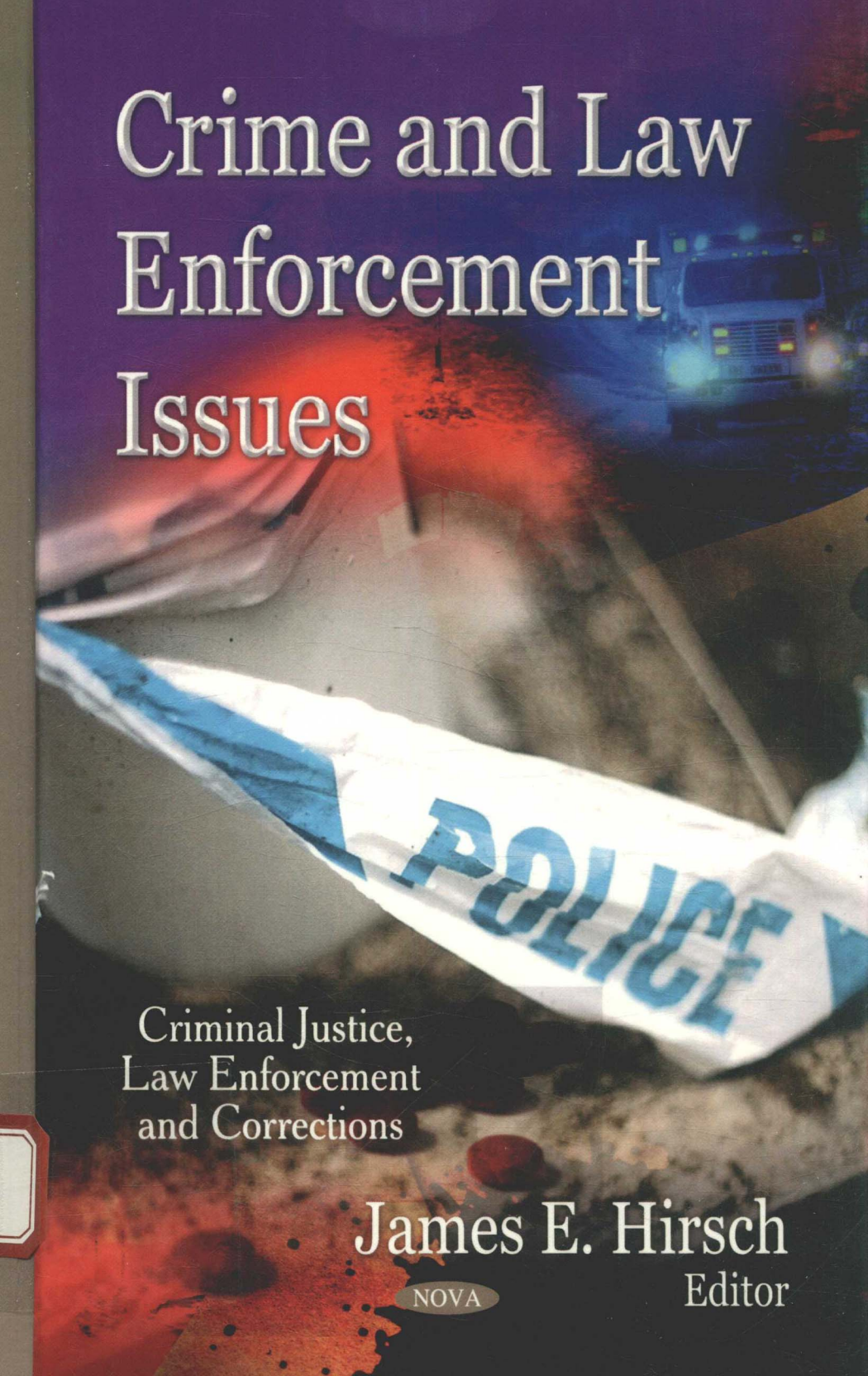


Crime and Law Enforcement Issues



Criminal Justice,
Law Enforcement
and Corrections

James E. Hirsch
Editor

NOVA

CRIMINAL JUSTICE, LAW ENFORCEMENT AND CORRECTIONS

CRIME AND LAW ENFORCEMENT ISSUES

JAMES E. HIRSCH
EDITOR



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PREFACE

This book presents and discusses information in the study of criminal justice and law enforcement. Topics discussed include capital punishment; juvenile justice; the use of DNA in cold cases; statutes of limitation in federal criminal cases; the illicit drug market in Taiwan and leadership in police organizations.

Chapter 1 - In 1995, the National Institute of Justice (NIJ) began research that would attempt to identify how often DNA had exonerated wrongfully convicted defendants. After extensive study, NIJ published the report *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial*, which presents case studies of 28 inmates for whom DNA analysis was exculpatory.

Chapter 2 - With the passage of P.L. 103-322, the Violent Crime Control and Law Enforcement Act of 1994, the federal death penalty became available as a possible punishment for a substantial number of new and existing civilian offenses. On April 24, 1996, the Antiterrorism and Effective Death Penalty Act of 1996 made further modifications and additions to the list of federal capital crimes. On June 25, 2002, P.L. 107-197, the Terrorist Bombings Convention Implementation Act of 2002, added another capital crime to the United States Code. The Intelligence Reform and Terrorism Prevention Act of 2004, P.L. 108-458, enacted December 17, 2004, included provisions which impacted or expanded some of the existing death penalty provisions. This report lists the current federal capital offenses and summarizes the procedures for federal civilian death penalty cases.

Chapter 3 - As more attention is being focused on juvenile offenders, some question whether the justice system is dealing with this population

appropriately. Since the late 1960s, the juvenile justice system has undergone significant modifications resulting from U.S. Supreme Court decisions, changes in federal and state law, and the growing belief that juveniles were increasingly involved in more serious and violent crimes. Consequently, at both the federal and states levels, the juvenile justice system has shifted from a mostly rehabilitative system to a more punitive one, with serious ramifications for juvenile offenders. Despite this shift, juveniles are generally not afforded the panoply of rights afforded to adult criminal defendants. The U.S. Constitution requires that juveniles receive many of the features of an adult criminal trial, including notice of charges, right to counsel, privilege against self-incrimination, right to confrontation and cross-examination, proof beyond a reasonable doubt, and double jeopardy. However, in *McKeiver v. Pennsylvania*, the Court held that juveniles do not have a fundamental right to a jury trial during adjudicatory proceedings.

The Sixth Amendment explicitly guarantees the right to an impartial jury trial in criminal prosecutions. In *Duncan v. Louisiana*, the U.S. Supreme Court held that this right is fundamental and guaranteed by the Due Process Clause of the Fourteenth Amendment. However, the Court has since limited its holding in *Duncan* to adult defendants by stating that the right to a jury trial is not constitutionally required for juveniles in juvenile court proceedings. Some argue that because the Court has determined that jury trials are not constitutionally required for juvenile adjudications, courts should not treat or consider juvenile adjudications in subsequent criminal proceedings. In addition, some argue that the use of non-jury juvenile adjudications in subsequent criminal proceedings violates due process guarantees, because juvenile justice and adult criminal proceedings are fundamentally different.

Has the juvenile justice system changed in such a manner that the Supreme Court should revisit the question of jury trials in juvenile adjudications? Are the procedural safeguards in the juvenile justice system sufficient to ensure their reliable use for sentence enhancement purposes in adult criminal proceedings? To help address these questions, this report provides a brief background on the purpose of the juvenile system and discusses procedural due process protections provided by the Court for juveniles during adjudicatory hearings. It also discusses the Court's emphasis on the jury's role in criminal proceedings and will be updated as events warrant.

Chapter 4 - A statute of limitations dictates the time period within which a legal proceeding must begin. The purpose of a statute of limitations in a criminal case is to ensure the prompt prosecution of criminal charges and

thereby spare the accused of the burden of having to defend against stale charges after memories may have faded or evidence is lost.

There is no statute of limitations for federal crimes punishable by death, nor for certain federal crimes of terrorism, nor, since passage of the Adam Walsh Child Protection and Safety Act (P.L. 109-248, H.R. 4472, 2006), for certain federal sex offenses. Prosecution for most other federal crimes must begin within five years of the commitment of the offense. There are exceptions. Some types of crimes are subject to a longer period of limitation; some circumstances suspend or extend the otherwise applicable period of limitation.

Arson, art theft, certain crimes against financial institutions and various immigration offenses all carry statutes of limitation longer than the five year standard. Regardless of the applicable statute of limitations, the period may be extended or the running of the period suspended or tolled under a number of circumstances such as when the accused is a fugitive or when the case involves charges of child abuse, bankruptcy, wartime fraud against the government, or DNA evidence.

Ordinarily, the statute of limitations begins to run as soon as the crime has been completed. Although the federal crime of conspiracy is complete when one of the plotters commits an affirmative act in its name, the period for conspiracies begins with the last affirmative act committed in furtherance of the scheme. Other so-called continuing offenses include various possession crimes and some that impose continuing obligations to register or report.

Limitation-related constitutional challenges arise most often under the Constitution's *ex post facto* and due process clauses. The federal courts have long held that a statute of limitations may be enlarged retroactively as long as the previously applicable period of limitation has not expired. The Supreme Court recently confirmed that view; the *ex post facto* proscription precludes legislative revival of an expired period of limitation. Due process condemns pre-indictment delays even when permitted by the statute of limitations if the prosecution wrongfully caused the delay and the accused's defense suffered actual, substantial harm as a consequence.

Chapter 5 - Definition: "Drug crime organization" in this analysis refers to criminal organizations that are engaged in trafficking, transporting, producing and distributing large quantities of drugs in Taiwan. Individual drug dealers and drug users are excluded from this analysis.

Chapter 6 - Posttraumatic life change was investigated in a sample of nonrecent sexual assault survivors. An average of 16 years postassault, most survivors identified positive changes that had resulted from the assault,

particularly in the domains of self (e.g., increased assertiveness), spirituality (e.g., spiritual well-being), and empathy (e.g., concern for others' suffering). Negative changes in beliefs about the fairness and safety of the world also were common, however. Controlling for recent life stressors and personality, positive changes were associated with fewer symptoms of depression, anxiety and Post Traumatic Stress Disorder (PTSD) and greater life satisfaction. Self-reported positive changes generally were related to personality, social support, coping, and control appraisals in hypothesized directions. Coping and control appraisals (particularly control over the recovery process) mediated the relations among personality and social support and positive life change.

Chapter 7 - Many police organizations across the United States use traditional written assessments to promote individuals to first line supervisor positions. Written assessments are cost effective. Recent research has shown assessments have shown problems with validity. One specific issue is with attempting to predict a candidate's leadership abilities or behavior. Other research uncovers issues relating to the lack of leadership training for aspiring first line supervisors. First line supervisors have been traditionally viewed as managers rather than leaders. The process has deterred many from applying for promotion within the ranks. This meta-analysis offers insight to the improvement of police promotional process may improve the selection of the right candidate and overall organizational leadership, but also aid in succession planning as well.

Chapter 8 - The primary goal of this study was to identify characteristics of licensed drinking establishments that predict alcohol sales to obviously intoxicated barroom patrons. Of particular interest was the relationship between "secondary servers" of alcohol and irresponsible alcohol service. Relying on a structured observation guide listing a large number of variables believed to be related to irresponsible alcohol service, trained observers spent a total of 444 hours collecting data in 25 licensed drinking establishments in Hoboken, New Jersey. Observations took place at two separate time periods, 7:30pm – 10:30pm and 11:00pm – 2:00am, on Thursday, Friday, and Saturday nights. Ordinary least squares (OLS) regression analyses revealed "number of secondary servers" as the strongest predictor of alcohol service to obviously intoxicated patrons in Hoboken barrooms. Another significant predictor of alcohol service to intoxicated patrons in this study was the presence of "aversive environmental stimuli" within licensed premises, such as excessive heat, smoke, and crowding. Several prevention strategies aimed at reducing irresponsible alcohol service in bars and associated problems with alcohol-related harm are proposed.

Chapter 9 - Many police organizations across the United States promote leadership training to those individuals that are first line supervisor positions. Many departments, however, do not have a true command structure in place. This in turn introduces the basic patrol officer to many leadership situations. Recent research has shown those not of rank do not receive leadership training. One specific issue is with increasing the patrol officers leadership abilities or behavior for situations that face often. Other research uncovers issues relating to the lack of leadership training for not only aspiring first line supervisors but basic patrol as well. First line supervisors have been traditionally viewed as managers rather than leaders. This meta-analysis offers insight to the improvement of police leadership training beginning with the basic police academy curriculum. By doing so, it may improve the overall organizational leadership, but also aid in succession planning as well.

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Chapter 1

USING DNA TO SOLVE COLD CASES*

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NATIONAL COMMISSION ON THE FUTURE OF DNA EVIDENCE

In 1995, the National Institute of Justice (NIJ) began research that would attempt to identify how often DNA had exonerated wrongfully convicted defendants. After extensive study, NIJ published the report *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial*, which presents case studies of 28 inmates for whom DNA analysis was exculpatory.

On learning of the breadth and scope of the issues related to forensic DNA, the Attorney General asked NIJ to establish the National Commission on the Future of DNA Evidence as a means to examine the most effective use of DNA in the criminal justice system. The Commission was appointed by the NIJ Director and represented the broad spectrum of the criminal justice system. Chaired by the Honorable Shirley S. Abrahamson, Chief Justice of the Wisconsin Supreme Court, the Commission consisted of representatives from the prosecution, the defense bar, law enforcement, the scientific community, the medical examiner community, academia, and victims' rights organizations.

* Excerpted from <http://www.ncjrs.gov/pdffiles1/nij/194197.pdf>.

The Commission's charge was to submit recommendations to the Attorney General that will help ensure the best use of DNA as a crimefighting tool and foster its use throughout the entire criminal justice system. Other focal areas for the Commission's consideration included crime scene investigation and evidence collection, laboratory funding, legal issues, and research and development. The Commission's working groups, consisting of commissioners and other experts, researched and examined various topics and reported back to the Commission.

The working groups' reports were submitted to the full Commission for approval, amendment, or further discussion and provided the Commission with background for its recommendations to the Attorney General.

By nature of its representative composition and its use of numerous working groups, the Commission received valuable input from all areas of the criminal justice system. The broad scope of that input enabled the Commission to develop recommendations that both maximize the investigative value of the technology and address the issues raised by its application.

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Crime Scene Investigation Working Group

The Crime Scene Investigation Working Group is a multidisciplinary group of criminal justice professionals from across the United States who represent both urban and rural jurisdictions. Working group members and contributors were recommended and selected for their experience in the area of criminal investigation and evidence collection from the standpoints of law enforcement, prosecution, defense, the forensic laboratory, and victim assistance.

DNA has proven to be a powerful tool in the fight against crime. DNA evidence can identify suspects, convict the guilty, and exonerate the innocent. Throughout the Nation, criminal justice professionals are discovering that advancements in DNA technology are breathing new life into old, cold, or unsolved criminal cases. Evidence that was previously unsuitable for DNA testing because a biological sample was too small or degraded may now yield a DNA profile. Development of the Combined DNA Index System (CODIS) at the State and national levels enables law enforcement to aid investigations by effectively and efficiently identifying suspects and linking serial crimes to each other. The National Commission on the Future of DNA Evidence made clear, however, that we must dedicate more resources to empower law enforcement to use this technology quickly and effectively.

Using DNA to Solve Cold Cases is intended for use by law enforcement and other criminal justice professionals who have the responsibility for reviewing and investigating unsolved cases. This report will provide basic information to assist agencies in the complex process of case review with a specific emphasis on using DNA evidence to solve previously unsolvable crimes. Although DNA is not the only forensic tool that can be valuable to unsolved case investigations, advancements in DNA technology and the success of DNA database systems have inspired law enforcement agencies throughout the country to reevaluate cold cases for DNA evidence. As law enforcement professionals progress through investigations, however, they should keep in mind the array of other technology advancements, such as improved ballistics and fingerprint databases, which may substantially advance a case beyond its original level.

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INTRODUCTION

In 1990, a series of brutal attacks on elderly victims occurred in Goldsboro, North Carolina, by an unknown individual dubbed the "Night Stalker." During one such attack in March, an elderly woman was brutally raped and almost murdered. Her daughter's early arrival home was the only thing that saved the woman's life. The suspect fled, leaving behind materials intended to burn the residence and the victim in an attempt to conceal the crime. In July 1990, another elderly woman was brutally raped and murdered in her home. Three months later, a third elderly woman was raped and stabbed to death. Her husband was also murdered. Their house was burned in an attempt to cover up the crime, but fire/rescue personnel pulled the bodies from the house before it was engulfed in flames.

When DNA analysis was conducted on biological evidence collected from vaginal swabs from each victim, authorities concluded that the same perpetrator had committed all three crimes. However, there was no suspect.

For 10 years, both the Goldsboro Police Department and the crime laboratory refused to forget about these cases. With funding from the National Institute of Justice, the crime laboratory retested the biological evidence in all three cases with newer DNA technology and entered the DNA profiles into North Carolina's DNA database. This would allow the DNA profile developed from the crime scene evidence to be compared to thousands of convicted offender profiles already in the database.

In April 2001, a "cold hit" was made to the perpetrator's convicted offender DNA profile in the database. The perpetrator had been convicted of shooting into an occupied dwelling, an offense that requires inclusion in the North Carolina DNA database. The suspect was brought into custody for questioning and was served with a search warrant to obtain a sample of his blood. That sample was analyzed and compared to the crime scene evidence, thereby confirming the DNA database match. When confronted with the DNA evidence, the suspect confessed to all three crimes.

Mark Nelson, special agent in charge of the North Carolina State Crime Laboratory, said, "Even though these terrible crimes occurred more than 10 years ago, we never gave up hope of solving them one day."

Every law enforcement department throughout the country has unsolved cases that could be solved through recent advancements in DNA technology. Today, investigators who understand which evidence may yield a DNA profile can identify a suspect in ways previously seen only on television. Evidence invisible to the naked eye can be the key to solving a residential burglary, sexual assault, or murder. The saliva on the stamp of a stalker's threatening

letter, the perspiration on a rapist's mask, or the skin cells shed on the ligature of a strangled child may hold the key to solving a crime.

In Austin, Texas, for example, an investigator knowledgeable about DNA technology was able to solve the rape of a local college student. Having read about the potential for obtaining DNA evidence from the ligature used to strangle a victim, the investigator requested DNA testing on the phone cord used to choke the victim in his case. He realized that in the course of choking someone, enough force and friction is applied to the rope or cord that the perpetrator's skin cells may rub off his hands and be left on the ligature.

The investigator's request paid off in an unanticipated way. In spite of the attacker's attempt to avoid identification through DNA evidence by wearing both a condom and rubber gloves, a reliable DNA profile was developed from the evidence. During the struggle, the attacker was forced to use one hand to hold the victim down, leaving only one hand to pull the phone cord tight. The attacker had to grab the remaining end of the cord with his mouth, thereby depositing his saliva on the cord. Although the developed profile came from saliva rather than skin, DNA not only solved the case in Austin, but also linked the perpetrator to a similar sexual assault in Waco.

Without the investigator's understanding of DNA technology and where DNA might be found, the case may have gone unsolved. The successful review and investigation of unsolved cases require the same basic elements as the investigation of new cases: cooperation among law enforcement, the crime laboratory, and the prosecutor's office. Investigators should be aware of technological advances in DNA testing that may yield profiles where previous testing was not performed or was unsuccessful. The crime laboratory can be essential to the preliminary review of unsolved cases, for example, by providing investigators with laboratory reports from previous testing and consultation regarding the investigative value of new DNA analysis techniques and DNA database search capabilities. Additionally, the prosecutor's office should be involved as soon as a case is reopened so that legal issues are addressed appropriately. It is also extremely important that case reconstruction considers the victim or victim's family and the importance of finality to closing a case.

Although DNA is not the only forensic tool available for the investigation of unsolved cases, advancements in DNA testing and the success of DNA database systems have inspired law enforcement agencies throughout the country to reevaluate cases previously thought unsolvable. The purpose of this report is to provide law enforcement with a practical resource for the review of old, cold, or unsolved cases that may be solved through DNA technology and