decisions, most importantly the decision of the Court in *Blockburger v. United States*, 284 U.S. 299 (1932). The statute at issue in *Blockburger*, the Harrison Narcotic Act, provided that "[i]t shall be unlawful for any person to purchase, sell, dispense, or distribute any of the aforesaid drugs" except subject to certain restrictions. *Id.* at 300. The Court rejected the defendant's contention that two sales made to the same purchaser with no substantial interval of time between them constituted a single, continuing offense. *Id.* at 301, 304. Instead, the Court held that each of the sales was a distinct offense, stating that "when the impulse is single, but one indictment lies, no matter how long the action may continue. If successive impulses are separately given, even though all unite in swelling a common stream of action, separate indictments lie." *Id.* at 302 (citation omitted). The two circuits that adopted the separate use interpretation of section 924(c) also relied on the *Blockburger* analysis in holding that the statute prohibits separate "impulses" rather than a course of conduct. *Lucas*, 932 F.2d at 1222-23; *Camps*, 32 F.3d at 107-08 ("Just as the Harrison Act proscribed each separate drug sale, and not the business of selling drugs, so too [section 924(c)] prohibits each separate act of firearm use or carriage, not violent crimes and drug trafficking with firearms.").

whether the particular act referred to in the statute is of a discrete or continuing nature.⁶² Because section 924(c), by its very terms, prohibits the "use" of a firearm, not "engaging in the use" of a firearm, the dissent reasoned that the statute criminalizes an individual act rather than a course of conduct.⁶³ Consequently, a complete section 924(c) violation occurs each time a defendant uses a firearm, even where separate and distinct uses occurred during the commission of a single underlying felony.

The dissent then turned to legislative history and policy considerations. One comment by Representative Poff warned the potential violator of section 924(c) that "if he uses his gun and is caught and convicted, he is going to jail" and "if he does so a second time, he is going to jail for a longer time."⁶⁴ The dissent viewed this intent to increase the punishment with subsequent uses of the firearm as evidence that section 924(c) cannot be limited to a single application per offense.⁶⁵ Such a limitation would not only fail adequately to deter criminals from using firearms to commit crime, but also provide them with an incentive to continue to employ a firearm after the first use.⁶⁶

Finally, the dissent dismissed the rule of lenity as inapplicable to the specific question of interpretation. It agreed that there is ambiguity lurking in section 924(c), but not with respect to whether a defendant can violate the statute more than once during a single underlying felony. Instead, the ambiguity stems from the difficulty of

The *Anderson* dissent, however, buttressed this analysis with a discussion of other cases that dealt with the same issue of multiple convictions. 59 F.3d at 1337 (Ginsburg, J., dissenting). In one of the cases, the Supreme Court held that a defendant could be convicted only once under a statute that provided "if any male person . . . cohabits with more than one woman, he shall be deemed guilty of a misdemeanor," because the offense was "inherently[] a continuous offense . . . not an offense consisting of an isolated act." *In re Snow*, 120 U.S. 274, 281 (1887). In another case, the Court did allow multiple convictions under the federal mail fraud statute which provided: "If any person . . . shall, in and for executing [any] scheme or artifice, . . . place any letter or packet in any post-office of the United States, such person . . . shall be [punished]." *In re Henry*, 123 U.S. 372, 373 (1887). The Court held that "[e]ach letter so . . . put in constitutes a separate and distinct violation of the act." *Id.* at 374 (internal quotation marks omitted). See also *Ebeling v. Morgan*, 237 U.S. 625, 629 (1915) (allowing multiple convictions under a statute providing that "[w]hoever shall tear, cut, or otherwise injure any mailbag . . . shall be fined," when the defendant cut several mailbags during the same criminal episode).

62. *Anderson*, 59 F.3d at 1337 (Ginsburg, J., dissenting).

63. *Id.* (Ginsburg, J., dissenting).

64. *Id.* at 1339 (Ginsburg, J., dissenting) (quoting 114 Cong. Rec. 22,231 (July 19, 1968)).

65. *Id.* at 1339 (Ginsburg, J., dissenting).

66. *Id.* (Ginsburg, J., dissenting). The dissent fleshed out its argument by stating that "once a drug conspirator has used his gun once in furtherance of the conspiracy, he may as well use, carry, display, brandish, and fire his weapon throughout the conspiracy, for no matter what he does with his firearm, he can be punished under [section 924(c)] for only one use." *Id.* (Ginsburg, J., dissenting).

determining when one use ends and a separate use begins.⁶⁷ While it may be appropriate to resolve such ambiguity in favor of the defendant, the dissent reasoned that allowing only one section 924(c) violation even where separate uses have been proven would violate the plain meaning of the statute.⁶⁸

IV. LIFTING THE FOG

A. *More Than a Penalty Enhancement*

At first glance, section 924(c) appears to be a penalty enhancement,⁶⁹ and some courts have characterized it as such.⁷⁰ If section 924(c) simply provides an enhanced punishment for a defendant who uses a gun to commit another crime, it is unquestionable that only one violation of the statute could be linked to a single predicate offense.⁷¹ An overwhelming amount of evidence, however, establishes that section 924(c) proscribes a separate and distinct criminal offense.

The statute provides that the underlying felony need only to be one for which the defendant “*may* be prosecuted in a court of the United States.”⁷² It also imposes a greater sentence for a “second or

67. *Id.* at 1341 (Ginsburg, J., dissenting).

68. *Id.* (Ginsburg, J., dissenting).

69. Section 924 is entitled “Penalties,” and its subsections provide penalties for firearms offenses established in other sections. The punishment for a violation of section 924(c) is “in addition to the punishment” imposed for the underlying felony, and a conviction under the statute requires proof of the commission of that felony. *Hill*, 971 F.2d at 1463.

70. See, for example, *Hamilton*, 953 F.2d at 1346 (referring to section 924(c) as an “enhanced penalty provision”); *Henning*, 906 F.2d at 1399 (stating that section 924(c) “is an enhancement statute”). The Supreme Court has contributed to the confusion, stating that the statute “authorizes the imposition of *enhanced penalties* on a defendant who uses or carries a firearm while committing a federal felony.” *Busic*, 446 U.S. at 399 (emphasis added).

71. The United States Sentencing Guidelines direct district courts, in some circumstances, to enhance a defendant’s offense level, and thereby the sentence imposed, according to certain characteristics of the offense. See, for example, United States Sentencing Commission, *Guidelines Manual* § 2B3.1(b)(2)(A)-(B) (Nov. 1994) (establishing offense level increases for specific actions involving the use of firearms or other dangerous weapons during the commission of a robbery). Double jeopardy principles, however, prevent courts from using a particular sentence enhancement more than once; otherwise courts would be able to impose multiple punishments for the same conduct. See *United States v. Haines*, 32 F.3d 290, 293 (7th Cir. 1994) (“Impermissible double counting occurs when a district court imposes two or more upward adjustments within the guidelines range, when both are premised on the *same* conduct.”).

72. 18 U.S.C. § 924(c)(1) (emphasis added).

subsequent conviction under this subsection."⁷³ A long line of decisions interpreting the statute further establishes that a violation of section 924(c) is a separate offense. For example, it is not necessary to convict a defendant of the underlying felony in order to convict him for a section 924(c) violation;⁷⁴ it is not even necessary to charge a defendant with the underlying crime.⁷⁵ A defendant may be convicted for conspiring to violate section 924(c).⁷⁶ Finally, one court has even held that venue for section 924(c) charges lies where the use of the firearm occurred, not the site of the underlying offense.⁷⁷

The legislative history of section 924(c) and subsequent statutory enactments also demonstrate that the section makes out a separate crime. Representative Poff stated that the statute would create "a separate Federal crime . . . and invoke[] separate and supplemental penalties."⁷⁸ Those penalties "were not addressed to the base felony" but were instead addressed "to the use of a firearm in the commission of the base felony."⁷⁹ Moreover, reports of both houses of Congress produced during consideration of amendments to section 924(c) are consistent with this vision of the statute,⁸⁰ and Congress

73. *Id.* (emphasis added).

74. *United States v. Robertson*, 901 F.2d 737, 738 n.1 (9th Cir. 1990).

75. *United States v. Wilson*, 884 F.2d 174, 176-77 (5th Cir. 1989).

76. *Hill*, 971 F.2d at 1467. In addition, 18 U.S.C. § 924(n) provides:

A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

77. *United States v. Corona*, 34 F.3d 876, 879 (9th Cir. 1994). But see *United States v. Pomranz*, 43 F.3d 156, 161 (5th Cir. 1995) (holding that a defendant indicted for violating section 924(c) may be prosecuted in the same venue as that for the underlying drug trafficking offense).

78. 114 Cong. Rec. 22,231 (July 19, 1968). The Supreme Court has stated that "[a]lthough these remarks are of course not dispositive of the issue of [section 924(c)'s] reach, they are certainly entitled to weight, coming as they do from the provision's sponsor." *Simpson*, 435 U.S. at 13.

79. 114 Cong. Rec. 30,583 (Oct. 10, 1968). Furthermore, Senator Mansfield, in an attempt to clarify that a second violation would result in a mandatory consecutive sentence, stated that "this bill provides for the first time a separate and additional penalty for the mere *act of choosing to use* or carry a gun in committing a crime under Federal law. If that choice is made more than once, the offender can in no way avoid a prison sentence regardless of the circumstances." 115 Cong. Rec. 34,838 (Nov. 19, 1969) (emphasis added). Clearly, Congress was focusing on the use of the gun, not the predicate offense.

80. See Comprehensive Crime Control Act of 1983, S. Rep. No. 98-225, 98th Cong., 1st Sess. 312, reprinted in 1984 U.S.C.C.A.N. 3182, 3490 (stating that section 924(c) "sets out an offense distinct from the underlying felony and is not simply a penalty provision"); Federal Firearms Law Reform Act of 1986, H.R. Rep. No. 99-495, 99th Cong., 2d Sess. 10, reprinted in 1986 U.S.C.C.A.N. 1327, 1336 (stating that "[a]lthough the provision . . . is frequently referred to as a penalty enhancement provision it is in reality a separate offense from crimes of violence"). Both of these reports cited the Supreme Court's statement that section 924(c) is "an

has even created specific penalties for deaths resulting from a section 924(c) violation.⁸¹

It is clear that violation of section 924(c) is a criminal offense distinct from the underlying felony. Standing alone, however, this factor appears insufficient to establish that each discrete use of a firearm is the proper unit of prosecution.

B. Prohibition of a Discrete Act

Recognizing that section 924(c) defines a separate and distinct criminal offense weighs heavily in favor of the separate use interpretation of the statute. A defendant violates section 924(c), just as he would any other statute, each time he commits the prohibited act of using or carrying a firearm during and in relation to the underlying felony. Section 924(c), then, should be directed toward each separate use of a firearm, rather than a course of conduct. Courts holding that a defendant may only violate section 924(c) once per underlying crime come dangerously close to interpreting the statute as nothing more than a penalty enhancement.

Nothing in the language or structure of section 924(c) as it is written—"whoever uses a firearm during and in relation to a crime of violence or drug trafficking crime"—establishes that a defendant may only violate the statute once.⁸² Interpreting section 924(c) to reach that conclusion essentially rewrites the statute to read "whoever commits a crime of violence or drug trafficking crime with a firearm" shall be punished.⁸³ Such a revision closely resembles the version of section 924(c) that was offered in the Senate but rejected by the Conference Committee.⁸⁴

offense distinct from the underlying federal felony." *Simpson*, 435 U.S. at 10. See S. Rep. No. 98-225 at 312 n.1 (cited in this note); H.R. Rep. No. 99-495 at 10 n.7 (cited in this note).

81. 18 U.S.C. § 924(i) (providing punishment for a "person who, in the course of a violation of [section 924(c)], causes the death of a person through the use of a firearm").

82. See *Camps*, 32 F.3d at 109 ("We would not say . . . that a provision imposing increased penalties for 'committing murder, rape, or larceny during and in relation to a drug trafficking crime' could not be violated more than once during a lengthy drug conspiracy.>").

83. *Anderson*, 59 F.3d at 1338 (Ginsburg, J., dissenting).

84. See notes 14-15 and accompanying text. Under the Senate measure, unlike the one offered by Representative Poff, "[n]o new crime would be created." 114 Cong. Rec. 27,142 (September 17, 1968). Rather, the measure would have provided "an added penalty . . . for an individual who is armed with any type of firearm while engaged in a Federal crime of violence." *Id.* The rejection of this version is further evidence that section 924(c) makes out a new crime.

The *Anderson* court's textual arguments also fail to provide meaningful support for the predicate offense test.⁸⁵ The court's emphasis on the use of definite articles in the penalty clauses relating to specific types of firearms is misplaced.⁸⁶ It is likely that Congress, by providing special penalties if "*the* firearm is a machinegun," is referring to the *particular* firearm that was used or carried in a *particular* violation of section 924(c). The court likewise infers too much from the juxtaposition of "uses" and "carries."⁸⁷ Contrary to its assertion that "carries" only implies a continuing activity, it may, in fact, be easier to find that a defendant who takes up his firearm on two separate occasions during the same underlying crime has "carried" that firearm more than once than it is to decide whether he has "used" it more than once.⁸⁸

The purpose of section 924(c), deterrence of the use of firearms,⁸⁹ lends additional weight to the argument that a defendant violates the statute each time he uses a firearm during the commission of the predicate offense. Interpreting the statute as criminalizing a course of conduct rather than each discrete use of a firearm prevents section 924(c) from achieving its full deterrent effect, and simultaneously creates perverse incentives for potential offenders. Under this interpretation, the statute would not deter any use of a firearm after the first use because the defendant could be punished for only one use.⁹⁰ Once a criminal uses his firearm once during the commission of the underlying felony, therefore, he may as well display, brandish, and fire his weapon on every possible occasion.⁹¹

This policy argument is especially compelling given the Supreme Court's most recent construction of section 924(c) in *Bailey v. United States*.⁹² According to the Court, a defendant uses a firearm in violation of section 924(c) only when he actively employs it during the commission of the underlying felony⁹³ by firing or attempting to

85. See Part III.C.2.

86. See notes 48-49 and accompanying text.

87. See notes 45-47 and accompanying text.

88. *Anderson*, 59 F.3d at 1336 n.1 (Ginsburg, J., dissenting).

89. See 114 Cong. Rec. 30,583 (Oct. 10, 1968) (statement of Representative Poff that section 924(c) "was designed to persuade the man who has decided to set forth on a criminal venture to leave his gun at home").

90. *Anderson*, 59 F.3d at 1339 (Ginsburg, J., dissenting).

91. *Id.* (Ginsburg, J., dissenting). See also *Camps*, 32 F.3d at 108 ("If multiple uses of extraordinarily dangerous weapons . . . could not be punished with multiple consecutive sentences, there would be little deterrence against armed drug dealers using those weapons repeatedly during a lengthy drug conspiracy.")

92. 116 S. Ct. 501, 133 L. Ed. 2d 472 (1995).

93. *Id.* at 505 (requiring "evidence sufficient to show an *active employment* of the firearm by the defendant, a use that makes the firearm an operative factor in relation to the predicate

fire, brandishing, displaying, bartering,⁹⁴ or striking with the firearm.⁹⁵ Because section 924(c) singles out, as a distinct offense, these particularly violent uses of a firearm, it seems clear that the statute provides punishment for each separate use. Thus, it is nearly incomprehensible that Congress intended only to punish a course of conduct.

C. Faulty Precedent

Analysis in early cases propounding the predicate offense test is also unconvincing. The Tenth Circuit first addressed the imposition of multiple sentences under section 924(c) in *United States v. Chalan*.⁹⁶ The defendant, who shot and killed the manager of a convenience store during a robbery, was convicted of robbery, felony murder, and two section 924(c) violations based on the single firearm use.⁹⁷ On appeal, the court vacated one of the section 924(c) convictions, holding that the predicate offenses constituted a single offense for double jeopardy purposes, and, therefore, a single crime of violence within the meaning of section 924(c).⁹⁸ As a result, the number of permissible violations of the statute was linked to the number of distinct underlying felonies. This holding, however, does not support the position that multiple underlying felonies are *necessary* to support multiple section 924(c) violations.⁹⁹

offense"). In particular, the Court held that "the inert presence of a firearm, without more, is not enough to trigger [section 924(c)]." *Id.* at 508. To hold otherwise would create such a broad reading of "uses" that "carries" would no longer have a "meaningful role" in the statute. *Id.* at 507.

94. The inclusion of bartering may seem odd, but the Court had previously found such conduct to violate section 924(c) in *Smith v. United States*, 113 S. Ct. 2050, 2060, 124 L. Ed. 2d 138 (1993).

95. *Bailey*, 116 S. Ct. at 508. Other less obvious violative conduct includes an offender's reference to a firearm in his possession or the "silent but obvious and forceful presence of a gun on a table." *Id.*

96. 812 F.2d 1302 (10th Cir. 1987).

97. *Id.* at 1315.

98. *Id.* at 1317. The court noted that "first-degree murder and robbery would constitute separate offenses if the first-degree murder conviction were premised on something other than robbery—for example, premeditation or kidnapping," because different facts would be needed to convict on both counts. *Id.* at 1316. Because Congress had not clearly expressed its intent regarding how to apply section 924(c) in such situations, the court invoked the rule of lenity. *Id.* at 1317.

99. Even advocates of the separate use interpretation of section 924(c) recognize that the predicate offense "may be an appropriate unit of account where the prosecution seeks convictions on two or more [section 924(c)] counts for the use of a single gun on a single occasion by linking [them] to nominally separate offenses that are not in fact separable for double jeopardy purposes." *Anderson*, 39 F.3d at 355 (panel decision).

Later, the Ninth Circuit relied upon *Chalan* when it addressed the imposition of multiple section 924(c) sentences in *United States v. Fontanilla*.¹⁰⁰ The defendant, while on a bus going to work, opened fire on the passengers, killing one and wounding another.¹⁰¹ He was convicted of murder, assault, and two violations of section 924(c).¹⁰² The court affirmed both section 924(c) convictions, holding that “[b]ecause the murder and assault were properly charged as separate crimes, it was *permissible* to charge the [defendant] with a separate firearm charge for each crime.”¹⁰³ No court, however, has ever questioned that multiple section 924(c) violations may be linked to separate predicate offenses. Nevertheless, later courts used *Fontanilla* as a stepping-stone to the conclusion that multiple section 924(c) violations *must* be supported by separate underlying felonies.¹⁰⁴

In most of those cases, there was not more than one separate and distinct use of a firearm related to the commission of a single underlying crime. Instead, they generally involved section 924(c) violations based on multiple guns found in a single cache.¹⁰⁵ The courts, in fact, never addressed the separate use interpretation, focusing solely upon refuting the “separate guns” interpretation.¹⁰⁶ Courts that rely on these cases as precedential support for the predicate offense test, therefore, state their holdings overbroadly. The cases do not foreclose the separate use interpretation.¹⁰⁷

100. 849 F.2d 1257 (9th Cir. 1988) (per curiam).

101. *Id.* at 1257.

102. *Id.* at 1258.

103. *Id.* at 1259 (emphasis added).

104. See, for example, *Henry*, 878 F.2d at 942-45.

105. See, for example, *Privette*, 947 F.2d at 1262 (“[U]se of more than one gun will not support multiple counts under [section 924(c)] for use of a firearm during a single drug trafficking crime.”); *Henning*, 906 F.2d at 1399 (holding that “where a defendant has been convicted of a single drug trafficking offense and more than one firearm was involved, a single violation of [section 924(c)] occurs and multiple consecutive sentences may not be stacked to account for each firearm seized”); *Cappas*, 29 F.3d at 1189 (holding that “the use of multiple guns in a single drug conspiracy will not support multiple convictions under [section 924(c)]”).

106. See, for example, *Lindsay*, 985 F.2d at 674 (stating that Congress “considered the appropriate unit of prosecution to be the underlying drug-trafficking offense, *not the separate firearms*”) (emphasis added); *Taylor*, 13 F.3d at 994 (holding that section 924(c)’s “unit of prosecution is the underlying offense, *not the number of firearms*”) (emphasis added). But see *Anderson*, 59 F.3d at 1326-34 (directly addressing and rejecting the separate use interpretation of section 924(c)).

107. The predicate offense test, however, is appropriate where more than one gun is used for the same purpose. See *Anderson*, 39 F.3d at 356 (panel decision) (recognizing without opinion that the predicate offense may be the proper unit of prosecution “where more than one gun is used to protect a stash of drugs in a single location”). The fundamental holding of the separate guns interpretation is that section 924(c) “authorizes prosecution for the *possession* of each firearm a defendant *possesses* during and in relation to a single crime of violence or drug trafficking crime.” *Freisinger*, 937 F.2d at 390 (emphasis added). That reasoning is particularly suspect in light of *Bailey*’s active employment standard.

D. Sentencing Matters

No other statutory impediments exist to the prosecution of a defendant for each separate and distinct use of a firearm during the commission of a single underlying felony. The Supreme Court, interpreting the second or subsequent convictions clause of section 924(c), has held that multiple convictions for violations of the statute, and the imposition of multiple sentences, may occur in a single prosecution.¹⁰⁸ Therefore, in light of the separate use interpretation, if the government can prove beyond a reasonable doubt that a defendant used a firearm on two or more separate occasions during the course of a single predicate offense,¹⁰⁹ nothing precludes it from prosecuting and convicting him for multiple violations of section 924(c).

V. CONCLUSION

Careful interpretation of the text and purpose of section 924(c) leads to the conclusion that a person violates the statute each time he uses a firearm during and in relation to a crime of violence or a drug trafficking crime, even when those uses relate to the same underlying offense. This descriptive conclusion, however, is accompanied by normative considerations concerning the application of section 924(c). The government not only *may* seek to prosecute for multiple violations of the statute when they exist, it *should* seek to prosecute them. Such an approach could prove an invaluable companion to, or perhaps even replacement of, other forms of gun control in an effort to curb violent crime. Punishment for violating section 924(c) specifically addresses the conduct that society seeks to deter—the criminal em-

108. *Deal v. United States*, 508 U.S. 129 (1993). This case did not present the Court with an opportunity to resolve the question in this Note because Deal was convicted of several underlying felonies and each charged violation of section 924(c) was specifically linked to a separate underlying felony.

109. The *Anderson* majority argued that "it would surely prove devilishly difficult analytically" to determine when a defendant has engaged in a separate "use" or "carry" during an ongoing conspiracy. 59 F.3d at 1331. As the government suggested in *Anderson*, however, the problem "really is no different than determining, in an 'assault' case, for example, whether a series of blows struck upon the same victim during an altercation (or other crime) . . . constitutes one continuing 'assault' or several discrete (and separately punishable) assaults." Appellee's Brief for the *In Banc* Court at 30, *United States v. Anderson*, 59 F.3d 1323 (D.C. Cir. 1995) (on file with the Author).

ployment of firearms¹¹⁰—and removes dangerous criminals from the streets for substantial periods of time. Accordingly, the proper use of section 924(c) benefits law enforcement and society.

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110. In this way, section 924(c) achieves its purpose, as stated by Representative Poff, to “target[] upon the criminal rather than the gun.” 114 Cong. Rec. 22,231 (July 19, 1968).

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