



LEQ

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Inside Violent Crimes Task Force

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PLAINCLOTHES SURVIVAL
REAL ESTATE FRAUD
COMPUTER FORENSICS
**LAW ENFORCEMENT
ASSISTANCE NETWORK**

FROM THE DISTRICT ATTORNEY

Bonnie M. Dumanis



It has been one year since the passage of Proposition 69, one of the best weapons given to law enforcement by California voters.

The state's new database is a powerful tool that already is proving to be an incredible success. Since the passage of Prop. 69, there have been more than 270,000 fingerprints submitted statewide, with more than 500 "hits."

In San Diego, Sheriff Bill Kolender and his department have done an outstanding job coordinating the implementation of Proposition 69, while Greg Thompson, Forensic Sciences Director, handles the day to day operations for the department. San Diego Police Chief Bill Lansdowne and his department have also done considerable work on this collaborative effort, which has made Prop. 69 a commanding criminal justice device for our office.

Thanks to all of their efforts, we've filed our first-ever charge against a John Doe based on DNA evidence found at a crime scene. Blood and skin found on a cash register have become key evidence that will eventually lead us to an armed robbery suspect.

The statute of limitations for this 2002 crime was just about to expire, but because of DNA, our prosecutors were able to stop the clock on the statute of limitations.

We don't know who this suspect is, what he looks like or where he is, but it doesn't matter. We have his DNA and we have issued a warrant for his arrest based on his DNA.

A violent criminal, such as the one that committed this robbery, will get arrested. When that happens, this suspect will be compelled to give his DNA, thanks to Prop. 69 and that's when we will get our match.

But our work with Proposition 69 is far from over. The federal government and other states are now working to get similar legislation on the books. The Federal DNA Act, which is almost exactly the same as Prop. 69, is part of the reauthorization of the Violence Against Women Act (S. 1197), which is currently being considered by Congress.

We have been given a fantastic weapon in the fight against crime and violence and our prosecutors are not wasting any time putting that weapon to use in a brand new way. Any day that we can catch a crook with his DNA is a very good day indeed.

A handwritten signature in black ink that reads "Bonnie M. Dumanis". The signature is written in a cursive, flowing style.

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Jesse Rodriguez
Assistant District Attorney



Streamlining the DA's Role in the Criminal Justice System

In an effort to make the criminal justice system more efficient and our office more productive, the District Attorney created a Case Disposition Division in 2003. As the division continues to evolve, reactions from law enforcement agencies, the criminal courts and the defense bar have been positive so far.

The steady improvements can be attributed to better communication between deputy DAs in the Case Issuance, Central Pretrial, Superior Court and Case Disposition Divisions. Issuing and disposition policies have

bargaining down to what a case is really worth. We file the appropriate charges in each case, based on the law, which we can prove to a jury beyond a reasonable doubt. Emotions do not play a part in case issuing.

Each step of the way, every effort is made to settle the case fairly before going to trial. And since cases continually evolve, they are frequently re-evaluated. The Case Disposition Division provides a dispassionate third party perspective.

also become uniform throughout the office and among all of the branches.

A vast majority of the cases that are submitted to the DA's Office for prosecution are of good quality, backed by excellent police work, credible witnesses and reliable victims. Our assembly line approach is designed to weed out the cases that won't hold up in front of a jury and settle the others at the earliest opportunity before going to trial.

The process begins when a case is submitted for review. We do not over charge with the intent of

Once a case is submitted for review, it starts on its path down a metaphorical conveyor belt or assembly line. From Case Issuing, it goes to Case Disposition before the preliminary hearing to see if a fair punishment can be reached with defense counsel. If it's not settled at that point, Central Pre-Trial gets the case, takes it to the preliminary hearing and hands it off back to Case Disposition for another try at settlement before trial. If the case is not settled by that point, the Superior Court Division takes it to trial.

Each step of the way, every effort is made to settle the case fairly before going to trial. And since cases continually evolve, they are frequently re-evaluated. The Case Disposition Division provides a dispassionate third party perspective.

Since our first look at a case is based only on the paperwork submitted by law enforcement officers and detectives, it is very important that the reports be thorough. Investigating officers should be aware of the elements of the crime and gather the evidence to prove the elements. The witness list must be complete and accurate, with true names, phone numbers and addresses. Photos can be crucial in proving a case. It also helps for the arresting officers to be available by phone to prosecutors to help us shore up a case.

Our liaison deputy DAs are in place to walk officers through the process in submitting a case for prosecution. And prosecutors in our Case Disposition Division are always available by phone. They also work in all the DA's branch offices.

This process applies to horizontal cases that are not assigned to special units for vertical prosecution. If a case is assigned to a special unit, it will be handled by one deputy beginning with issuing through to sentencing. No matter how a case is handled, teamwork between law enforcement agencies and the DA's Office is crucial for successful prosecution. **LEQ**

Plainclothes personnel have much to think about when it comes to officer safety. The working environment requires a fluid, dynamic, and often immediate response to criminal activity. As such, the plainclothes officer must recognize a variety of survival techniques systematic to the discipline. The failure to do so can produce disastrous results. Consider the following:

Situation One

You're a plainclothes officer assigned to a five-member team. Your supervisor, via radio, directs your squad to the corner of First and Broadway to set up surveillance. You are told the target of your stakeout has committed a strong-arm robbery and officers believe he is headed home to your location. Your assignment is to take him into custody before he enters his home. There were no weapons used in the crime.

A records check shows the suspect on active parole for a similar offense. Within five minutes of your arrival, the suspect appears in his vehicle. He gets out of his vehicle and sees you. Simultaneously, members of your team exit their vehicles and move in for the arrest. The suspect does not run, nor does he display a deadly weapon. Instead, he faces you and takes a fighting stance. How will you handle the arrest?

Situation Two

Now, given the same scenario as above, you receive the surveillance mission at the beginning of your shift, and have time to plan the event. Your supervisor provides the team with supplementary information about the suspect, including details of his prison experience and that he has vowed not to return.

The sergeant adds that the suspect has declared to



Contemporary Issues For Plainclothes Survival

By Mark Anning

family members he will not be taken alive if cornered or chased by law enforcement. Additional information finds the suspect is an avid practitioner of an aggressive martial arts discipline. Your suspect has not been known to carry weapons, but your supervisor urges extreme caution. Given these details, how will you handle this arrest?

Assessment

I presented these scenarios to two teams of experienced investigators during a recent officer safety briefing. The team discussing the first scenario elected to move in on the unarmed suspect using hands-on tactics, or hand-to-hand combat. This was not surprising, as few plainclothes officers carry additional safety tools on their person besides a firearm, extra magazines and handcuffs.

Not so surprising, the second group decided to arm themselves with an assortment of less-lethal weapons, such as collapsible batons, pepper spray, and nun-chucks. Could these sets of circumstances have had disastrous results for the officers in group one? Absolutely. The question becomes, why were the groups so different in their selected enforcement responses? The answer is found by reviewing three fundamental characteristics to plainclothes survival. They are mental conditioning, situational training, and the force options inventory.

Mental Conditioning

While assessing mental conditioning, ask yourself if the officers in group one were practicing ‘what-when’ thinking? In other words, did they consider an assortment of strategies to meet various reactions by the suspect for that situation? Was their plan comprehensive and operational, or did it appear to be, ‘ready, one-two-three, get him.’

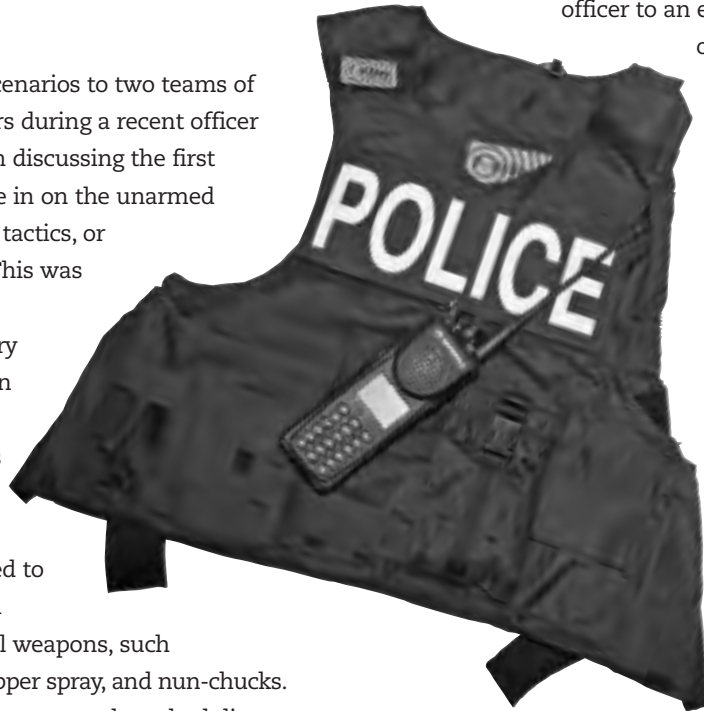
Every officer would agree that had the suspect displayed a deadly

weapon, the officers could have used deadly force. But what happens when the suspect selects a more conventional method of defense, like his fists? Without additional safety tools, the only remaining option is hand-to-hand combat. Given that most combative situations end up on the ground, this exposes the plainclothes officer to an extremely dangerous set of circumstances.

Likewise, planning for the event, or mentally uploading various use-of-force scenarios provides the plainclothes officer with the defined state of mind for dominating the encounter. Similarly, what-when thinking requires the plainclothes officer who knows the tactics, to think tactically.

Situational Training

Maneuvering as a squad in any law enforcement situation, regardless of the task at hand, requires rehearsal, and teamwork. The aforementioned scenario illustrates an excellent example. During the approach, which officer will give verbal commands, which officer or officers will deploy force options if less-lethal tools are required, and who will handcuff the suspect?



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Bonnie M. Dumanis publisher	Gail Stewart editor-in-chief	Paul Levikow managing editor
Blaise Nauyokas, BrainShine publication design		
Jesse Rodriguez, Michael Connelly, Wendy L. Patrick Mazarella, Robert C. Phillips, Greg Thompson columnists		
Mark Anning, Dave Craig, Kristin Heinrich, David W. Hendron, Fiona Khalil, Paul Levikow, M. Margaret Neil, Gail Stewart contributing writers		

Let's examine one additional scenario. What if the suspect simply turns and runs? Will the team give chase? Are all members of the team physically able to do so? For a well-orchestrated arrest to take place, the answers to these questions must be determined. Any plainclothes detail operating in this environment should practice these types of scenarios regularly.

Like an individual's shooting ability, tactical maneuvers are perishable skills. Plainclothes personnel would do well learning from the Special Weapons and Tactics (SWAT) community. SWAT operators do high-risk pedestrian stops in their sleep, because the tactics are fundamental and seldom change.

However, knowing what your teammate will do, and how he or she will react in a given situation is a practiced evolution, that requires application and

Do you give your handgun a daily 'once-over' visual inspection? Has one of your every day habits become a press-check (a process of depressing the slide confirming a round is in the chamber)? Do you periodically field strip your weapon, clean, inspect, and reassemble it? These are simple tasks that do more than just the obvious.

Clearly, performing these actions demonstrates the weapons operational readiness. But as you handle, manipulate, and function check the firearm, you're also building self-assurance and confidence that it will perform when required. This results in a more educated, self-confident, and practiced shooter.

The next question in your pre-assessment examination should be: As a plainclothes officer, have you properly outfitted yourself with supplementary safety tools of the trade? Are you carrying an expandable baton, OC / Pepper spray, or taser?

If so, are they kept at the bottom of your



collaboration. There are no shortcuts for this learning delivery method. As mentioned, strategies seldom change, but team members come and go. Likewise, situational training at the squad level should be applicable, continuous and consequential.

Force Options Inventory

Officers, investigators, and agents working the plainclothes discipline should periodically conduct a personal force options inventory. As a pre-assessment examination, think about these issues: do you strap your weapon on in the same fashion everyday, or do you leave it in your brief case, purse, or glove compartment until it is needed?

equipment bag, in the trunk, or do you carry them on your person, in a tactical vest or in a readily-available equipment case? Moreover, if these things are carried, how often do you open the baton, test the pepper spray, or function check the taser?

As with your firearm, performing a periodic inspection of supplementary safety tools insures the user of their reliability, building confidence and reassurance the equipment will perform. When taking enforcement action, plainclothes personnel have to remember that using their

Plainclothes Survival

firearm in the line of duty is possible, but not always probable.

Conversely, the conditions for using less-lethal force options are possible and highly probable. Likewise, personnel in this discipline have got to maintain self-confidence with their less-lethal force options, as they do with their firearms, while maintaining their readiness and accessibility.

Some Statistics

In July 2004, I conducted a statewide survey that solicited information from plainclothes officers regarding their equipment and training. Surprisingly, 77% affirmed they had received no survival skills training for their plainclothes assignment. Similarly, and with regard to team



training, 49% stated their unit or squad did not train.

Additional findings showed that 74% carry their handgun in a waist holster, leaving 26% carrying their weapon in another location. Many carry OC spray and a baton in their gear bag, but less than 13% carry OC spray and less than 7% carry an expandable baton on their person. Only 12% practice with their firearm on a regular basis, and less than 7% practice martial arts or another self defense discipline.

The data suggests that in a given situation, the average plainclothes officer is less prepared than his or her uniformed counterpart to successfully confront a criminal suspect. Yet investigators, detectives and plainclothes officers place themselves in these types of situations daily.

Federal Bureau of Investigation statistics tend to

support these facts. Accordingly, their data shows detectives and officers on other duties represent 23% of the total in-the-line-of-duty deaths annually. In addition, approximately 3,400 detectives and investigators are assaulted every year. Of those assaulted, roughly 70% had a partner or were assisted at the time of the contact.

The research shows that when contacting the criminal element, plainclothes personnel are using proper assistance at the appropriate times. However, even with assistance, many are not prepared for the less-lethal confrontation that takes place. Similarly, aggravated assaults on these personnel still occur.



Detective Mark Anning is assigned to the San Diego Police Department's Child Abuse Unit. He has worked domestic violence, child abuse, robbery, general investigations, patrol, SWAT, crisis negotiations, and field training. He has a B.S. in Criminal Justice, a M.A. in management and is a POST Master Instructor.

Conclusion

Investigators, detectives, and officers working plainclothes assignments experience a fascinating and rewarding occupation. However, the conditions of their employment make that line of work as treacherous as any another in the law enforcement.

As such, those professionals have to maintain a prepared state-of-mind, put into practice situational training, and sustain a force options inventory for a safe and triumphant tour of duty.

LEQ



Real Estate Fraud

By Fiona Khalil

“It’s a civil matter.” Yes, it most likely is, but it could be, at the same time, a criminal matter too. In the real estate crimes area there are many obscure Penal Code sections and other crimes defined throughout several different codes, which define felony conduct, with state prison sanctions. In addition to the standard grand theft and forgery found in the majority of real estate related crimes, there are felony crimes found in the Civil Code, the Corporation Code, the Business and Professions Code, and many others.

Rent skimming, (Civil Code §890), equity theft, (Civil Code §1695), mortgage foreclosure consultants, (Civil Code §2945.7), recording a false or forged document (Penal Code § 115), theft by a fiduciary or power of attorney (Penal Code §506 and 507), selling the same parcel to two or more different buyers (Penal Code §533) and sale of partial interest in real property which is in reality a security (Corporations Code §25400) are but a few examples of seemingly “civil matters” that are felonies too.

With mortgage interest rates at historic lows, and

prices of real property at historic highs, the unwary or the unsophisticated can become the victim of a perfect storm of fraud and crime brought on by the unscrupulous. The grifter comes in all shapes and sizes, with all sorts of easy money, get out of debt, or can’t lose programs, aka: schemes. A couple of examples of recently prosecuted cases illustrate the lengths to which the schemer will go and the ease with which the victims are fleeced.

Bridge Loans

Posing as a “bridge loan” specialist, Mr. Jones (protecting the guilty), using simple computer generated flyers, fax machine and word of mouth, sought out investors who had \$10,000 to \$20,000 to loan for a short period of time. As sort of a loan broker, Mr. Jones told the lender that the borrower he represented was about to lose their home to foreclosure, and needed to borrow this money to save the property until it could be sold.

Jones didn’t promise a percentage return, but did promise for example, the repayment of \$15,000 in six

months for a \$10,000 loan. And, by the way, your loan will be secured by a mortgage on the borrower's real property. The lender would make out a cashiers check payable to Jones in exchange for a notarized officially recorded trust deed.

The problem for the lender is that there was no borrower, Jones pocketed the money, the trust deed was a forgery, and the owner of the property described in the trust deed had no idea that there was now a lien against his property. Of course, at least at first, some of the loans were actually paid off as promised. Word quickly spread that this was a good deal and Jones became the person to call for a short term investment with a great return. It was nothing more than a Ponzi scheme.

There were several victims affected by Jones' investment program. First the lender, whose loan was never repaid, a victim of a violation of Penal Code §532.

Second, the unknowing property owner whose property was encumbered by a lien that he had no knowledge of until he started a sales or refinance of his



property, a victim of a violation of Penal Code §115.

Third, the County Recorder's Office took in for recording false and forged documents which are now part of the public record, and eventually title insurance companies that are asked to determine if a land owner has a good and valid title.

Jones worked his magic throughout the counties of

San Diego, Orange and Los Angeles. Over a hundred "lenders," thousands of dollars, and many property owners are his victims. He is serving time in a state prison.

The Loan Broker

In a second case, Ms. Brown rented office space in Mission Valley, leased office equipment including copy and fax machines, installed a sophisticated phone system, and began sending out flyers in bulk by fax, inviting borrowers, even persons with terrible credit, to apply for loans with little or no cost or fees.

Brown also promised that she would "repair" if needed, the borrower's poor credit report for the small fee of \$500. All the customer had to do was to send in an authorization allowing Brown to transfer funds from his or her personal checking account, for "incidentals" such as notary or messenger fees, and that \$500 to repair credit, a violation of Civil Code §1789.20.

The application had to identify the customer's bank account. Brown actually brokered a few loans at first. By

the way, she is not a licensed real estate broker, nor does she hold any other type of license, other than a Fourth Waiver due to a grand theft conviction a few years back out of Orange County.

One victim of bad business or unfulfilled promises does not necessarily a felony make. At first the two or three complaints about Brown seemed to be truly "civil matters." It is more likely than not all of Brown's victims made formal reports. After a short time and due to the fact that the Real Estate Fraud unit maintains an index of all complaints, it became clear that Brown's name was coming up too often.

Arrest and search warrants were served and the operation was shut down. Scores of victims were identified; the total loss amounted to thousands of dollars. The companies that leased office equipment to Brown were victims, banks and credit unions were victims, and the persons most vulnerable, the customers who are usually in financial difficulty suffered. Brown is serving a prison term in California.

Investigative Leads To Consider

- Obtain a property profile from a title company which shows the history of conveyances on the questioned property
- Obtain a copy of any questionable deeds from the county recorder's office
- Obtain copies of driver's licenses of the parties involved to compare signatures
- Obtain notary signature cards from the county recorder's office
- Interview any notary
- Get handwriting exemplars from key parties
- Always get a copy of the line item from a notary's journal for notarized documents. It must be provided to you pursuant to Government Code section 8206(c) upon written request. If you think the notary is involved in a scheme to defraud, get a search warrant for the journal so you can look at entries before and after the questioned item
- Get search warrants for mortgage loan files, lender's files, escrow files, real estate salesperson's files, or bank records to follow the money trail
- Call the District Attorney's Office, Real Estate Fraud Division at (619)531-4070 with any questions

These cases illustrate at least one important lesson for law enforcement. Scam artists almost always have more than one victim. There is a tendency to view small dollar losses in what looks like a business transaction to be non-criminal.

But add up the number of the small dollar losses, and the number of persons affected by the false promise, the fraudulent scheme or the false or forged document and it becomes a pattern of felony criminal behavior. A centralized data base of victim's complaints would help investigators to quickly determine if a pattern of criminal conduct is taking place.

Taking Advantage Of Elders

June Driscoll lives in Idaho with her son, Matthew, and his family. She suffers from Alzheimer's. Mrs.

Driscoll is rarely able to comprehend the simplest of communications. During her adult life she was an independent, vibrant woman. Now she can no longer sign her name and wouldn't know what to do with a pen if she was given one.

Mrs. Driscoll's daughter, Natalie, lived in San Diego. In 1997, Mrs. Driscoll purchased a rental property in Lemon Grove. She gave Natalie Driscoll a special power of attorney to manage the property for her while Mrs. Driscoll lived out of state. The arrangement



stopped when Mrs. Driscoll found out her daughter wasn't using the rent to pay the mortgage.

Matthew Driscoll took over management of the property as Mrs. Driscoll's health began to fail. He obtained a durable power of attorney over all of his mother's affairs. Five years went by. Natalie did not visit her mother. The tenants, Mr. and Mrs. Jacobs, remained in the home. They paid their rent on time and had an excellent relationship with Matthew Driscoll. Mrs. Driscoll's ability to do anything for herself steadily declined to the point where Matthew and his wife took care of all of her needs.

In early 2004 Natalie Driscoll sent letters to the Jacobs telling them she was taking over management of the property. She told them the rent would be increased and that they should send the payments to her. Within days, an appraiser appeared at their door, unannounced, and

stated he wanted to inspect the interior of the home so that he could estimate the value of the property.

Mrs. Jacobs called Matthew Driscoll and asked for an explanation. It was the first he had heard of his sister's demands.

Matthew called the appraiser who told him he worked for a mortgage broker. The next telephone call was to the mortgage broker. During that conversation Matthew found out that the mortgage broker believed his sister owned the home and was processing Natalie's

application for a home loan. The mortgage broker had ordered a title search and found a quitclaim deed had been recorded in 2004 which transferred ownership of the property from Mrs. Driscoll to her daughter, Natalie.

When Matthew inspected the quitclaim deed he found there were a couple of problems with it. It had a signature on it which purportedly was June Driscoll's, but he knew his mother could no longer sign her name. Additionally, a notary's stamp and signature on the document represented a notarization of Mrs. Driscoll's signature in San Diego County during a time when Mrs. Driscoll had been in Idaho.

Nonetheless, the quitclaim deed had been filed with the county recorder's office and a title company was willing to insure that transfer of the property was legitimate. Based on what appeared to be a genuine conveyance of title, a lender was ready to write a check to Natalie Driscoll for \$180,000 and pay off the outstanding mortgage on the property. The loan was secured by the property and the equity in it.

A search warrant for the mortgage broker's file revealed that Natalie Driscoll had submitted a false application for the loan, misstating her employment history and lying about the rental income generated by the property. In doing so, she committed attempted grand theft (PC 664/487) which would have been completed if she had accepted the loan.

The notary who was supposed to have notarized the quitclaim deed told investigators she had never notarized the document and the signature that was supposed to be hers was nothing like her real signature, a fact made obvious by the notary's signature on file with the county recorder's office. Natalie had obtained a copy of the notary's stamp and pasted it onto a rudimentary quitclaim deed form. She simply filled in the rest of the form.

Every signature on the form was forged in violation of Penal Code section 470(a) (Forgery). By filing the false quitclaim deed with the county recorder's office Natalie Driscoll committed a violation of Penal Code section 115 (Procuring or Offering a False or Forged Instrument for

Record), a prison presumptive felony.

Remarkably, Natalie Driscoll could not be charged with grand theft for stealing title to her mother's home, because theft of the real property is limited to theft by false pretenses. In those cases the prosecution must prove the home owner relied upon a false representation made by the thief when they part with title to their home.

In this case, there had been no representations made by Natalie to her mother. An alternate theory to proceed upon is that the attempted theft of the equity in the home by Natalie Driscoll was an attempted grand theft of personal property.



A forged deed does not convey title to its immediate grantee. At sentencing the Court entered an order that the quitclaim deed filed by Natalie Driscoll was null and void. Natalie Driscoll was convicted of forgery and filing a false document and is now serving a prison term.

Identity Theft

Spiro Stamatopoulos worked hard each month to make his mortgage payments, thinking that he was investing in the American Dream of home ownership and the benefits that escalating home

equity could provide. Over the Christmas holidays Mr. Stamatopoulos enjoyed his vacation to Greece, visiting with friends and relaxing with his family.

When he returned to Los Angeles in early January he found his telephone service had been disconnected. He had several letters in his mailbox from banks and credit card companies confirming or denying loan or credit card applications that had been submitted in his name. The most alarming of all was a notification from Wells Fargo bank concerning a \$245,000 home equity line of credit which he knew nothing about.

Mr. Stamatopoulos contacted Wells Fargo and told them he had never applied for the line of credit secured by his home in Los Angeles. Wells Fargo had been about to fund the loan and was just days away from wiring \$245,000 to the bank account of someone they thought was the real Spiro Stamatopoulos. Mr. Stamatopoulos quickly ordered his credit reports from the three credit

reporting bureaus. The news he received raised his anxiety level substantially.

From the time he had been out of the country someone had applied for credit and purchased thousands of dollars worth of items in his name. A cash advance in the amount of \$30,000 had been made on one card that was opened using Mr. Stamatopoulos' identity.

A review of billing statements showed that whoever had opened the credit cards quickly went on a shopping spree buying expensive goods such as a plasma television and Italian leather furniture.

A Wells Fargo investigator tried to uncover who had been using Mr. Stamatopoulos' identity to get the home equity line of credit. The offender used a post office box in Vista, yet provided a telephone number with a Los Angeles area code.

A checking account had been opened with Wells Fargo and several large cash withdrawals had occurred after the identity thief deposited a cash advance from one credit card. Bank records provided an initial break in the case. The thief had mistakenly used his own name when signing a withdrawal slip.

District Attorney Investigator Rick Stark followed up with the manager of the private mail facility that rented the post office box used on the applications. That person noted the license plate number of a car used by a man who took mail out of the box.

The registration of the vehicle came back to a Vista address and the registered owner of the vehicle looked remarkably like the man seen repeatedly withdrawing money from Wells Fargo bank surveillance videos. When Investigator Stark served a search

warrant on the home of the suspect, he found the plasma television hanging up in the living room. The Italian furniture filled the same area.

The defendant knew significant amounts of identifying information about the victim. He had even obtained a California driver's license in the victim's name and used that to persuade others that he was Spiro Stamatopoulos. The defendant spent approximately \$70,000 using credit cards. He almost obtained \$245,000 of the victim's hard earned equity in his home.

Not content with making one application to get a home equity line of credit on the victim's residence, the defendant made an application to another lending institution as well. Luckily, that loan never funded. The defendant pled guilty to multiple counts of grand theft for stealing funds from several different financial institutions.

Vacation Rentals

Imagine booking a two week reservation for a beach front vacation home, paying a few thousand dollars of



rent up front, flying with your entire family across country, arriving with anticipation, and showing up at the residence on the beach, only to have the owner answer the door and tell you the house is not available.

You turn to your family as the door closes and try to address their fear and disappointment while coming to grips with the thought of having spent your vacation money and now having to return home or spend money for comparable shelter when you have none.

What happened? You have a signed contract, contacts at the rental agency, and documented conversations saying the one-of-a-kind beach front home was stocked with clean towels and awaiting your arrival.

What happened is that you were victimized, like close to 260 other individuals and families, by the fraudulent acts of Celeste Miranda. For her conduct Ms. Miranda was sentenced to 6 years, eight months in prison, and ordered to pay \$1,478,073.24 in restitution.

Celeste Miranda was operating Cequis San Diego, a vacation rental agency claiming to represent some of the choice beach properties in San Diego's Mission and Pacific Beach.

Miranda initially seemed to be operating a legitimate enterprise until she got greedy and started to advertise properties on the web, posting photographs of beautiful interiors and picturesque sunsets from balconies, and collecting money up front, knowing she no longer represented these properties or had the authority to rent them.

Her other offenses included failing to return rental and cleaning deposits, neglecting to pay the landlord his or her share of rental proceeds, and neglecting to pay the \$425,000 transit occupancy tax (TOT) to the City of San Diego. The City then went after the property owners for TOT money even though Miranda was obligated under contract to pay the tax.

The City held the property owner ultimately responsible and had the authority to put a lien on their property if the tax and penalty was not paid. As you can imagine, Miranda didn't have the money.

Miranda immediately left San Diego after search warrants were executed at her home and business. She continued a pattern of questionable conduct in Las Vegas, Hawaii, Texas, and Washington. She was eventually located in Canada under her new name, arrested for an

immigration violation, and returned to San Diego for prosecution.

Like most real estate fraud cases, the failure to return money led to charges of grand theft. Together they allowed us to charge losses in excess of \$1,000,000, which increased Miranda's prison exposure. Renters, property owners, the city, and a bank were all victims that resulted in charges of felony grand theft or forgery being filed.

From a prosecutors perspective it was essential to work closely with the investigator, paralegal, and forensic accountant, and to secure or subpoena the proper contracts, real estate and financial documents. It helps to know you have the Regional Computer and Forensic Lab (RCFL) professionals backing you up should you need the computers and programs used by the suspect analyzed.

Case management was also important. When more than 250 people were victims, contacting and staying in touch with those individuals, and properly managing the volumes of information in preparation for court or grand jury presentation, took time and teamwork.

Such a case requires an understanding of contracts, warrants, subpoenas, documentary evidence, and case preparation. In the end it also requires working with revenue and recovery, the probation department, and in-house restitution experts to do what you can to see the victim's rights are protected.

There are a number of other significant features of this case. There were many victims, many of whom had vacations ruined and could not afford such a fraudulent setback. Property owners lost out on rental money and then ran the risk of having a cloud on their title thereby prohibiting the smooth transfer or sale of their property.

Failure to pay the TOT resulted in penalties accruing daily. A bank was defrauded and a city in need of revenue was adversely impacted. Additionally, people are now suspicious of the web as a means of booking travel, and San Diego's reputation as a vacation rental resort was tarnished in a way difficult to measure.



Fiona Khalil is a Deputy District Attorney in San Diego County assigned to the Real Estate Fraud Unit in the Economic Crimes Division.

LEQ

THEFT OF REAL PROPERTY

Several ways to judge if theft has occurred:

1. Defendant made:
 - (a) a promise without the intent to perform it, or,
 - (b) knowingly made a false representation which the victim could have reasonably believed was true. There must be proof of the false pretense and it must be one of the following:
 - a writing subscribed by the defendant or in his handwriting.
 - an oral false promise accompanied by a false object, document or writing, intended to be used and was used to deceive the recipient.
 - testimony of two witnesses or one witness and corroborating circumstances, such as a similar false representation being made to someone other than the victim.
2. The defendant had the specific intent to defraud the victim. That is, the defendant intended to deprive the owner permanently or temporarily of his property.
3. The victim believed and relied upon the promise or false representation which was material to inducing the victim to part with his property. The promise or false representation doesn't have to be the sole cause of the victim's decision to part with his property.
4. The theft was accomplished because the victim parted with his property intending to transfer ownership of the property.

Some cases of theft of real estate involve trustees or persons who hold a power of attorney over another. They will frequently attempt to hide behind their fiduciary position and suggest that their actions were appropriate. The following is a brief synopsis of what is expected of someone who holds this position and what they cannot do.

Fiduciary duties of trustee or POA:

- Obedience (Carry out instructions/wishes of trustor/relative)
- Manage assets carefully
- Keep assets separate (avoid commingling funds)

- Keep records of finances/actions
- Use good faith/honesty
- Disclosure of material facts of any transaction
- Disclose/avoid conflicts of interest
- Selfless representation (action to protect assets)
- Reasonable care/skill

Typical examples of what trustee or power of attorney may do:

- Make bank deposits, withdrawals or other transactions
- Trade stocks and bonds
- Pay bills
- Buy/sell property
- Hire caretakers
- File tax returns
- Arrange distribution of retirement benefits
- Negotiate/sign contracts
- Apply for benefits like SSI or Medi-Cal
- Establish a trust

What trustee or power of attorney can't do:

- Change Will (Probate Code Section 4264)
- Make gifts to him or herself (PC506/507)
- Forge signature (PC470)
- Commingling funds (PC506 & Probate Code)
- Actions contrary to wishes/estate preservation (PC506 generally)

Signs of potential financial abuse by trustee or POA:

- Unpaid bills, eviction notices, notices to discontinue utilities
- Re-routing of bank statements from trustor home
- Lack of capacity of trustor when documents signed
- Unusual bank activity
- Care of trustor does not equate to wealth of trustor
- Belongings or property missing from estate
- Suspicious signatures on checks & other docs

By Wendy L. Patrick Mazzarella



Criminal Discovery – Are Oral Statements Discoverable?

You and the prosecutor on your case are almost ready for trial. Your reports have all been proofed and delivered, all of the exhibits are done, and the trial notebooks contain a meticulous index of all of your evidence, documents, and witness statements. You and the prosecutor have held several meetings with the defense team and are confident that you have complied with all of your discovery obligations. Until the phone rings.

It is one of the material witnesses and they proceed to

deliver an earful of information. Most of the information has already been included in your past reports, but there are some details that they did not reveal in any of their past interviews. You do not write a report, you merely call and tell the prosecutor about the phone call.

What is the obligation of the prosecution team to turn over the oral statement to the defense? Would it make a difference if the witness had called and spoken directly to the prosecutor?

Penal Code Section 1054

Criminal discovery is governed by Penal Code Section 1054, which describes the discovery obligations of both sides in a criminal case. Under Section 1054.1, the prosecution is obligated to disclose the enumerated information “if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies.” They also have the additional duty under PC 1054.1(e) to disclose any exculpatory evidence.

Both sides are bound by a reciprocal obligation to disclose the names and addresses of witnesses intended to be called at trial as well as their statements. In addition, PC 1054.1(f) mandates disclosure of “relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial . . .”

The reciprocal defense obligation under Section PC 1054.3(a) is similarly phrased regarding witness statements other than the defendant, mandating

disclosure of “relevant written or recorded statements of those persons, or reports of the statements of those persons...” There has been discussion in the criminal arena, however, as to what constitutes a witness “statement” or “report.”

Roland v. Superior Court

Early in the opinion, *Roland* quoted from *In re Littlefield* in recognizing that in a criminal case, “all court-ordered discovery is governed exclusively by – and is barred except as provided by – the discovery chapter...enacted by Proposition 115.” The court noted the voters’ intent behind enacting the discovery statutes was to “reopen the two-way street of reciprocal discovery” and “restore balance and fairness to our criminal justice system.”

The holding in *Roland*, which will have a significant impact on criminal case preparation, was that even oral statements made by witnesses must be disclosed. In *Roland*, the defense attorney advised court and counsel that he would be calling seven new

witnesses at trial. The court ordered him to provide the prosecution with all witness statements, both written and oral.

The court gave defense counsel the option of providing this information to the prosecutor by giving him written reports of their statements, or simply by calling him and providing the information in summary form over the phone. Defendant *Roland* argued that PC 1054.3 did not include the obligation to disclose unrecorded oral witness statements.

Statements Conveyed to Counsel by a Third Party

The *Roland* court began its analysis of PC 1054.3 by noting that the plain meaning of the language of PC 1054.3 included written witness statements, video or tape-recorded oral statements, and also the “raw written notes” of a defense investigator’s interview of a witness.

The court proceeded to conclude through examining the plain meaning and purpose of PC 1054.3 that the

statute's disclosure requirement includes oral witness statements that are orally communicated to defense counsel by third parties, such as an investigator. Part of the support for this conclusion stemmed from a close examination of the statutory language.

The court noted that "the statute's use of the word 'or' rather than 'and,' as well as its use of a comma to separate 'statements' from 'reports of the statements,' indicates that the words 'written or recorded' modify 'statements,' not 'reports of the statements.'" The court also noted that PC 1054.3 used the language "of those persons" two times, which was likely designed to separate the two categories.

The rationale and two-way street nature of the conclusion was further explained; interpreting section 1054.3 and concomitantly section 1054.1 to include witnesses' oral statements contained in oral reports to counsel

will help ensure that both parties receive the maximum possible amount of information with which to prepare their cases. This facilitates the ascertainment of the truth at trial.

Recognizing that there is no duty for defense counsel to acquire written witness statements, the court explained that they cannot avoid the duty to disclose relevant witness statements by simply failing to write down the information.

Statements Made Directly to Counsel

The court then tackled the issue of whether oral statements made directly to defense counsel were required to be disclosed, and concluded that they were. The reasoning behind this conclusion included the recognition that: "excluding such statements from the disclosure requirement of section 1054.3 – and concomitantly section 1054.1 – would undermine the voters' intent because it would permit defense attorneys and prosecutors to

avoid disclosing relevant information by simply conducting their own interviews of critical witnesses, instead of using investigators to perform this task, and by not writing down or recording any of those witnesses' statements."

The impact of Roland will have a widespread effect on criminal practitioners and the law enforcement community because the issue of how to deal with oral witness statements is a dilemma faced frequently in criminal proceedings. Please stay tuned as we follow the progression of this case, and case law in this area. As with any recent case, please check the continuing validity of this decision before relying on the case as authority.

LEQ

Wendy L. Patrick-Mazzarella is a Deputy District Attorney assigned to the Family Protection Division of the San Diego County District Attorney's Office. This column does not contain legal advice. Please shepardize all case law before using.

NEWS BRIEFS

Check Enforcement Program

The San Diego District Attorney's Office launched a Check Enforcement Program targeting bad checks in San Diego County. Notices were sent out in November to 40,000 merchants throughout the County, encouraging them to sign up for the program.

This newly upgraded program is designed to be more responsive for victims. Another goal is to increase the accountability of those who pass bad checks. This will be done without any undue administrative or financial burden on the criminal justice system.

The multi-faceted approach includes: assistance in recovering money lost to bad checks, training programs and preventive check acceptance measures designed to reduce the number of bad checks, pursuit and prosecution of check offenders who refuse to make restitution and, finally, an educational course to help check offenders avoid writing and passing any future bad checks.

Medical & Legal Insurance Fraud Task Force

The District Attorney's Office has created a multi-agency task force designed to investigate and prosecute insurance fraud and tax evasion by medical and legal professionals. It's the first of its kind in California.

Members of the task force include the Medical Board of CA Investigative Services; the State Bar of CA Enforcement Unit; the FBI's SD Health Care Fraud Team; the US Dept. of Health & Human Services, Office of the Inspector General; the State of CA Franchise Tax Board, Investigations Bureau; the CA Dept. of Insurance, Fraud Division; and the DA's Insurance Fraud Division.

The main objective of the Medical and Legal Insurance Fraud Task Force is to investigate and prosecute professionals engaged in auto insurance fraud, workers' compensation fraud and/or tax evasion. These types of sophisticated crimes require a more specialized focus to capture these criminals.

Computer forensics. Police officers in the field wonder why it matters to them. Investigators ask how long it will take to get their service requests done.

Prosecutors weigh its value versus other physical – and less confusing – evidence. Administrators discuss how to pay for its higher and higher costs. To all though, it represents an important – and often critical – corner of the arrest, investigation and prosecution of a criminal.

Consider these three very different cases:

Within days, the residence was identified, Comfort was arrested and his computer seized. The analysis of Comfort's computer resulted in the recovery of the subject emails, notes written by Comfort relative to the crime, map images of one of the victim's residential area, and other damaging evidence showing a long obsession with the victims.

In 2004, Marlon Laminoza used his computer to coordinate a ring of identity theft criminals throughout



The Continuing Evolution Of Computer Forensics

By David W. Hendron

In 1996, Frederick Davidson shot three of his SDSU professors to death during a challenge to his master's thesis. The gun used in the offense was concealed within the lab area where the crime occurred. A later analysis of Davidson's computers revealed scanned digital images of the murder weapon – a Taurus 9mm pistol – placed in the directories of his computer that also contained various drafts of the thesis. The presence of the images helped to establish the premeditation of the crime.

In 1998, Duwayne Isaiah Comfort stalked five victims – four women and one man – over several months via electronic mail. Comfort was careful to always send his email from USD. Approximately 120 emails containing death threats, threats of sexual assault and other terrorizing statements were sent. While this was occurring, Comfort became sloppy and sent email to the victim from his home residence.

the United States. Laminoza provided a co-conspirator with purchase information, and then directed orders to be made using the victim's names and credit card numbers. When Laminoza was arrested, his computer and a number of hard drives were seized.

The forensic analysis of this evidence revealed more than 8,500 individual victims' personal and financial information, evidence indicating Laminoza was spamming thousands of victims, Laminoza's attempts to infect millions of computers with viruses, phishing schemes, fraudulent credit card ordering information, the identification of his co-conspirator and other information.

Still not convinced it could be important to you? Ask some folks who know for certain: I am quite sure that David Westerfield and Kristen Rossum would tell you that the analysis of digital evidence was recently a critical matter in their lives.

The History Of Computer Forensics

Put simply, computer forensics is the analysis of digital evidence to gather information for use in an investigation or for court. Computer forensics, or the analysis of digital evidence, has been in existence as a formal process worldwide for more than 20 years. Computers have been around far longer, since the 1950's. However, the computers of the 1950's, 60's and 70's were far too large, and far too expensive, to have a serious use by criminals.

Prior to 1990, various attempts at user interfaces resulted in similar versions of text-based computing. In 1990, Microsoft released Windows 3.0, the first graphical user interface (GUI) that the public embraced. This was followed in 1992 with Windows 3.1 and 3.11, in 1994 with Windows NT, and in 1995 with Windows 95. Windows 98 and Windows 2000 followed in later years.

The latest version, Windows XP, is highly popular and widely used. During these advancements, other operating systems, most notably Macintosh and Linux, also developed GUI-based operating systems that are popular with the public and often encountered in the field.

Why is this important? Older computers were difficult to learn and – for our criminal element – difficult to exploit for criminal purpose. Think about it: if it involves significant work, it is less likely to be popular with most of your street criminals. If it is easy, the computer and operating system offer less of a learning curve and more opportunities for criminal exploitation. It is no wonder that computer forensics began as a more serious function in law enforcement in the early 1990's.

In San Diego County in 1994 there were a number of agencies that had investigators or agents assigned to computer forensics duties. Often, these investigators did it as a hobby, using their own funds to purchase equipment and software. In 1996, the San Diego Police Department began accepting limited requests for service from outside agencies to be done by a single detective who was also working a criminal caseload.

In 1997, at least three agencies were accepting forensic service requests: SDPD, the San Diego County District Attorney's Office and the United States Secret Service. In each case, there was still a single forensic examiner assigned the task. Each of the three investigators was soon overwhelmed with their own success and increasing demands for service.

By 1998, the effects of the volume of requests had reached a peak. The District Attorney's Office reduced, and

then eliminated, requests for service for cases not yet in prosecution. The U.S. Secret Service eliminated the service for outside agencies. SDPD tried a more novel approach, and in one notable case, charged another agency (the CHP) for forensic work performed on a case involving nearly 900 pieces of digital evidence.

In 1999, the San Diego Regional Computer Forensics Laboratory – the first of its kind – was established. The RCFL began accepting cases from agencies in San Diego and Imperial Counties. Riverside County now also provides one investigator, providing a conduit for a limited number of cases from that county as well. The RCFL sworn and non-sworn personnel includes investigators and agents from local, state and federal law enforcement agencies.

The RCFL concept has grown dramatically. There are 14 RCFL's across the nation, either fully in service or expected to be soon.





The RCFL is the only full-time laboratory dedicated solely to conducting computer forensics in San Diego County. Other units or agencies either accept limited numbers of requests for service, such as the U.S. Secret Service, or only perform digital evidence examinations for in-house cases.

Those agencies in San Diego County include Immigration and Customs Enforcement (ICE), U.S. Postal Inspection Service, IRS-CID, DEA, California Department of Justice, Escondido PD, and two local task forces: the Internet Crimes Against Children (ICAC) task force, and the Computer and Technology Crimes High Tech Response Team (CATCH).

The Process Of Computer Seizure And Handling

The process of digital evidence analysis really begins in the field. Typically, digital evidence – whether it is identified and seized or not – is encountered by patrol officers and deputies or detectives while investigating various types of crimes. Virtually every crime today can be enhanced through the use of computers and digital media. Those same devices often hold the key evidence – or the smoking gun – that can make or break a case.

Identification and seizure of digital evidence is the key. If an officer or investigator does not recognize the item as potential evidence, or its value as evidence is not identified, the benefit has been immediately lost. Most law enforcement personnel would automatically associate a computer with identity theft or the transmission of threatening email. However, the connection to the crime becomes less clear when talking about auto theft, narcotics sales or murder.

Likewise, the seizure and handling of the digital evidence is a critical point. Did the seizing agent taint the evidence by booting up the computer and printing out documents? Was the camera containing the images of child pornography dropped during transportation? Were the unmarked CD's seized from the suspect's residence left on the investigators desk, and ultimately later discarded as trash? These are all real-life examples of issues in digital forensics.

Proper handling, including recognition, documentation, chain of custody, and laboratory requests are all part of CATCH/RCFL's class, The Seizure and Handling of Digital Evidence. This collaborative effort teaches the methods of identification of digital evidence, its importance in various kinds of crimes, and how the evidence should

be handled from seizure to lab service request. Hundreds of officers and investigators have been trained in San Diego County.

After the seizure, the most common issue is to wait to submit the digital evidence until there is an immediate need, such as court. The RCFL is constantly faced with requests for service on evidence seized months or years prior where there is now a pending court case. Not only does this reduce the time available for the forensic examination, it can eliminate the possible benefit when the time allotted is insufficient for the examination of the computer or related media.

In the same vein, if 50 computers are seized, it might be prudent to focus the examination on the computers or related media most likely to contain relevant evidence, and will certainly speed along the forensic analysis.

A best case scenario involves a proper seizure in the field, whether by front line officers or investigators trained in computer forensics. The computer should be handled with care, documented fully, including photographs and/or sketches and a computer chain of custody.

Next, the officer or investigator charged with handling the digital evidence involved in their investigation should see that the evidence is examined in a timely manner. Whether it is done in-house by one of the agencies, task forces or small units who do their own forensics, or by the RCFL, time is of the essence. The day after the seizure of the evidence is definitely not too soon. Six months later probably is too late.

Another consideration is the legal issues related to both the seizure and examination of the digital evidence. The computer or other digital evidence must always be thought of as a closed container. When considering whether or not the computer must be subject to a warrant or other exception for seizure or search, here are some tips:

- **Plain View:** A computer seized in plain view is still a closed container; the plain view doctrine does not authorize agents to open and view the contents of a computer file that they are not otherwise authorized to open and review.
- **Consent:** Written consent is a must if this method must be used. Generally, a computer forensics examiner or unit will not search digital evidence submitted based upon verbal consent. Even written consent is viewed with a raised eyebrow. This is generally because this is the exception to the 4th

Amendment most likely to be lost due to a variety of reasons, and the amount of time and resources poured into a digital evidence examination.

- **Incident to an Arrest:** The seizure of digital evidence seized pursuant to an arrest can be good enough to secure the evidence, but will not allow the search of that evidence. Think of that closed container. You may have legal cause to seize it, but if you do not have legal cause to open it and search it, get a warrant.
- **Probation or Parole:** Ensure the conditions of probation or parole authorize the search. Obtain a court copy of the 4th waiver conditions, or relevant paperwork from the parole officer and submit that with the examination for service.
- **Exigent Circumstances:** This exception is also about as useful as incident to the arrest. Generally, the exigency involved with digital evidence is going to involve the prevention or interruption of the destruction of evidence. The evidence is, after all, quite volatile and easy to destroy. However, when the emergency is over, the usual rules apply.
- **Search Warrant:** Ensure your warrant contains the proper language to justify the seizure and search of the digital evidence as well as the identification of that evidence. Simply stating that you are looking for computers may be sufficient in some cases, but what about CD's, flash media, digital cameras and other items?
- Units such as CATCH provide examples of search warrants both in terms of justification language and the identification of digital evidence, but frequently also provide expert opinion that can be quoted in the search warrant affidavit. The bottom line with the legalities of the search: if in doubt, get a search warrant.

Upon seizure, the digital evidence must be packaged carefully. Use evidence tape to seal the power port of a computer as well as its side panels. Smaller items such as thumb drives, flash media, digital cameras and related items should be placed into a bag or other container that is then sealed. This protects the chain of custody and helps to prevent claims of alteration later on.

When seizing digital evidence, ensure the seizing officer checks for other evidence or contraband inside the computer, laptop case or other container. Some interesting

items have been recovered from the interior of computers or laptop cases submitted for examination, such as loaded firearms, narcotics, used hypodermic syringes, stolen identification, counterfeit checks, and dead rodents.

A common misconception among field officers or investigators is that it may be acceptable in some circumstances to examine the computer without qualified assistance. Pressures such as budget or time issues sometimes lure law enforcement personnel or management into the false belief that money or time issues outweigh the possible drawbacks of viewing the evidence themselves.



This is simply not so and there is no circumstance that would make non-qualified viewing of digital evidence acceptable. Requests for analysis have been denied based upon mishandling of the original evidence. The RCFL, and in some cases CATCH or other units, can be available for any case where there is an urgent need to view the evidence for investigative purpose in the field.

The Care And Feeding Of A Computer Forensics Examiner

Who is qualified to perform a computer forensics examination? This has been the subject of much conversation over the years. Is it anyone who can use a computer successfully, or someone specifically certified to perform such examinations? Must it be a sworn peace officer, or can a qualified non-sworn examiner be just as good? Are certifications required?

The current computer forensics community has an eclectic mixture of individuals. Law enforcement tends to

prefer peace officers for the work, but there is an increasing move nationwide to utilize non-sworn examiners in the computer forensics field. Locally, the RCFL uses both sworn and non-sworn personnel to great success.

On the other hand, the criminal defense community has fielded some highly questionable “forensic examiners” with such backgrounds as private investigation, website development and even dental hygiene.

Training by qualified groups or agencies is the key to success. It is widely accepted that it will take an average of about two years to take an investigator and turn him or her into a forensic examiner. If the prospective examiner is immersed in the field full-time, it may take less time. Money is also an issue. Training and equipment are expensive.

For the six computer forensics examiners (CFE) at CATCH – all of which were part-time examiners in FY2004-2005 – more than \$300,000 was spent on costs directly related to computer forensics activities, training, overtime and equipment.

Some groups like CATCH and the RCFL, have established demanding protocols and policies for the training, certification, and peer and administrative reviews necessary to not only train their personnel to a high degree, but also monitor their progress, procedures followed and methods used on each and every forensic examination performed.

Other agencies opt for an approach often tempered by the realities of budgets, time and caseload constraints, and personnel allocation. In either case, the successful examiners and units are those that establish good policies, practices, reviewing of cases and reports, and have enough money to pay for training, equipment and software. It is a never-ending process.

Certification of an examiner is a plus. On the local and state law enforcement side, certifications can come from a variety of sources, most notably from the International Association of Computer Investigative Specialists (IACIS), or from other sources such as Comptia’s A+. On the federal side, Seized Computer Evidence Recovery Specialist (SCERS), Computer Analysis Response Team (CART) training, or the Electronic Crimes Special Agent Program (ECSAP), are some examples that provide training certifications.

More recently, some colleges and universities began offering vocational certifications or college degree programs in computer forensics.

The Computer Forensics Process

What happens during a computer forensics examination? After the successful seizure, the digital evidence should be examined as promptly as possible. When submitting the evidence for examination, stop and consider what is needed or expected.

List or supply copies of items you have already recovered, such as counterfeit identification, robbery notes, victim names, suspect phone numbers and other items. Make a list of words or phrases – known as “text strings” – which the forensic examiner can use to locate the evidence.

Remember, today’s computer hard drives are often so large that simply requesting a “search for evidence of criminal activity” is akin to asking someone to go to the San Diego Public Library and search every page of every book for some general subject, such as auto repair.

Instead, a paper or electronic list of text strings can make the difference between a good recovery of evidence or none at all. Also remember that the investigator conducting your examination has no idea about your case.

Child pornography is easy to identify. The name of a co-conspirator, victim, address or phone number may be just another name or bit of information and thus overlooked.

Once properly prepared, deliver the digital evidence to a qualified professional. If it is going to the RCFL, for example, you would take all of the digital evidence (computers, floppy disks, CD’s, power supplies for laptop’s, etc.) that need to be examined in at the same time. A request for service (on the RCFL’s website at www.rcfl.org) will have to be prepared in advance.

The investigator will also need the list of text strings if appropriate, a copy of the legal authority for the search, and any other information, including notes, reports, and warrant affidavits, that will inform the examiner of what is required and arm him or her with the information necessary to recover your evidence.

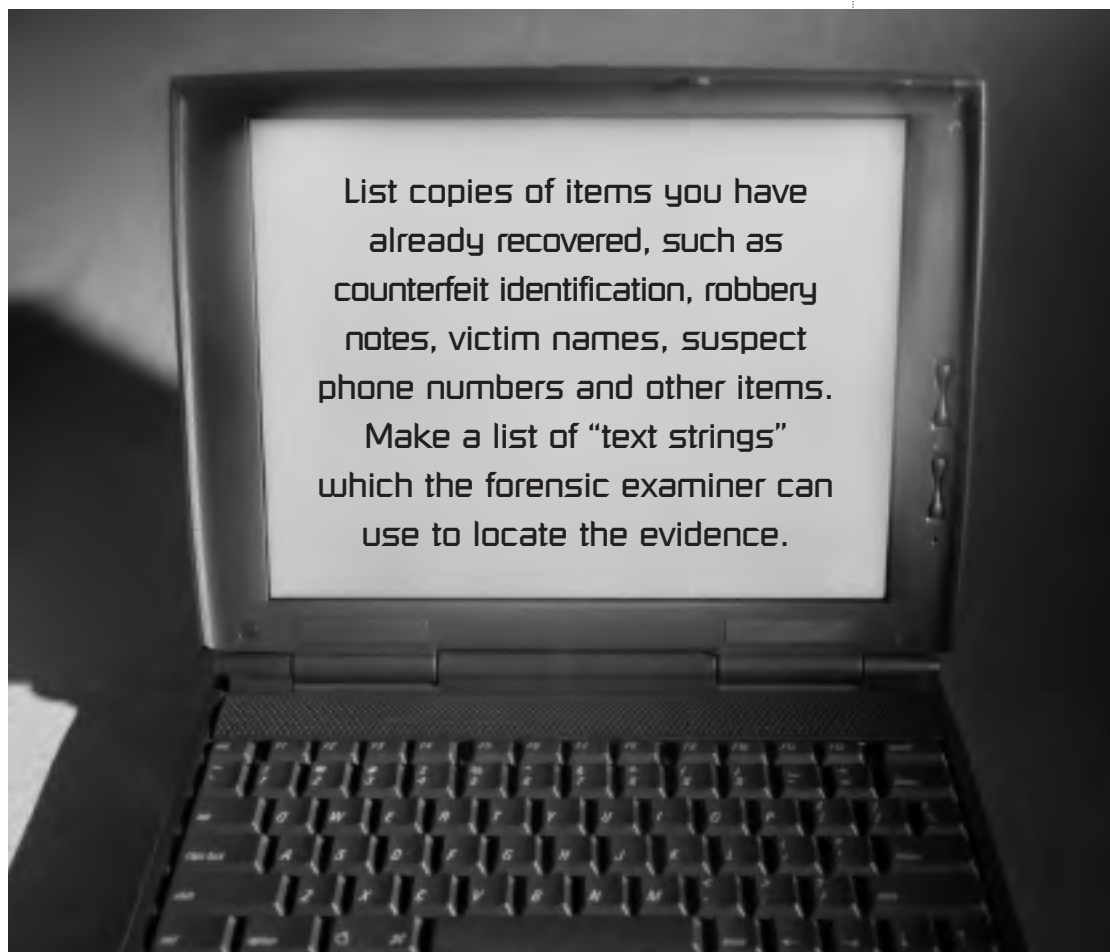
After a physical examination of the submitted digital evidence, the

examiner will make a forensic image of the digital evidence. This is a process where a bit-by-bit copy of the digital evidence is made, not just the active files that the user might see.

Instead, space not currently allocated to a file or folder (unallocated space), space at the end of a file not usually visible to the user (slack space), hidden files, hidden partitions, as well as the normal, active files are copied. The original digital evidence (ODE) will be placed back into evidence, and the duplicate digital evidence (DDE) will be used for the remainder of the examination.

A variety of procedures will be used to successfully complete the examination. No two exams are the same. Some exams will only require copying the files of a specific folder. Others will require detailed and highly technical searches to recover a snippet of digital evidence from a deleted and partially overwritten file. Still others will require recovery of hidden partitions, or the decryption of encrypted files. The process can be highly technical and time consuming.

Other considerations for the examination are



Computer Forensics

priorities. Each case is prioritized according to immediate need. A murder case with a preliminary examination hearing in two weeks is going to take precedence over a fraud case without a suspect in custody.

The investigator or unit handling the digital evidence will make the determination of the priority based upon the input of the investigator, the needs of the case, the number of computers or items of digital evidence to be seized, and the current backlog of cases.

In 2004, the RCFL conducted examinations on 745 separate cases. A case may be one computer or 100. The average processing time was 22-24 hours per examination. During the same year, CATCH conducted 61 searches by six forensics examiners who also had their own criminal caseload to work.

During the examination, the case agent may be called upon to provide more information, answer questions to clarify the search or help identify evidence, or come to the lab to review the examination results.

Once the examination is done, the forensic examiner will prepare a report. The report will often be subject to peer review and administrative review. During the peer review process, the reviewer – also a forensic examiner – will attempt to identify issues in the examination or report and attempt to make constructive suggestions to help overcome potential problems or enhance the success of the examination.

Reports are made available to the case agent along with the original digital evidence. It is unlikely the lab handling your examination will release the report without the digital evidence. This practice resulted in many reports released, but also in repeated phone calls to investigators to pick up the evidence. The report is likely to have attachments, CDs or DVDs that contain additional information, recovered evidence, programs or other items of interest.

Digital Evidence And Prosecution

A serious issue in computer forensics is that the data



For more information:

U.S. Dept. of Justice computer search and seizure manual:
www.usdoj.gov/criminal/cybercrime/s&smanual2002.htm

Best Practices for Seizing Electronic Evidence:
www.secretservice.gov/electronic_evidence.shtml

San Diego Regional Computer Forensics Laboratory:
www.rcfl.org

Computer and Technology Crime High Tech Response Team (CATCH):
www.catchteam.org

can often be overlooked. This can be either deliberate or accidental. Deliberate because the reports and attachments can be complicated and therefore too much trouble to make use of. Accidental because the prosecutor does not understand the material and therefore does not recognize its importance.

First, we must ensure the reports that are prepared by computer forensics examiners are understandable, contain a minimum of highly technical terms (techno babble) or if they are present that explanations for those terms are also available, and that the reports clearly reference any attachments or other data so the reader knows what they are looking at. Second, the prosecutors must be educated – or take the time to educate themselves – on unfamiliar concepts, terms and ideas.

This can be hard to do in many cases. An unremarkable criminal case making its way through the District Attorney's Office can be handled by a number of different deputies. The deputy who handles the case for the preliminary examination may receive the case very close to the time of the hearing, sometimes the day of.

It is then difficult for that deputy to adequately prepare for the use of that material, especially when it is voluminous, or where there are attachments on CDs that must be reviewed, digested and possibly printed out for use in court. It may be incumbent on the case agent for that unremarkable case to contact the prosecutor as much time as possible in advance to alert him or her of the technical issues involved and the meaning of the digital analysis examination results.

For vertical prosecution and cases in trial, the time issues are usually less problematic since the prosecutor would normally be aware of the issues well in advance of the hearing. The key here is preparation. The deputy must review the material, discuss the results with the case agent and/or the forensic examiner. This is especially true in the more serious cases or cases with great technical issues. In those cases, a meeting including the prosecutor, case agent and the forensic examiner is a must.

In addition to the prosecutor being educated on the general forensic process and what the examiner does, some questions that the prosecutor might pose include what the evidence really means and what facts it supports or proves. Ask the forensics examiner about possible defense issues or questions, such as proving ownership over the data or use of a particular computer. If there is additional forensic analysis needed, ask for it. As with the

original request, timeliness is an issue here and can make the difference.

Another possible problem is Proposition 115 testimony. Having the case agent testify for a forensics examiner can pose some obvious problems. Would you have an officer testify for a DNA expert or the criminalist who examined fiber evidence? The officer's explanation of the technical issues in these scenarios may produce less than desirable results. Careful planning here can help prevent a nasty gap in your witness list.

The last major issue is exhibits. Computer forensics reports can contain a lot of information in the body of the report, or can contain attachments. Think about what the jury is going to be faced with in interpreting and weighing the examiners testimony.

As in other cases involving technical experts, often the picture is worth a thousand words. Copies of relevant images, counterfeit checks, notes or other items of data may do more to help your jury understand what actually occurred than hours of technical testimony.



David W. Hendron, a 23-year law enforcement veteran, is an investigator with the San Diego County District Attorney's CATCH Team, a certified forensic computer examiner and the president of the High Technology Crime Investigation Association in San Diego.

Benefits Of Digital Evidence

Computer forensics is one of the only forensic processes that can show motive, intent, planning, reasoning, co-conspirator conduct, communication...the list goes on. The Westerfield case is a classic example of this. A juror might think, "He looks so normal" until the contents of his computer are revealed, along with the true inner evil.

Computer forensics, with proper planning and preparation, provides the paperless trail to many kinds of criminal conduct that might otherwise be lacking, or perhaps just not condensed all in one convenient package. Think of it as a present, open it and reap the benefits of a thorough investigation.

In the end, the prosecutor, now armed with good, understandable information, can prepare the proper questions to elicit good information that will not miss its mark with the judge or jury.

LEQ

On a good day, Shannin Suzette Marsh might be described as your average 35-year-old military wife. She was friendly, cute and could be quite charming. Her long curly brown hair framed a disarming face with unforgettable dimples and a nice big smile. She was a dedicated wife of a Camp Pendleton Marine drill instructor and the mother of two teenagers.

Tierrasanta. It had just been robbed by a woman who used a pink demand note and showed a weapon. The note read: "Don't f— it up, this is serious. I will kill you. I have a gun. Do not set off the alarm. I know where the alarms are located. I have a partner outside and you have only three minutes to do as follows."

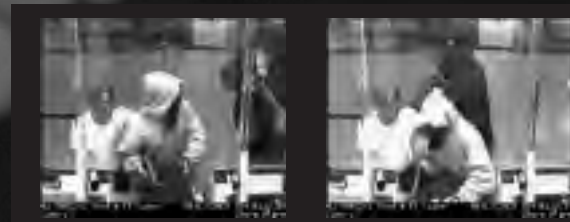
The no-nonsense robber threatened to shoot the



SDPD Detective
Robert Sylvester

Special Report: **Inside The Violent Crimes Major Offenders/Bank Robbery Task Force**

By Gail Stewart



Unfortunately, Shannin was also a methamphetamine snorting, demand-note writing and fake-gun toting bank robber. Shannin not only robbed banks, she also fancied holding up gas stations, hair salons, shoe stores, gift shops and she even held up a Joann's Fabric and Crafts store.

On the morning of December 17th, 2003, when the police radio crackled in a vehicle belonging to a detective with the FBI's Violent Crimes Major Offenders Bank Robbery Task Force, agents knew they weren't dealing with a run-of-the-mill junkie bank robber.

The voice on the other end of the radio laid out the facts of a heist at the USA Federal Credit Union in

victims if they came out of the vault. After loading the cash into a bag, the robber closed the vault door and then walked away with \$23,000 stuffed inside a pink handbag.

This was not Shannin Marsh's first robbery and it would not be her last. But it was the most lucrative. The haul slowed her down for a couple of months, but soon she was back at it. According to her probation report, "she usually needed \$200 a week to support her drug habit, so she planned the robberies and carried them out."

Detectives say Shannin's meth use undoubtedly led to her violent behavior during the robberies. Toward the tail end of her crime spree, Shannin became increasingly

aggressive. While robbing the Shoe Pavilion, an employee testified that “she took a gun and point [sic] it at me.” But the victim turned feisty and put up a fight, knocking the weapon out of Shannin’s grasp.

Then, according to the woman’s testimony, Shannin reached into her pink purse and “took the box cutter and point [sic] at me. And then, at that point, I was — wet



Shannin Marsh

my pants.” Although the victim did not suffer a physical scar from the attack, the woman still has flashbacks of Shannin Marsh to this day.

Shannin’s probation report said, “It got to the point that she was out of control and could not stop her criminal behavior until the police arrested her.”

Shortly after the Tierrasanta robbery in December of 2003, San Diego Police Detective Robert Sylvester, a member of the Violent Crimes Major Offenders Bank Robbery Task Force, was assigned the Shannin Marsh case.

Unfortunately, he wouldn’t get a break in the case for almost 10 months.

According to court transcripts, Shannin had robbed the Pacific Marine Credit Union in Oceanside in September of 2003. She got away with more than \$1,300. In October of 2004, she robbed it again. But this time, the employees of the bank had several reasons to remember her.

First, her dimples; they were memorable features witnesses would recall. Secondly, Shannin “opened her purse ... it contained a black pistol.” That weapon would later be found and become a key piece of evidence.

Finally, incredible as it may sound, Shannin had actually been a regular customer at the very same credit union for years and she was not a very nice one. One astute supervisor had even taken the step of reviewing the bank’s surveillance equipment to see Shannin’s antics for herself after several of the tellers had complained about the “loud and unruly” customer.

When it came time to review the tape from the October 2004 robbery, there was no doubt in that supervisor’s mind that the woman holding up the bank was none other than the “verbally abusive” Shannin Marsh.

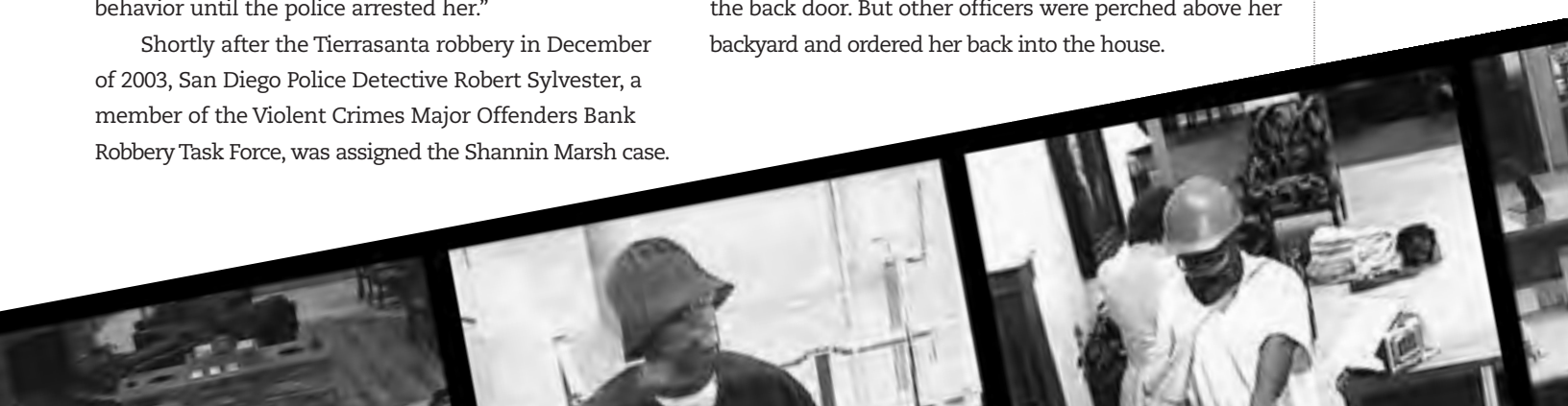
But Shannin was also a sloppy criminal. For example, following an unrelated car accident, Shannin’s Ford 150 truck got towed to an impound yard. The company documented the property found inside the vehicle which included one grey sweater, one folding chair and one black air soft hand-gun.

Shannin had left her fake weapon just lying on the front seat of the cab. That towing report would serve as a significant clue during the Pacific Marine Credit Union robbery investigation.

After Shannin hit the North County credit union a second time, the tips start coming in and the clues began to fall into place. From there, it was just a matter of getting the north county bank employees to identify the surveillance pictures from the Tierrasanta heist.

Finally, Detective Sylvester got his girl.

The day detectives served the arrest warrant at the quiet Oceanside home, Shannin attempted to run out the back door. But other officers were perched above her backyard and ordered her back into the house.



Meanwhile, the detectives at the front had already busted through the door. Detective Sylvester and others took her down at gunpoint in the hallway of her own home. Through it all, Shannin shed few tears.

Shannin's crime spree lasted 13 months and would eventually lead to her becoming one of San Diego County's boldest and most prolific female armed robbers.

Deputy District Attorney George Bennett of the DA's Major Violator Unit prosecuted Shannin on seven felony charges, including robbery, assault and burglary. She pled guilty and is serving six years, eight months in state prison.

Violent Crimes Major Offenders/Bank Robbery Task Force

Detective Sylvester is one of four members of the VCMO, which is the Task Force that responds to all bank robberies in the County of San Diego. The Task Force has been around since 1996. But after 9/11, like most everything else in our country, it changed. It was downsized quite a bit. However, the three FBI agents and Detective Sylvester who are assigned to the Task Force are all full-time and dedicated to the task at hand.

They are also responsible for interstate and US/Mexico kidnappings, extortions, fugitives and

enforcement agencies in other areas have pictures of the suspects and know about them. His service work pays off.

Today's Bank Robber

Bank robbers today are more mobile than ever before. The FedEx bandit is a great case in point. This defendant started his crime spree in Los Angeles, spent some time in Orange County, then came down to San Diego and robbed banks here. He went back to Orange, pulled a few more heists and then was recently caught crossing the border from Mexico back into the San Diego area.

One of the reasons law enforcement was finally able to put the series together was because of the work of the VCMO Task Force. Deputy District Attorney Bennett is prosecuting the FedEx bandit on more than 30 felony bank robbery counts.

The Latest Series

For the most part, many bank robbers work alone. However, there is always



theft on the high seas. The Task Force works very closely with both the U.S. Attorney's Office and the Office of the District Attorney on the prosecution of these cases.

Detective Sylvester also does extensive outreach to other counties. He serves as a liaison distributing crime trends, holding quarterly meetings and sharing information. These preventive measures ensure that when there is a major robbery series, other law

the exception. Take the case involving the latest gang of thugs who are accused of holding up five banks in San Diego. They allegedly entered the banks wearing masks, shouting obscenities and waving semi-automatics.

According to witnesses, the suspects walked up to each teller, got the money and then tried to get into the vault. The suspects were aggressive and violent. Thanks to some alert citizens and the VCMO, the suspects were finally apprehended. The Office of the District Attorney is currently prosecuting the five defendants, including one woman, (she apparently was the get away driver) on 15 felony counts related to this bank robbery series.

Will The Bank On Your Beat Be Next?

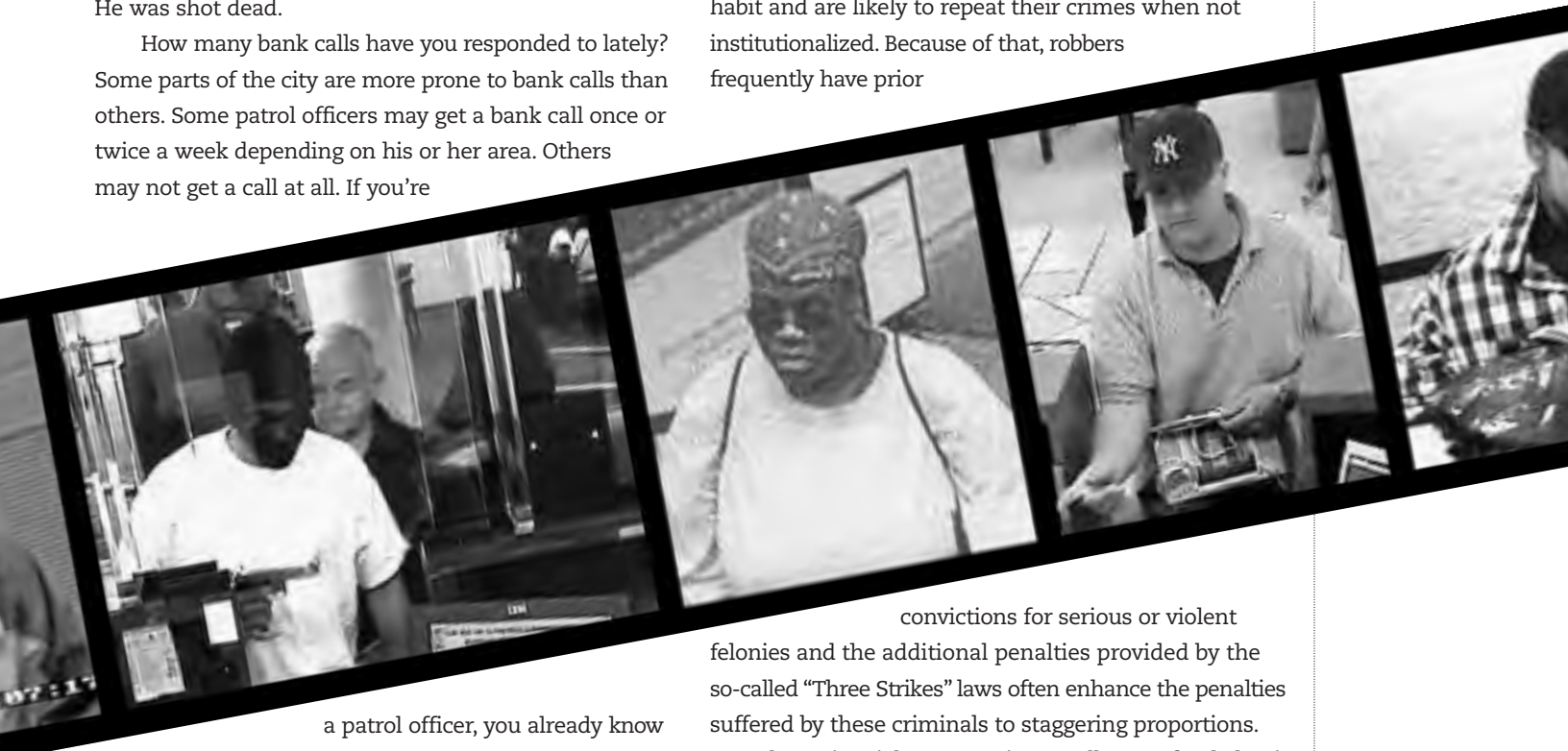
2005 was a big year for robbing banks in San Diego County. The VCMO reports that more than 160 banks were robbed, topping 2004.

One of the most deadly involved an off-duty Sheriff's Deputy who just happened to be a customer when an armed robber burst into a bank on Rosecrans Street in the Sports Arena area. Fortunately, the off duty deputy was not injured and neither were any of the employees or customers. The same can not be said of the robber. He was shot dead.

How many bank calls have you responded to lately? Some parts of the city are more prone to bank calls than others. Some patrol officers may get a bank call once or twice a week depending on his or her area. Others may not get a call at all. If you're

prosecuted in California under Penal Code § 211. Robbery carries a base punishment term of two, three, or five years in state prison. Because robbery is a violent felony per se, a person sentenced to prison for robbery receives at best 15 percent time off for good behavior once in the institutions.

Additional penalties for use of a firearm in the commission of a robbery provide enhancements of 10, 20, or 25-years-to-life in addition to the base prison term. Moreover, like many criminals, robbers are creatures of habit and are likely to repeat their crimes when not institutionalized. Because of that, robbers frequently have prior



a patrol officer, you already know that most bank calls are false alarms. Still, the VCMO warns that no one should ever get complacent about a bank call.

For the most part, the patrol officer will be the first one to respond to a bank robbery scene. With this in mind, it's important to remember a few key points and terminology.

- Be very alert to all activities as you approach the crime scene
- Suspect could be carrying dye packs
- Bait money is serialized money (no tracking device)
- Dye pack (exploding dye device)
- Electronic tracking system (PRONET)

Crime And Punishment

Robbery of any type – including bank robbery – is

convictions for serious or violent felonies and the additional penalties provided by the so-called "Three Strikes" laws often enhance the penalties suffered by these criminals to staggering proportions.

The Major Violator Team is a small, grant-funded unit of the Superior Court Division in the District Attorney's Office whose main focus is the prosecution of serial robbers and residential burglars. Over the years, the unit has been responsible for the prosecution of many of San Diego's most well-known serial robbers including Shannin Marsh. Major Violators is a vertical unit, meaning that a single, experienced deputy district attorney is assigned to a case for all purposes from issuing through sentencing.

The prosecutors assigned to major violators have the luxury of a reduced caseload – and in most cases are disinclined (if not, outright prohibited) to dispense plea bargains to targeted defendants. That basically means very bad news to those who get caught robbing banks in San Diego.

LEQ

Greg Thompson



The New Tipping Point In Criminal Investigations

On November 2, 2004 – the date voters passed Proposition 69, the DNA Fingerprint, Unsolved Crime and Innocence Protection Act – two roads converged: one road, a change in the law; the other, a change in science. The result is a whole new dimension in criminal investigations.

To understand its impact – and how investigators and prosecutors can put it to use – we need to understand Bruce Harrington's story.

Mr. Harrington, a businessman from Newport Beach, lost his brother and sister-in-law to murder. Mr. Harrington's younger brother was by all accounts full of promise. He had recently completed medical school and married a lovely, intelligent woman. Then their home was broken into and the young couple was killed. The motive was sexual assault. That was 1980 and the crime went unsolved.

In the late 1990's the case – like so many – was re-opened to see if crime scene biological evidence could be linked to the killer. The evidence yielded a DNA profile that was submitted to California's DNA database. The profile was searched against both the known databank (convicted defendants required to submit DNA samples) and against the unknown databank (profiles developed from crime scenes but not linked to a named suspect).

Investigators made a stunning discovery.

The suspect who had attacked and killed Mr. Harrington's family members was responsible for a series of rapes in the late 1970's in

Sacramento and along the I-80 corridor. Known as the East Area Rapist, he was good for as many as 50 nighttime burglary rapes. By connecting the DNA evidence, investigators learned that in 1980 the suspect moved to Southern California.

There, between 1980 and 1986, he committed at least six murders in Ventura and Orange Counties, including the Harringtons. That's what investigators discovered. What they didn't discover was his identity because he was not in the database of known suspects.

When briefed by detectives, Mr. Harrington took in the information and then personally spoke to forensic professionals, concluding that the reason that the suspect was not in California's database was that it was not inclusive enough. California, unlike some states, only required DNA samples to be collected from select felons, not all felons.

If California's law was expanded, he reasoned, the likelihood of capturing the DNA of this rapist-killer would go up substantially. So Mr. Harrington went to the legislature with the backing of prosecutors, law enforcement and forensic



professionals and asked that the law be changed to require a DNA profile from every convicted felon.

The legislature refused. Mr. Harrington put his money where his passion was. He financed an initiative that voters passed by nearly 60 percent.

This bit of history is critical. Proposition 69 was not created as some technical clean-up or law revision. It was crafted to take its place among California initiatives that have re-shaped the criminal justice system and are today household terms: Proposition 8 – the Crime Victims Bill of Rights, Proposition 115 – the Crime Victims Justice Reform Act, and the Three Strikes law. There are its roots.

Those measures promised Californians real change in the

delivery of justice; so too with this measure. Proposition 69 was built to identify killers, to take sexual predators off the streets, to solve crimes, to exonerate the innocent and exculpate the guilty.

The stakes are obviously high. And the outcome is anything but a forgone conclusion. The DNA Initiative is not self-executing. It depends upon law enforcement, prosecutors and forensic science professionals to change how they approach criminal cases to make it work.

Start with the basics. In a nutshell the law creates in California an all-felon database of DNA profiles.

Effective immediately, every convicted felon must submit to have a swab of saliva taken from inside his or her cheek through what is known as a buccal swab. From there the process is straightforward:

- The sample is sent to the crime laboratory of California's Department of Justice, where criminalists develop a DNA profile. That profile is entered into a database of known samples known as CODIS.

- This enables investigators to search the database with biological samples from unknown samples: a spot of blood from the crime scene; semen, saliva or blood from the seat of a car or contained in a rape kit in a sexual assault case. This evidence must be "profiled" by the local laboratory – the San Diego Sheriff's Regional Crime Laboratory or the San Diego Police Department Laboratory – and it can be searched against the CODIS data base of known suspects.

- The unknown database, or evidentiary database, searches the "knowns" for a match. If there is a hit, a match to a suspect, a DOJ scientist confirms this and notifies the local laboratory.

What happens at this point depends upon the detective handling the case. The DNA criminalist contacts the detective who may do one of two things, depending upon

the facts of the case.

- The evidence of the match provides probable cause to secure from the suspect a new sample of his blood or saliva, so that it can be compared against the DNA obtained from the evidence. That can be done either through a search warrant or pursuant to arrest – again depending upon the facts of the case. For example, in a rape case, if the suspect is a total stranger to the victim, then detectives will undoubtedly treat the DNA match as probable cause to arrest. If, by contrast, the suspect is known to the victim, the detective will approach the revelation of the DNA match in a different fashion.

In many respects what the initiative does is much like what we do with fingerprints: CODIS operates in a similar fashion to AFIS (Automated Fingerprint Identification System) and Cal ID. This is conceptually familiar ground.

Prop 69 Distilled

November 2, 2004, California voters passed Proposition 69, the DNA Fingerprint, Unsolved Crime and Innocence Protection Act. The initiative significantly expanded California's Convicted Offender DNA Data Bank Program. Law enforcement should be able to use the expanded database to reduce the number of unsolved crimes, to stop serial crime and to exonerate persons who are wrongly suspected or accused of crime.

As a result of the passage of Proposition 69, California law now requires DNA samples be taken and submitted to the Cal-DNA Data Bank from:

- All registered sex and arson offenders (both felonies and misdemeanors)

- Adults convicted of any felony offense
- Juveniles who suffer a true finding or are convicted of any felony
- Adults and juveniles housed in mental health/sex offender treatment programs for felony offenses
- Any person required to provide DNA samples as a condition of a plea
- Adults arrested for a murder, voluntary manslaughter, any Penal Code Section 290 felony sex offense, or an attempt to commit any of these crimes
- Starting in 2009, any adult arrested for or charged with any felony offense

Indeed, the initiative's name – DNA Fingerprint...Act – signals familiar turf.

What is unfamiliar for criminal justice professionals is the scope of the new law's potential.

The state of Virginia has the longest history in the United States with an all-felon database, so it becomes a good basis of comparison to California. In California with its pre-Prop. 69 limited database – only select felons – the Department of Justice reported "hits" or matches in seven percent to 15 percent of no-suspect cases.

of Corrections and Rehabilitation alone, the number will go to 500,000. That number will grow at a rate of 100,000 a year until 2009.

Then the law changes: DNA will be treated comparable to fingerprints, so that DNA samples will be taken at every felony arrest. By the close of 2009 there will be in California's database of known criminals more than one million profiles.

And it's here the roads converge. Because of the change in law, the CODIS database will grow more than 200 percent. At the same time, the

- There are those cases where the suspect took extra steps not to be identified. He wore gloves so as not to leave prints and left the gloves outside the door. The inside of the gloves yielded DNA. Robbers who wore ski masks to avoid being identified tossed them in a dumpster. The masks yielded DNA evidence.

Significantly, those cases were not murders or rapes or even assaults. And still investigators gathered biological evidence. Most recently, our

Most recently, our DNA criminalists have been doing work on contact DNA: from the steering wheel of cars or the trigger of a gun or even from a fingerprint. The results are mixed, but point to the future and to the potential exploitation of this evidence.



By contrast, Virginia reports hits against its all-felon database in 40 percent of its cases. The difference is dramatic – and, at the same time, predictable. This is the stuff of basic crime control: when you include burglars and thieves and drug dealers – criminals of all stripes – some of them turn out to be the rapists and killers you're seeking through the database search. In fact, lots of them do, as the Virginia experience shows.

Now factor in California's staggering numbers. As we entered 2005 there were just over 300,000 known offenders in CODIS. By close of the year – with over 30,000 from Dept.

science is changing so that we can now populate the unsolved database with profiles taken from smaller and smaller biological samples from an expanding array of crimes.

All of us know of a case of the telltale drop of blood – something nearly overlooked but made the difference in solving the case. But that's just the beginning:

- DNA profiles have been developed at my Lab from the inside of baseball caps and the collar of shirts, from cigarette butts, from envelopes that have been licked, from a tissue where the suspect blew his nose.

DNA criminalists have been doing work on contact DNA: from the steering wheel of cars or the trigger of a gun or even from a fingerprint. The results are mixed, but point to the future and to the potential exploitation of this evidence.

In a case outside our jurisdiction, an enterprising investigator gathered dead mosquitoes at the crime scene. Sure enough, they contained human DNA. One can only imagine the crime scene – with a numbered tile denoting a mosquito, feet up and waiting to be gathered as evidence.

There was a time when we might shake our head and say look

what the future holds. No more: the future is here. The question becomes what we do with it.

In "The Tipping Point," Malcolm Gladwell's book on social epidemics, he tries to explain why some ideas or products become contagious and take off. It begins with "the law of the few." A small number of people are, as in the case of health epidemics, the carriers or transmitters. From there things grow until at some point they tip. The idea becomes a movement; the product becomes a fashion epidemic.

When things turn epidemic, the results become disproportionate to the numeric input.

We understand this colloquially in sports. A team adds to its roster a new ball player who hits with a certain batting average (measured to the third decimal) and who earns a certain fielding percentage at a certain position. It's all very precise.

Yet we know that some players' presence has an impact disproportionate to the numbers. We call them impact players. Their play affects the play of the opponent and consequently their teammates. Their impact exceeds their own statistical performance. And looking back on a season, the addition of this player to the roster becomes the tipping point.

Proposition 69 is the new player, its passage the new tipping point in criminal justice. The numbers it portends are dramatic, but its impact extends beyond the numbers. It stands to change how crime is investigated and to change the role of science in criminal justice. **LEQ**

Thompson is the San Diego County Sheriff's Director of Forensic Services and directs the Sheriff's Regional Crime Laboratory.

Regional Steering Committee

Immediately following the passage of the DNA Fingerprint, Unsolved Crime and Innocence Protection Act on November 2, 2004, San Diego Sheriff Bill Kolender formed a Regional DNA Identification Steering Committee to facilitate the implementation of Proposition 69 in San Diego County. The Steering Committee is made up of representatives of the Sheriff's Department, the Probation Department, the District Attorney, the Superior Court, the County's Public Safety Group Executive Office, the State's Department of Justice, State Parole, the Public Defender, the City Attorney and multiple police agencies in the County. The DNA Steering Committee meets regularly to consider, among other policy issues, the most effective way to coordinate the collection of DNA samples from offenders.

While practice varies from county to county, San Diego County collects samples from convicted adult offenders in one of two ways: the Sheriff's Detentions Bureau is responsible for taking samples from all in-custody defendants; the Probation Department has established collection sites for all out-of-custody defendants. The Probation Department also collects from juveniles as covered by the law.

In January of 2005 the San Diego County Board of Supervisors created a DNA Identification trust fund to begin collecting the increased fines and penalties that were assessed as part of the Act. These funds address some of the increased costs in sample collection and will eventually be available for the region's two crime laboratories – the San Diego Police Department Crime Laboratory and the San Diego Sheriff's Regional Crime Laboratory – in order to fund the increase in DNA casework.

Assistant Sheriff William Gore chairs the DNA Steering Committee and DNA Criminalist Connie Milton serves as the coordinator. Ms. Milton can be reached at connie.milton@sdsheriff.org.

Robert C. Phillips



Once upon a time, “in a Land called Honalee,”

which is believed to be located somewhere near the sea in northern California, lived Little Jackie Paper. Poor Little Jackie, as the story is told, suffered from any number of aches and pains, including impaired vision, intractable nausea, arthritis, and consequent weight loss.

In combination, Little Jackie’s ailments caused serious harm to his physical and mental health. When

Ziploc plastic baggie containing some green vegetable matter, clearly marked “Columbian Gold.”

“But,” cried Little Jackie Paper, “all I’ve got is this ‘string, sealing wax, and other fancy stuff.’ And besides, I need a physician’s authorization, either oral or written, before I can smoke that stuff.” Jackie, it seems, was a law school drop out and had some familiarity with the law involving the

green vegetable matter home, buying a marijuana pipe at the Honalee Head Shop on the way, and smoked it. Miraculously, his arthritic joints suddenly loosened up. His nausea went away and he started putting on weight again. His vision improved to nearly 20/20. Most importantly, his psoriasis was cured. Either that or Little Jackie, being stoned, just wasn’t cognizant of his medical ills any more. All Little Jackie knew, or cared, was that he felt “really cool, dude!”

Life became good. The sun was bright again. The moon, at night, was

The Medical Marijuana Initiative: A Modern-Day Fairy Tale

not hospitalized, Little Jackie could be found wandering from place to place in and about Honalee, seeking some sort of respite from his pain and suffering.

Then one day, Little Jackie happened upon a magic dragon known to the locals as “Puff the Drug Dealer.” Puff, lurking in the recessed shadows of a darkened alcove, could see that Little Jackie was not well.

Sensing an opportunity, Puff called to him: “Pssst. Hey kid! Got a dime for a baggie of weed? This stuff is guaranteed to make you feel better. Double your money back if it doesn’t cure all your ailments. Can’t hurt that psoriasis you’ve got, either.” Whereupon Puff produced a small

ingestion of hallucinogens.

“Hey, that’s okay. Take it. You can owe me,” replied the dragon, knowing that getting him hooked was all he needed to do to take control of the rest of this sickly kid’s life. “And I can authorize it,” Puff quickly added, pulling a medical degree out of thin air – after all, he is a magic dragon, remember. “I’ve got my license as an ‘attending physician,’ authorizing the practice of medicine,” boasted Puff while waiving a freshly mimeographed diploma from the West Covina Mail Order School of Brain Surgery and Automobile Repair. “All you need to do is designate me as your primary caregiver.”

Well, Little Jackie Paper took that

something to behold. The world was full of love, as it had been before Jackie got sick. Jackie and Puff, becoming fast friends, frolicked in the autumn mist together, traveling the sea around Honalee by “boat with billowed sail” while “Jackie kept a lookout perched on Puff’s gigantic tail.”

As Little Jackie got better, he soon began to see the potential profits in this shredded green stuff. And Puff needed a front man. Not too many people would buy from a dragon, what with his propensity for drooling and the occasional, yet disconcerting, fiery flare-ups emitting from his nostrils. It was bad for business whenever he toasted a potential buyer.

They therefore formed a



partnership and set out to realize some financial gain in a business they entitled the “Honalee Cannabis Buyers’ Club.” Setting up shop, they supplied marijuana to anyone who could produce evidence of a medical necessity and the necessary physician’s authorization. Their enterprise soon became so profitable that they were able to move their operation to a rural plot of land on the outskirts of town that they affectionately named “Never-Ever Land.”

Puff, as the business’s self-appointed Attending-Physician-and-Primary-Caregiver-in-Chief, used the north 40 of Never-Ever Land to cultivate all the marijuana they could sell. He continued to keep his partner, Little Jackie, in a constant mind-numbing high. Jackie, in his drug-induced euphoria, was content to rake in the profits, using the money to convert a part of Never-Ever Land into an amusement park for Hollywood celebrities and to get a much-needed nose job.

It was all like living in a fairy tale until that fateful day when the Honalee Police Department raided Never-Ever Land, executing a search warrant on the property and confiscating some 300 marijuana plants. As a result, Little Jackie was charged in state court with the illegal possession, sale, and cultivation of marijuana. Puff, for his part, “could not be brave,” and “sadly slipped into his cave,” determined to lay low until the heat was off. Little Jackie, abandoned by his former friend and business partner, had to take the whole rap alone. After all, who would believe a pot-smoking Honaleean hippie’s claim that his co-conspirator in this enterprise was a magic dragon?

Fortunately for Little Jackie, the

California voters in 1996 approved an initiative known as the “Compassionate Use Act,” more often simply referred to as “Proposition 215,” adding section 11362.5 to the Health and Safety Code. Pursuant to subdivision (d) of 11362.5, the laws prohibiting the cultivation and possession of marijuana cannot be used against “a patient or...a patient’s primary caregiver who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.”



Then, effective January 1, 2004, the California Legislature enacted Health and Safety Code sections 11362.7 through 11362.9, expanding and clarifying the somewhat vague provisions of Proposition 215.

Believing that these state statutory exceptions to the criminal penalties normally associated with the manufacturing, transportation, use and distribution of controlled substances provided him with a viable defense, Little Jackie hired some big-name, publicity-seeking, criminal defense attorneys to defend him. With hoards of reporters and

other news media-types inundating the Land called Honalee, the “trial of the millennium,” as it was referred to by a number of news show talking heads, was ready to start.

The stated purpose of Proposition 215 and its clarifying legislation is “(t)to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes.” Little Jackie was certainly ill, and Puff, with his mail-order medical degree, authorized Jackie’s use of marijuana to alleviate his debilitating symptoms.

And although Proposition 215

Little Jackie’s real problem was that the number of plants he and Puff were growing at Never-Ever Land were enough,

does not allow for a physician’s post-arrest ratification of self-medication, Little Jackie had other doctors ready to attest to the seriousness of Jackie’s condition. Whether or not a defendant is sufficiently “seriously ill” is not a question for the jury. “[T]he question of whether the medical use of marijuana is appropriate for a patient’s illness is a determination to be made by a physician.

A physician’s determination on this medical issue is not to be second-guessed by jurors who might not deem the patient’s condition to be sufficiently ‘serious.’” It wasn’t really

an issue whether Little Jackie qualified as a lawful user of marijuana. It was clear that he did indeed suffer from a “serious medical condition,” as this term is now defined in H&S § 11362.7(h).

But Little Jackie and Puff didn’t stop at merely alleviating Jackie’s medical ills. They turned it into a business enterprise, supplying other admittedly deserving patients with quantities of weed. The issue at trial, therefore, was to be whether in light of the 2004 enactment of H&S §§ 11362.7 et seq., was Jackie still

for medicinal purposes. Puff had such a card as well, listing him as a “designated primary caregiver.”

Having these cards in their possession, although not legally necessary as a prerequisite to claiming the protections of Proposition 215, entitled both Jackie and Puff to at least some degree of protection from criminal liability for the possession, cultivation, possession for sale, transportation, and maintaining or managing a place where marijuana was used and/or sold, as well as protecting Never-Ever Land from being

“reasonable doubt” as to these issues to be entitled to an acquittal.

Little Jackie’s real problem was that the number of plants he and Puff were growing at Never-Ever Land were enough, in the opinion of the experts, to relieve the discomforts of the entire population of the “Land called Honalee.” Also, as a related issue, Proposition 215 did not provide, at least as originally written, authority to transport or sell marijuana, or to set up a cannabis buyers’ club for the wholesale distribution of marijuana to anyone and everyone claiming a need. Enactment of sections 11362.7 et seq., however, may have fixed that problem for Little Jackie.

Even under the new legislation, with certain exceptions, a qualified patient or primary caregiver is only entitled to possess at any one time eight ounces of dried marijuana and no more than six mature, or twelve immature, marijuana plants, per qualified patient. A doctor may approve additional amounts, when medically necessary, and counties and cities may, through their own legislative bodies, allow for higher limits.

Although there are provisions in the new legislation allowing a primary caregiver to recoup his or her actual expenses, neither Proposition 215 nor the new 2004 legislation was intended to shield the hardcore narcotics trafficker from criminal liability. Nor do these statutes authorize an independent entrepreneur to take it upon himself to cultivate and sell marijuana to a cannabis club for the purpose of providing the club with a supply from which they can give marijuana to qualified patients. It could certainly be argued that Little Jackie and Puff produced more

in the opinion of the experts, to relieve the discomforts of the entire population of the “Land called Honalee.”



entitled to the protections of Proposition 215?

Despite these uncertainties, the newly enacted provisions of H&S §§ 11362.7 et seq. are what Little Jackie’s attorneys intended to use as a defense. Jackie still hoped to beat this rap.

As part of the defense strategy, it was to be argued that Little Jackie had applied for, and received, an identification card from the California State Department of Health Services; a voluntary program that serves to give official recognition to a person as one that may lawfully use marijuana

subjected to nuisance abatement proceedings.

This, however, did not provide Little Jackie with complete immunity from arrest or prosecution. In what the California Supreme Court referred to as a form of “limited immunity,” Jackie must still be ready to prove, as an affirmative defense, that he strictly complied with the relevant statutes, and that he was thus entitled to the protections of Proposition 215. That was the bad news. The good news was that, as determined by the California Supreme Court, he would only need to raise a

marijuana, and took in more money than necessary to pay for their out-of-pocket expenses.

But there are provisions under the new legislation that can be interpreted as lawfully allowing for a cannabis club-style operation. Specifically, H&S § 11362.7(d) includes within its definition of a “primary caregiver” an individual who is “. . . the owner or operator, or no more than three employees who are designated by the owner or operator, of a clinic, facility, hospice, or home health agency . . .”, as those entities



are defined in the section.

Subdivision (d) also allows for a single primary caregiver to be responsible for any number of patients under certain circumstances. So with the number of plants and amount of dried marijuana allowed being dependent upon the number of patients being serviced, a primary caregiver, under the right circumstances, would be able to justify the possession of nearly limitless quantities of marijuana.

Little Jackie’s defense team also has to consider the statutory

restrictions on the use of marijuana in or about certain locations. For instance, despite a medical need, it would be a misdemeanor offense for Jackie to smoke marijuana in the workplace, within 1,000 feet of a school, recreation center, or youth center, while on a school bus, when operating a motor vehicle or a boat, or in any other place where smoking is prohibited by law.

Little Jackie assured his attorneys that there would be no surprises during trial; that he is in full compliance with the legal restrictions on the possession, cultivation and use of marijuana, and that the Honalee Cannabis Buyers’ Club is legit. His attorneys warn him, however, that if he’s wrong, and is convicted, that the court is not authorized by law to return to him any of the marijuana; even that amount that he was lawfully using for his own medical needs. If convicted, Little Jackie will either have to learn to do without, or find him another lawful source.

Also, if convicted, it will be up to a sentencing court, in determining the appropriate terms and conditions of any probation being imposed, whether or not Little Jackie will be allowed to use marijuana at all. If sentenced to jail, he will not be allowed to smoke marijuana while serving his sentence unless the particular jail or correctional institution has set aside an area for him to do so; something correctional authorities are not required to do when it will endanger the health and safety of other prisoners or the security of the facility. It is hard to imagine the circumstances under which the ingestion of a hallucinogen by inmates wouldn’t contribute to safety and

security problems in a jail.

So what is to happen to Little Jackie Paper and Puff the Magic Dragon? Little Jackie’s case will go to trial, leaving it to a jury to decide whether, under the circumstances, he’s entitled to the protections of Proposition 215. All we have done here is to discuss the potential issues Little Jack Paper faces under the present status of California law; not what should necessarily happen to him.

We also have not discussed Little Jackie’s possible criminal liability under federal law, even if he is acquitted by a state court. The United States Supreme Court has recently ruled that despite a state’s attempts at legalizing the cultivation and use of marijuana for certain purposes, the federal Legislature retains the authority to, and in fact has, outlawed such activity. It remains simply a question of whether federal law enforcement will seek to enforce the federal statutes prohibiting such acts in the face of a state’s clear intent to allow them. Only time will tell.

“Puff,” in the meantime, is rumored to have joined a drug cartel somewhere in South America, looking for other lucrative ways of spreading the magic of a drug-induced, mind-altering, brain-frying euphoria. By the way, there is no truth to the rumor that Puff used his magic in getting another initiative, Proposition 36, the Drug Probation and Treatment Program, passed by California voters. **LEQ**

Former police officer Robert C. Phillips is a Deputy District Attorney in San Diego County and is the liaison to the San Diego County Sheriff’s Office and the Carlsbad, El Cajon, Escondido, La Mesa and Oceanside police departments.

By Michael Connelly



Catching Up With The CATCH Team

During the past several years, San Diego County has enjoyed significant growth and recognition due to the technology infrastructure that has developed here. Sometime around 2000 San Diego was dubbed “the new wireless valley” and a “technology hub.”

Unfortunately, accompanying the benefits of a thriving technology-rich society is the accompanying increased criminal activity as criminals use that same technology to devise new schemes and expand old ones.

To address the increasing in criminal activity in this area, the CATCH Team was formed in 1999. CATCH (Computer and Technology Crimes High-tech Response Team) is currently comprised of 30 Investigators from local, state and federal law enforcement agencies.

They include the San Diego Sheriff's Department, San Diego Police Department, FBI, Office of Homeland Security's Immigration and Customs Enforcement, San Diego District Attorney's Office, San Diego County Probation, California Department of Justice, California Department of Motor Vehicles, Internal Revenue Service, Office of Inspector General Social Security Administration, Imperial County District Attorney's Office, Riverside Sheriff's Office, Riverside County District Attorney's Office and the Carlsbad Police Department.

CATCH has four vertical prosecutors assigned full-time to prosecute cases and provide legal advice. They are assigned from the State Attorney General's Office and the San Diego and Riverside County District Attorney's Offices.

CATCH became fully operational on June 1, 2000 joining a statewide and national network of task forces dedicated to battling criminals who attempt to exploit the technology industry or infrastructure for criminal gain. CATCH investigates crimes where technology is the means to commit the crime, is the target of the crime, or where a specialized understanding of technology is needed to solve a case.

The CATCH region of responsibility includes the counties of San Diego, Imperial and Riverside, covering more than 16,000 square miles, with approximately 120 miles of international border and a population of more than 4.6 million.

In May of 2002, CATCH expanded its mission and added investigators and prosecutors to form the CATCH-ID Theft Enforcement Team. Two teams of investigators and two attorneys make up the ID Theft team.

The experience of CATCH ID in 2003 and 2004 demonstrated that most of the individuals on probation or parole for identity theft-related offenses continue to re-offend and perpetrate new offenses against scores of new victims. Most of the suspects CATCH arrested indicated they felt emboldened to re-offend because, despite the fact they were on probation, no one ever checked on them.

Because these defendants have found a fairly easy way to make money and they know it is difficult for law enforcement to investigate/prosecute, and the consequences of getting caught have been minimal, they tend to get right back in the business once they are out of custody. CATCH ID's proactive enforcement efforts focus resources on recidivist ID thieves, thereby eliminating the threat they pose to the community.

Identity theft is the fastest growing crime in California. Nationally, the number one complaint of fraud reported by citizens is the crime of identity theft. Furthermore, the U.S. Federal Trade Commission ranks identity theft as the number one complaint for the fifth year in a row. In response, over the past several years, the legislature has passed laws aimed at more specifically penalizing this conduct (Penal Code 530.5).

Concerned that law enforcement was ignoring a crime it saw as a “civil problem,” in 2000 the California Legislature mandated that law enforcement agencies take police reports from victims of identity theft. (Penal Code 530.6) The scope of the problem is now confirmed as documented instances of identity theft continue to soar.

Identity theft is the criminal use of the personal information of another for financial gain. While the crime of identity theft is not new, the ability of criminals to commit it exploded simultaneously with the recent advances in technology. **LEQ**



LEAN – Law Enforcement Assistance Network For Mutual Aid Responses

By Dave Craig

At least once a month, an incident occurs that requires more resources than an agency has immediately available. It could be a building search, a vehicle pursuit, or an 11-99. The list of incidents above makes a strong point – situations can occur that over-tax an agency’s resources, and can travel a long way from where they start. It can happen to a smaller agency like La Mesa PD or Coronado PD, or one of the large agencies, like San Diego PD or the Sheriff’s Department.

San Diego County is made up of 18 cities and more than three million people, policed by 10 municipal law enforcement agencies and many state and federal agencies. For the most part, these agencies act independently, able to conduct business with the resources available to them. However, sometimes the business gets busy and more help is needed. The County enjoys an outstanding mutual aid relationship between agencies – everyone is willing to help at a moment’s notice, with whatever it takes to get the job done.

The problem is how do we coordinate our efforts?

May 2001

Santana High School Shooting

5 law enforcement agencies involved

March 2002

Granite Hills High School Shooting

5 law enforcement agencies involved

December 2002

Trolley-bus Pursuit from Coronado to Boulevard

3 law enforcement agencies involved

June 2003

Oceanside – 11-99/Officer Involved Shooting

6 law enforcement agencies involved

In a pursuit, how can the primary officer talk to the unit behind him? How do uninvolved officers stay aware of, or out of the way of, this pursuit? How does the watch commander stay informed, especially when they have three units chasing a felon that is now 40 miles away?

For the last 20 years, almost every law enforcement agency in the county has had its own radio system. These radio systems were adequate for our jobs within the city, but didn't extend too far. Also, officers probably couldn't talk to the agencies around them. Dispatchers could try a BORTAC patch, but those took 3-5 minutes to activate, and could be cumbersome at times.

Mutual Aid Communications History – The Short Version

In 1991, the City of San Diego transitioned to a Motorola 800 MHz trunked radio system. In 1997, the County of San Diego and several cities activated the Regional Communication System (RCS), a similar but updated Motorola 800 MHz trunked radio system. The RCS initiated the rekindling of mutual aid communications between agencies of all types – fire, police, and public services.

In 2000, the RCS and San Diego City radio systems built a bridge between them, allowing the two radio systems to be tied together for mutual aid. Imperial County agencies are converting to the RCS, and Orange, Riverside, and San Bernardino Counties have 800 MHz systems that we can talk to on ICALL.

But having the physical ability to talk to other agencies is just the first step. You have to have a protocol in place. You have to train the officers, dispatchers, supervisors, and watch commanders. You have to practice. And then practice. And then practice. Finally, and most importantly, you have to use it.

In 1999, the Law Enforcement Assistance Network, or LEAN Committee, was formed with the purpose of formulating protocols, developing training and continually re-evaluating mutual aid communications. Representatives from nearly every law enforcement agency in the county created protocols that accomplish the following:

1. Allow agencies to communicate in a mutual aid situation, regardless of what radio system they use.
2. Create tasks that are easy for field units and dispatchers to remember and use in a "hot" situation.
3. Allow important, time-sensitive information (BOLs, etc.) to be broadcast once and reach units quickly.

In April of 2001, the LEAN Committee produced a 27-minute training video with the protocols that provide all of this. These protocols, signed by each of the Chiefs of Police and Sheriff, have been used countless times and have changed the way we communicate forever. Let's take a look at how this works:

Channels / Talk Groups / Frequencies

Each radio system and/or agency has its own internal method of broadcasting important information and some have designated channels. The LEAN Protocols simply add the mutual aid channels to that (by patching or multi-selecting), widening the audience of the same broadcast. To reach agencies using the RCS, dispatchers or field units can select one of these talk groups:

For units north of Highway 52:

Law Enforcement North Command (LE N CMD)

For units south of Highway 52:

Law Enforcement South Command (LE S CMD)

For units east of Valley Center, Ramona, Alpine

Law Enforcement – East Command (LE E CMD)

For units throughout San Diego County:

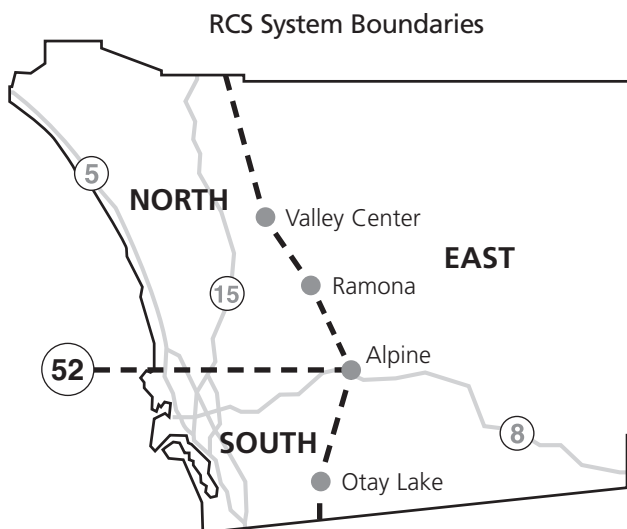
BLUE-1

Non-RCS units (SDPD/NCPD) outside their area:

ICALL (repeated)

In Orange/Riverside Counties:

CLEMARS or ICALL (repeated)



Contacting Other Agencies' Units

If an officer in the field needs to talk to an officer or the dispatcher from another agency for a low priority call like assistance in contacting a victim, the best way is to contact them directly. The officer should switch to the regional mutual aid talk group, such as LE N CMD and hail the officer or agency dispatch center directly. Once contact is established, they should then move to a tactical aid channel such as LE N TAC-1. Officers can then communicate directly, taking the dispatchers out of the middle. If one of the officers is an SDPD officer, the dispatchers create a patch, and allow the officers to speak directly. It's like a cell phone system dedicated to your job.



BOLs

If an agency receives information about a crime, suspect, or victim and wants to get that information out to other agencies, the dispatcher used to make anywhere from four to 10 phone calls, repeating the description over and over. Using the LEAN protocols, the dispatcher or field unit can make one broadcast over LE N CMD, LE S CMD, or BLUE-1. By choosing the proper talk group, that one broadcast can reach farther, faster. Many agencies have had tremendous success (with the help of other agencies) by getting the information out quickly, apprehending suspects that have left their jurisdiction.

Pursuits

When pursuing a suspect in a vehicle, every officer involved must be in contact – in contact with their cover, their dispatcher, and their supervisor. The watch commander also has an interest in keeping an ear on the incident and its progress. When the pursuit becomes a

mutual aid incident, the officers, supervisors, and watch commander for each involved agency must now monitor. If a pursuit is coming through your area, you don't want to find out by accident. It'd be nice to know that cars traveling 80 miles per hour are coming toward your intersection.

As a supervisor, you want to be sure that units are not getting involved unnecessarily and that only the required amount of assistance is given. County pursuit policy outlines how much and when, and the liability monster is always sitting on a watch commander's shoulder. Coordination over the radio is the key.

When a pursuit starts in your area, you are normally broadcasting on your primary channel. If the pursuit starts to leave your city or area, the dispatcher will create a patch to the proper mutual aid channel, usually LE S CMD or LE N CMD, and will advise other agencies and units where to monitor. While you stay on primary and work the pursuit, outside agencies can hear your pursuit and either stay out of the way or assist as requested.

The outside agencies can scan the incident, remaining aware of its position and any need for assistance. When called for assistance, or an obvious need for help arises, the outside agencies' officers can switch to the mutual aid channel before they are on scene and involved. Changing channels in the middle of an incident is difficult, and should be limited as much as possible. From the beginning to the end, all field units' actions and communication should be with the originating agency's dispatcher. They have been keeping track of this incident since the beginning, and should have the best handle on it.

Since pursuits can traverse large areas of the county, the units and dispatcher may need to make some changes in order to stay in contact. While changing channels in the middle of the pursuit is not the preferred option, sometimes it is the only option. Not all channels work everywhere, so units must use what works where they are.

When would you want to make a channel change? If you are using the RCS channels, you will need to change channels when you approach the Highway 52 line, or when you approach Valley Center, Ramona, or Alpine. Due to coverage limitations, most channels that work on one side of this line won't work as well after you cross the line. Changing to a countywide channel is the best way to ensure continuous communications.

There are two options that can be used throughout San Diego County and into other counties as well. First, if a unit is using an RCS radio, or a radio programmed with

the RCS mutual aid package, BLUE-1 is the best choice. If using an SDPD radio that doesn't have the RCS channels, then ICALL may be the best choice.

Now that all of the units have switched to the countywide channel, the incident remains there until its termination, whether called off or "Code 4, suspect in custody." Looking at the big picture, units that are involved in the incident should only have to make one channel change, and then only if the pursuit crosses one of the lines. Otherwise, no channel changes are made – the dispatcher creates the patches that bring us all together.

As you can see, the dispatcher is the hinge pin in all of this. First, they must create the right patch, with the right channels, at the right time. When things are moving fast, earlier is better. Second, dispatchers have to understand, repeat and document the actions of all involved units. This can be an overwhelming task, complicated by different agencies' different ways of operating.

Units should help the dispatcher by using their agency name and call sign each time they broadcast, e.g., "Sheriff's 71-Paul-5", or "Escondido 234-Mary" and should use plain text instead of codes. Dispatchers are expected to be the communications experts and must know the LEAN protocols inside and out. However, they could use your help in maintaining an effective communications picture.

11-99 Or Non-Mobile Incidents

These events are handled, from a channel usage standpoint, just like a pursuit. If the incident occurs in your area, you will stay on your primary channel (as advised by your dispatcher) and responding units from outside agencies will be patched to you on the mutual aid channels.

If this is an incident that should be heard by all of the field units that are scanning LE S CMD or LE N CMD, the dispatcher will patch to that talk group. If this incident is smaller in nature, such as a K-9 unit from another agency coming in to search a building, the dispatcher will probably elect to use one of the LE S TACs or LE N TACs.



The Future Looks Bright (With Some Help)

The future of mutual aid communications in San Diego County looks bright. We're just starting to tap into our potential and we're doing very well. Departments can continue this trend by ensuring that their field personnel are trained in these protocols. They should be so comfortable that they are second nature. The protocols are a simple and effective way to increase officer and public safety. By including them in the Field Training program, these protocols will quickly become another routine task performed during mutual aid calls.

Dispatchers should be given knowledge, training, and experience to be comfortable with putting together the patches, and to know why and when. They should be encouraged to think outside the box, and wonder, what if, with respect to making sure units are communicating. There is still a lot of room for growth in communicating with counties to the north and east and dispatchers will be the ones to lead us. Their creativity leads to increased capability.

Finally, with technological growth, radio systems will make communicating easier. Departments must include mutual aid when choosing or programming their communications systems and equipment. Looking back just 10 years, we remember what not being able to talk was like.

Stepping backward is not an option. Also, with manpower shortages, agencies will continue to call each other for help. Helping to ensure their safety is paramount, and communications is a large piece of that puzzle.

If you have not seen the LEAN Mutual Aid Communications Training video, please contact your LEAN representative or your Communications Manager. They should have a copy available, or obtain one through the San Diego Sheriff's Wireless Services Unit at (858) 694-3953. Download a copy of the LEAN Protocols and read about some of the successful LEAN incidents at www.sdlean.org.



Coronado Police Officer Dave Craig is the Chairman of the LEAN Committee and continues to train and consult with San Diego/Imperial County agencies in the tactical use of communication systems.

LEQ

By M. Margaret Neil

San Diego District Attorney Investigator Connie Johnson

After eight little girls were molested in their second grade classroom by their teacher, Thad Jesperson, they then had to stand up and testify four separate times, once at the preliminary hearing and again at the three trials that followed. Each trial, the courtroom was packed with Jesperson's supporters, one of whom maintained a zealous website lauding the defendant's virtues.

The victims didn't have a forum to tell their side of the story other than on the witness stand, a place that's hard enough for an adult to testify, much less a traumatized child. The criminal justice system is no place for a little girl.

Enter District Attorney Investigator Connie Johnson.

Tracy Prior, the Deputy District Attorney who prosecuted Jesperson said, "It takes a special investigator to get on the floor and color and play "UNO" with eight 9-year-olds. It takes a special investigator to go to McDonalds and build rapport with a 9-year-old who is having nightmares about testifying. It takes a special investigator to calm the parents of a 9-year-old who tried to jump out of her parent's moving car on the way to the courthouse. Connie is that special investigator."

"Our defendant was the only teacher to tell the counselor that he had already spoken to his class about sexual harassment and that it wouldn't be necessary for her to talk to his class," said Johnson.

This counselor provided invaluable help in classroom reconstruction and in identifying additional witnesses, and her testimony undermined Jesperson's credibility. Prior said that Johnson's "demeanor and professionalism generated information that otherwise may not have been elicited."

To prepare Prior for cross-examination of his 35 character witnesses, Johnson monitored the defendant's website, which contained many letters of support from the teachers, and defendant's family and friends.

"Many of these supporters who wrote in were identified and eventually became witnesses," Johnson said. "Their letters posted to the website became evidence to

impeach them with on the

stand. It was amazing how they tried to cloud the issue for the sake of their child molester friend."

Deena Brooks, who runs the Kids in Court program, described teachers wearing badges to school that read "I believe Mr. J." "The principle made them take them off, but the damage had been done," said Brooks. "Many of the teachers testified on his behalf and essentially called the girls liars. One of them even erased Jesperson's hard drive at the school at his request after he was arrested."

For Johnson, gaining the confidence of the victim's family was key. "The parents were very disillusioned with the school due to their support of Jesperson," she said. "The parents soon realized they had their own support system in the District Attorney's office. We wanted them to feel safe again and confident they had made the right decision to go forward."

Johnson gives credit to SDPD Detective Kim Newbold and DA Paralegal Mimi Villalobos. Johnson also cited Brooks and the Kids in Court program, which became a valuable tool.

"Her (Brooks) commitment to the victims throughout the process became such an important part of getting our victims to testify," said Johnson.

Johnson is proud to have played an integral role in the prosecution of this child molester and said that Tracy Prior once told a reporter, "We send our children to school, they're not supposed come back soiled."

"These parents looked to us for answers and closure for their pain and I believe we met their expectations. This case came down to the believability of the victims and corroboration of witnesses. Thanks to our team of people working on this case, justice prevailed," said Johnson.

For her essential contribution in a hard-won victory against this multiple-victim child molester, San Diego County District Attorney Investigator Connie Johnson is awarded the LEQ Commendation of the Quarter. **LEQ**



PROFILE IN LAW ENFORCEMENT

By Kristin Heinrich and Paul Levikow

New Chiefs Around The County

Chief Paul Crook Coronado Police Department

As a child, Paul Crook was quite literally struck with the desire to pursue a career in law enforcement. When he was a young boy, Crook was hit by a car and became immediately inspired by the compassionate officer who first appeared on scene. Crook ended up following his childhood dream and achieved a significant milestone in his career on September 14, 2005 when he became Chief of the Coronado Police Department.

"Once I got it in my blood, I couldn't get it out," he said.

As chief, Crook gained the responsibility of leading the organization, setting policy, preparing annual budget recommendations and acting as a liaison with other departments in the area and with the local community. His department has a goal of protecting the community and enhancing the quality of life for people visiting, working or living in Coronado. While with the department, Chief Crook hopes to increase police services and improve his organization.

Chief Crook grew up in Coronado and has been with the department for more than 26 years. In order to advance his career in law enforcement, he earned two associate's degrees in fire technology and police science, a

bachelor's degree in criminal justice and a master's in organizational management from the University of La Verne.

He started working as a crossing guard with the Coronado Police Department and then slowly worked up the ranks until he ultimately reached his current position. Prior to being selected chief, he served as assistant chief under Robert Hutton.

When he took over after Hutton retired, Chief Crook assumed command of 107 people, including 43 sworn officers, 40 senior volunteers, a support staff of about 20 and four part-time employees. He takes pride in the fact that his department has always remained involved with the Coronado community.

Because of this close relationship, Chief Crook has a personal goal of maintaining good public relations.

"Our goal is to deliver whatever services we can to create and enhance the quality of life for our residents here," he said.



Chief Clifford Diamond El Cajon Police Department

After working in Arizona, Florida and Washington D.C., Clifford Diamond was extremely pleased to settle down in the San Diego area and take command as Chief of the El Cajon Police Department on May 31, 2005.

"El Cajon was a real attractive city to me for a number of reasons," he said. "It's big enough to get the job done and still small enough to know the people and the community."

Chief Diamond was selected after a nationwide search. He has worked in law enforcement for 32 years. He first

took an interest in the field after becoming involved with a police cadet program in high school.

After starting as a police aide, Chief Diamond eventually reached the rank of deputy chief in his hometown of Scottsdale, Arizona. He later took a position as chief in Lakeland, Florida and then moved to Washington D.C. where he



worked for the Police Executive Research Forum (PERF). While with PERF, he was responsible for consulting various police personnel and managing the community policing and crime reduction in Kingston, Jamaica. All of this work helped train him for his current position in El Cajon.

On the day he began, Chief Diamond gained command over all of the criminal investigations, patrol functions and traffic operations in his department. He also took control of a budget of around \$25 million. Ultimately, he is responsible for making sure that everything in his organization runs smoothly and efficiently.

Overall, his goal is threefold. First, he wants to get to know his staff and local community. He also hopes to improve and enhance the existing programs. Finally, he wants to ensure that all of his employees have the tools and training they need to do their jobs.

Chief Diamond believes that his staff has a lot to offer the people in El Cajon. "They are willing to go that extra mile," he said.

He loves his job and his new location. When he spoke of his future in El Cajon, Chief Diamond said, "This is a place I chose to come to with the intent of staying."

Chief Darryl Griffen United States Border Patrol

Darryl Griffen assumed full responsibility as Chief Patrol Agent at the San Diego Sector of the United States Border Patrol on November 28, 2004. He values his new position because it gives him an opportunity to become an agent of change within the organization.

Chief Griffen has a broad background in law enforcement. He received an associate's degree and a bachelor's in criminal justice and later went on to earn a master's from Harvard in public administration. After working with the police department in Warsaw, New York, Chief Griffen took a job with the San Diego Border Patrol in October of 1981.

When asked why he was initially drawn to law enforcement, he said, "I felt a desire to take a position or have a profession where you serve as a public servant."

Chief Griffen now has control over 91 miles of coastland and 60 miles of land border area. He is responsible for maintaining the safety of over 7,000 square miles including all of San Diego County and parts of Orange and Riverside County. In order to accomplish this task, he directs a staff of approximately 1,825 people and is in charge of a total operating budget that exceeds \$220 million.

The San Diego Sector of the Border Patrol makes every effort to maintain a safe and secure border, coordinate border enforcement management and develop the most highly trained workforce possible. The priority mission of the organization is to prevent

terrorists and terrorist weapons from entering the country, which is coupled with the traditional mission of preventing the entry of illegal immigrants, smugglers, narcotics and other contraband. the career development of his employees.

Since taking command, he has witnessed changes within the organization. "We are becoming much more of an intelligence driven enforcement organization," he said.

Overall, he attributes much of his success to the shared effort of law enforcement personnel around San Diego. "The willingness to work together, I think, is unmatched anywhere else," he said.



Chief Alan Lanning La Mesa Police Department

Following 28 years of law enforcement service, Alan Lanning wanted an opportunity to put to use everything he had learned in a leadership position. On February 10, 2005 he achieved this goal by taking over as Chief of the La Mesa Police Department.

As head of the department, Chief Lanning oversees departmental operations, recruits personnel and serves as a contact person between the City Manager's Office and the City Council for issues relating to law enforcement.

The mission of the organization is to preserve the peace, prevent crime and arrest anyone who violates the law. "The main focus of our efforts is dealing with increased gang activity in the East County region and dealing with the rate of some major property crimes," he said.

Chief Lanning began his career in law enforcement shortly after graduating from San Diego State University in 1976 with a degree in criminal justice administration. For him, it was an extremely appealing line of work. "It was both an interesting and rewarding career," he said. He ended up joining the La Mesa Police Department after

college because he was familiar with the area and liked the fact that it was a smaller police department.

Although he is currently working on restructuring some areas of the department, Chief Lanning wanted to avoid any unnecessary or unreasonable changes. In the long run, he hopes to build it into an efficient organization where the personnel receive the training they need to work effectively.

From the beginning, one of his main challenges has been just trying to keep up to date on everything that is happening in his department and the local area. Chief Lanning loves the fact that his staff works hard to serve the local schools, residents and businesses.

"We have a long tradition of providing a very high level of service to the community," he said.



Chief Kirk Sanfilippo San Diego Harbor Police

Chief Kirk Sanfilippo was appointed as the permanent Chief of San Diego Harbor Police in June 2005 after serving as the Acting Chief for two months following the resignation of his predecessor. He rose from the rank of Captain.

Chief Sanfilippo oversees a force of 144 sworn officers and 29 support staff with an annual budget of \$24 million. The Harbor Police jurisdiction includes San Diego Bay, San Diego International Airport at Lindbergh Field and the tidelands within the Port of San Diego's jurisdiction.

"The message I would like to send to the public safety community is the vision of the Harbor Police as a dynamic public service organization and national leader in public safety and homeland security," Chief Sanfilippo said. "Our mission is to provide the highest standard of public safety and homeland security through a dedicated team of highly trained professionals."

The chief has served 27 years in law enforcement,

mostly in Northern California at the City of Sunnyvale Department of Public Safety and the Santa Clara County Sheriff's Department.

"At a young age I decided I wanted a career that would enhance the quality of life for other people," he said.

Chief Sanfilippo is a graduate of the FBI National Academy. He earned a Bachelor of Arts degree from the University of Santa Clara and took graduate studies in public administration at San Jose State University.

His goals as the new chief of Harbor Police include continued development of a new facility for the HPD and continuing to refine and improve on port and seaport security as it relates to homeland security, as well as traditional crime reduction and managing the perception of fear of crime and disorder.



LEQ



Office of the District Attorney
County of San Diego
330 West Broadway, Suite 1300
San Diego, California 92101

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