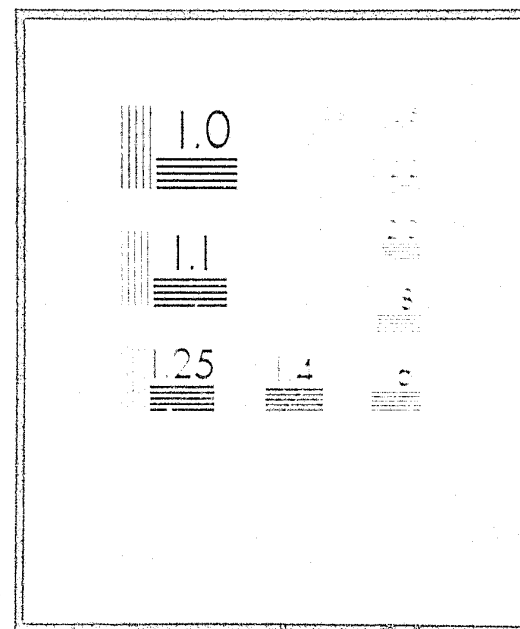


NCJRS

This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



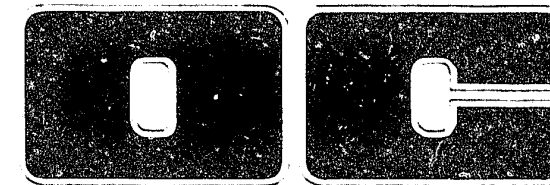
Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504.

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U.S. Department of Justice.

U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
WASHINGTON, D.C. 20531

2277

0 2 1 8 1 1 m e d

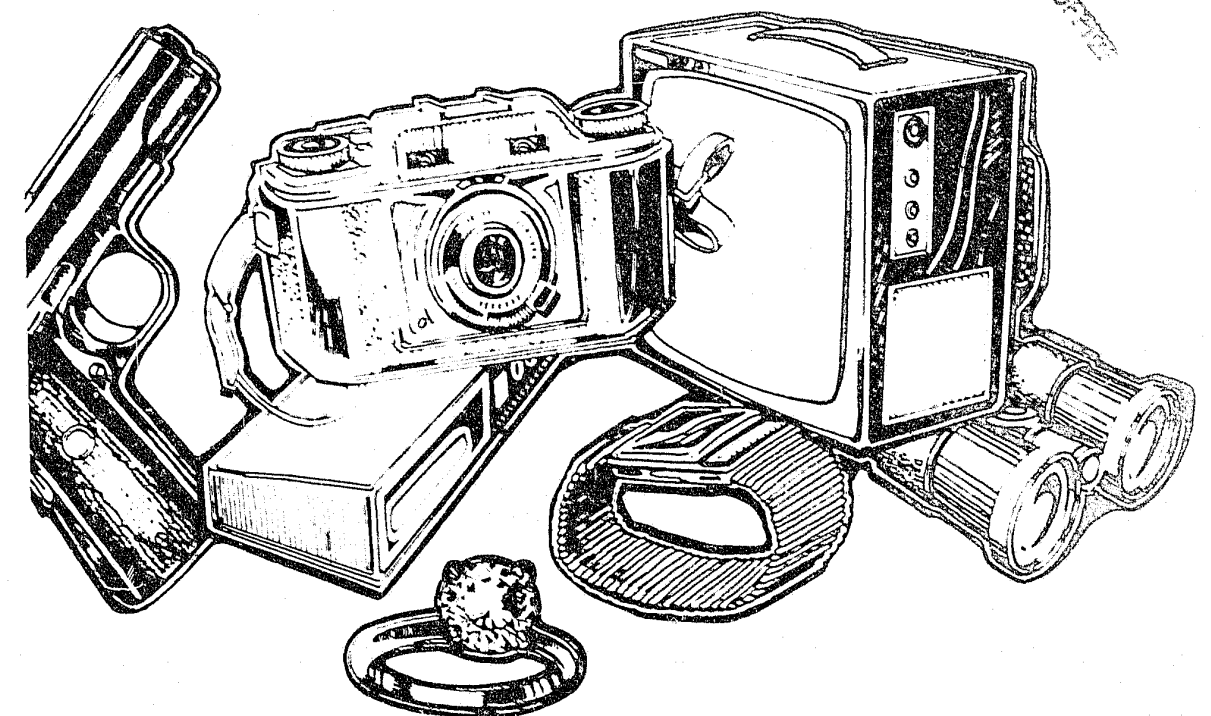


ORGANIZED CRIME CONTROL

ANTI-FENCING MANUAL

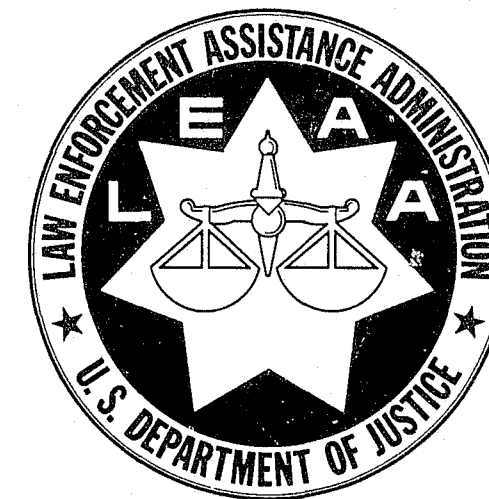
SEPTEMBER 1972

Strategies For Combatting the Criminal Receiver of Stolen Goods



Strategies For Combatting the Criminal Receiver of Stolen Goods

**AN ANTI-FENCING MANUAL
FOR LAW ENFORCEMENT AGENCIES**



NCJRS
OCT 15 1976
ACQUISITIONS

LOAN DOCUMENT
RETURN TO:
NCJRS
P.O. BOX 24036 S.W. POST OFFICE
WASHINGTON, D.C. 20024

Enforcement Program Division
Office of Regional Operations
Law Enforcement Assistance Administration
United States Department of Justice

STRATEGIES FOR COMBATING
THE CRIMINAL RECEIVER
(FENCE) OF STOLEN
GOODS

A MANUAL FOR LAW ENFORCEMENT AGENCIES

PROJECT DIRECTOR:

MARILYN E. WALSH, PH.D.
RESEARCH SCIENTIST

PROJECT MONITOR:

Mr. James O. Golden
Director, Enforcement Program Division
Office of Regional Operations

The fact that the Law Enforcement Assistance Administration
furnished financial support for the writing and publishing of
this manual does not necessarily indicate the concurrence of
LEAA in the material presented herein.

ENFORCEMENT PROGRAM DIVISION
OFFICE OF REGIONAL OPERATIONS
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
UNITED STATES DEPARTMENT OF JUSTICE

August 1976

FOREWORD

Until recently it would have been extremely difficult to prepare a law enforcement manual on anti-fencing strategies. Now, however, continued increases in property theft and growing frustration with traditional enforcement measures against it have combined to produce greater awareness of and focus on the criminal receiver (fence) of stolen goods. The number of law enforcement agencies involved today in anti-fencing enforcement now far exceeds that of five years ago.

This manual represents an attempt to bring together in a single source, a composite of contemporary law enforcement knowledge about and experience with the fence of stolen goods --- in order that the larger law enforcement community might benefit from the lessons learned.

The guiding principle in the preparation of this manual was to make it of practical benefit to law enforcement agencies. Most of the time allotted to this project, then, was spent in the field, interviewing and learning from anti-fencing units and others in their agencies. The design of the manual was dictated to a large extent by what these people felt to be important to communicate to others about anti-fencing enforcement. In other words, what they knew about anti-fencing; what they wished they had known before getting started; and what they saw as continued problems and dilemmas. The manual does not therefore necessarily represent the breaking of new ground. Instead it has been an attempt to organize and tell in a clear and concise manner that which is already known, experienced and hoped for. This turned out to be a great deal indeed.

The manual is a product, then, of the interest, concern, and knowledge of many, who must take major credit for it -- though no responsibility for its shortcomings. In particular, it is necessary to thank the following:

The sixteen law enforcement agencies who were visited during the course of the manual's preparation and the many others who helped by telephone or letter. These are listed in Appendix A along with the names of the reviewers of the draft version of the document. Without the generosity of these agencies and their personnel in sharing both their time and their knowledge, the manual could not have been written. The thoughtful and constructive comments of the review panel helped to ensure its comprehensiveness and utility. To all these we owe a deep debt of gratitude.

To Mr. James Golden of the Enforcement Program Division, Office of Regional Operations, LEAA, who served as Project Monitor, goes an equal debt of thanks. Without his vision and energy, the manual could not have taken shape. His continued support, dedication, insightful comments, and assistance throughout the project proved to be invaluable. Mr. Stephen Cooley and Mr. Jay Marshall also of the Office of Regional Operations, LEAA, provided additional support and assistance which greatly facilitated our work.

The Battelle Law and Justice Study Center Project Staff should be individually noted for it was through and with them that the manual took shape and came to life: Dr. Duncan Chappell, who served as overall project coordinator; Mr. Herbert Edelhertz, who made both substantive and editorial contributions; Mr. Harvey Chamberlin, legal specialist, and Ms. Roma St. James, who took total responsibility for manuscript and graphics preparation.

PREFACE

The major objective of this manual is to provide law enforcement agencies with a basic, practical handbook on effective ways to combat the criminal receiver (fence) of stolen goods. The resources relied upon were the knowledge and experience of anti-fencing units throughout the United States. We sought to find out how they addressed these four basic questions:

1. Who is the fence?
2. What is the nature of the challenge(s) he presents to law enforcement?
3. What does it take to combat him?
4. What can be expected from an effort to combat him?

This manual is aimed at meeting the needs of both the field officer and the agency administrator. It is designed to guide and facilitate action, rather than to give pat answers. In order to do this, it was necessary to both explore the promise and the dilemmas of anti-fencing enforcement efforts. Put another way, this covers both the excitement and the frustration of combatting the fence.

This manual deals with the fencing problem generally, and also with specific issues likely to face a variety of individual agencies. Its aim has been to be of practical benefit to a wide law enforcement audience with varied needs and different levels of available resources.

The seriousness of the challenge of property theft is only surpassed by the challenges presented to those who seek new ways to combat it. Old approaches and old perspectives are difficult to discard. While the potential rewards of anti-fencing enforcement are great, they will come only to those agencies which give the commitment and possess the understanding it takes to achieve them. Anti-fencing enforcement, then, is a challenge to those agencies which are truly concerned about property theft, and willing to back up that concern with an unfaltering commitment of available resources, talent, stamina, and imagination. It is to such agencies and their people that the following pages are addressed. In this manual we cannot hope to answer all their questions, or solve all their problems, or address all their needs. If it can help in these areas, however, this manual will have done its job.

TABLE OF CONTENTS

	<u>Page</u>
FOREWORD	i
PREFACE	iii
INTRODUCTION - WHY GO AFTER THE FENCE?	1
Traditional Theft Enforcement Policy	3
Assessment of Shortcomings and the Development of New Priorities in Theft Enforcement	4
Outline and Approach of the Manual	5
CHAPTER ONE - THE FENCE OF STOLEN GOODS AS A LAW ENFORCEMENT TARGET	7
Definition of the Problem	7
The Role(s) Played by the Fence	8
The Impacts of the Fence	11
The Fence's Impact on the Burglar	11
The Fence's Impact on Law Enforcement	12
The Fence's Impact on Property Theft Victims	13
Fences and Fencing Operations - The Scope of the Problem	14
Fencing and Local Theft Problems	14
Fencing Linked to Narcotics Dealing	16
Fencing Operations Linked to Organize Crime Activities	18
Fencing Operations Tied to Professional Theft Rings	21
Indicators of Fencing Activities	23
Statistical Indicators	23
Observational Indicators	23
Collateral Crimes as Indicators of Fencing	25
Assessment of the Fencing Problem	26
The Fence as a Law Enforcement Target - A Summary	28
CHAPTER TWO - THE COMPONENTS OF ACTION: RESOURCES AND MANPOWER	30
Designing an Anti-Fence Effort	30
Budgetary Justifications for Anti-Fencing	33
Selection of Officers for Anti-Fence Effort	34
The Field Commander	34
The Property Officer	35
Secretarial/Clerical Role	35
Investigators	36
Selection Procedures	36
Orientation and Training	37

TABLE OF CONTENTS (continued)

	<u>Page</u>
Locating the Unit in the Agency	38
The Command Relationship	38
Relationship with Other Theft Units	39
Relationship with the Intelligence Function	43
Security versus Secrecy	45
Locating the Anti-Fencing Effort: A Summary	47
Internal Management of the Anti-Fencing Effort	49
Setting Goals and Priorities	49
Targeting Fences Identified by Burglary/Theft Units	50
Targeting of Specific Individual's Method	51
Targeting by Type of Fence Method	52
Targeting by Geographic Area Method	52
Targeting by Type of Thief Method	52
Setting Priorities - A Summary	53
Resource and Manpower Utilization Policies	53
Accountability and Audit Control Policies	55
Internal Management - A Summary	57
Intra-Jurisdiction Resources and Requirements	57
The Role and Importance of the Prosecutor	57
Strategies and Models of Prosecutor/Police Interaction	59
Police/Prosecutor Interaction - A Summary	61
Other Intra-Jurisdiction Agency Support	62
Outside Resources Contributing to the Effort	63
Other Law Enforcement Agencies of Similar Jurisdiction	63
Interaction With Agencies of Larger Jurisdiction	65
The Federal Role	65
State Agency Roles	66
International Investigations	67
Jurisdictional Boundaries - A Summary	67
Resources from the Private Sector	68
Citizens Groups as a Resource	68
The Media as a Resource	70
The Business Sector as a Resource	71
CHAPTER THREE - TAKING ACTION - ALTERNATIVE STRATEGIES IN ANTI-FENCING ENFORCEMENT	74
Fencing Types and Enforcement Strategies	74
Common Elements in Anti-Fencing Efforts	74
Specialized Strategies for Localized Fencing Situations	76
The Traditional Surveillance/Warrant Strategy	77
The Buy-Bust Strategy	77
The Undercover Buy Strategy	79
The Undercover Buy-Sell Strategy	80
Localized Fencing Strategies - A Summary	81

TABLE OF CONTENTS (continued)

	<u>Page</u>
Specialized Strategies for Narcotics Related Fencing Operations	82
A Model for a Coordinated Narcotics/Fencing Strategy	84
Strategies Against Organized Crime-Based Fencing Operations	85
Strategies Against the Mobile, Professional Theft Ring	87
The Role of the Storefront	89
Some Background on the Storefront	89
New Innovations in the Storefront	90
Choice of Site for Storefront	91
Designing the Interior of the Storefront	92
Selection, Training and Orientation of Personnel	93
Development of Security Protocols	93
Determination of a Close-Out Strategy	94
Results and Criticisms of the Storefront	95
Assessment of the Storefront From an Anti-Fencing Perspective	96
Assessment of Anti-Fencing Strategies with Regard to Investigative Requirements	97
Impact and Assessment of the Problem	108
Indirect Impacts of the Anti-Fencing Effort	109
An Internal Evaluation Design - A Summary	110
Integration of Anti-Fencing Enforcement in the Agency Structure	111
Anti-Fencing Do's and Dont's for the Administrator	112
CONCLUSION - GOING THE ANTI-FENCING ROUTE, WHAT DOES IT MEAN?	113
What Anti-Fencing Means for the Officers Involved	113
What Anti-Fencing Means to the Agency	114
What Anti-Fencing Means to the Public	115

APPENDIX A - List of Contributing Agencies and Members of Panel of Review Panel	117
APPENDIX B - Exhibits	122
APPENDIX C - Investigator's Legal Guide	140

INTRODUCTION

WHY GO AFTER THE FENCE?

A consistent and alarming pattern emerges each year from the crime statistics compiled by the Federal Bureau of Investigation and by large and small law enforcement agencies around the nation. It is a pattern that reveals an absolute dominance of theft crimes, combined with a substantial increase in crimes of that type over the preceding year. In 1973, for example, theft crimes (i.e., burglaries, larcenies and auto thefts) constituted 90% of all reported crime nationally and showed an increase of 6% over 1972. In 1974, the figures were 90% and 18% respectively.¹ In 1973, a burglary was estimated to occur nationally once every 12 seconds; in 1974, the estimate was one every 10 seconds.

Behind these alarming statistics lie some even more disturbing facts. Victimization studies by the National Crime Panel suggest that two or perhaps three times as many thefts occur as are reported.² Hearings in 1973 and 1974 by the Senate Small Business Committee revealed that real losses due to cargo theft are similarly under-reported, concealing yet another sizeable part of the true incidence of theft.³ While, then, it becomes somewhat impossible to accurately estimate the actual level of theft occurring and the amount of losses for which it accounts, it is possible to conclude that the statistics we do have -- alarming though they may be -- represent only a part of the total victimization due to theft. It is also clear that in terms of frequency of occurrence, number and range of victims, and economic impact, theft constitutes this country's number one crime problem!

What do we know about this problem? Perhaps the most striking aspect of the problem is the fact that it is dominated by thefts of goods (i.e., property theft) as opposed to thefts of cash or its equivalent. Estimates suggest that as much as 75% to 85% of annual theft losses consist of goods and merchandise.⁴ This critical piece of information strongly suggests that

¹In recent years, the only reverse in this trend was noted in 1972 where although theft crimes still constituted 86% of all reported crimes, their number had declined 2.3% from 1971.

²See, Criminal Victimization Surveys in 13 American Cities, U.S. Dept. of Justice, (Washington, D.C.: G.P.O., 1975).

³U.S. Congress, Senate, Select Committee on Small Business, Criminal Redistribution (Fencing) Systems and Their Economic Impact on Small Businesses, Part I and Part II, Hearings before the Committee, May 1 and 2, 1973, and April 30 and May 1, 1974.

⁴From G. Robert Blakey and Michael Goldsmith, "Statistical Analysis of the Theft and Recovery of Stolen Property," Table 10, copy kindly supplied by the authors. See also Marilyn Walsh, "Stolen Property and Its Redistribution in the Seattle Metropolitan Area," report prepared for the Seattle Police Department, February, 1975.

the activities of these thieves are supported by a stable and continuing market for stolen property. If such a market did not exist, thieves would be required to shift their activities to targets in which cash alone could be acquired. This would not only shrink the number of available theft targets but also limit the number of thieves who could operate at any one time. Because the market for stolen property does exist, we are left with the kind of situation that has become only too familiar -- a constantly increasing rate of theft, dominated by thefts of goods, stolen from a wide range of reporting and non-reporting victims. If, then, we are ever to impact on the serious and ever increasing theft problem we face, it is clear that we must focus not only on the thief but also on the market for stolen property. This means attention to the criminal receiver of stolen goods, or the "fence" as he is more often called.

The need to combat the fence is by no means a new thought. As long ago as 1795, Patrick Colquhoun (known as the father of the British police) wrote:⁵

"In contemplating the characters of all these different classes of delinquents (that is Thieves, Robbers, Cheats and Swindlers), there can be little hesitation in pronouncing the Receivers to be the most mischievous of the whole; inasmuch as without the aid they afford, in purchasing and concealing every species of property stolen or fraudulently obtained, Thieves, Robbers and Swindlers,... must quit the trade, as unproductive and hazardous in the extreme.

Similarly in 1928, the Association of Grand Jurors of New York County, in its study of the receiving laws of the forty-eight states and Alaska, said of the receiver: "He not only furnishes the incentive to crime by providing a market, but he organizes and directs criminals, and very often finances them."⁶ More recently, the President's Crime Commission in its discussion of professional crime, characterized the receiver as one of the two "essential relationships"⁷ which the professional criminal must establish in order to successfully survive. And Jerome Hall, whose analysis of criminal receiving had provided the basis for the Crime Commission's remarks, updated his own work in 1968 stating: "It is clear that the criminal receiver is the heart of the theft problem. Not only large scale professional theft

⁵Patrick Colquhoun, Treatise on The Police of the Metropolis, (Montclair, N.J.: Patterson Smith), p. 289.

⁶The Criminal Receiver of Stolen Goods: Source of Organized Crime and Creator of Criminals, Assoc. of Grand Jurors, (N.Y.: Putnam, 1928), at p. vii.

⁷The Challenge of Crime in a Free Society, (Wash., D.C.: G.P.O., 1967), p. 46.

but also countless thefts by juveniles and occasional offenders depend on the availability of a regular market - and to provide that service is the crucial function of the criminal receiver."⁸

Despite all this testimony to the fence's importance, it has taken until now -- the latter half of the 20th Century -- to develop a body of experience to guide anti-fencing enforcement efforts. The historic lack of enforcement attention given the fence derives mainly from two sources:

- a traditional theft enforcement policy that is both inappropriate and self defeating; and
- an inability to assess current shortcomings in such a way that resources can be redirected according to clear priorities.

I. TRADITIONAL THEFT ENFORCEMENT POLICY

Law enforcement activities directed against property theft are traditionally thief-oriented in approach. This orientation is the basis for the creation of the usual burglary-theft investigative units, sections, or details. Where an agency and/or jurisdiction is large enough, this approach results in the creation of even more specialized burglary-theft units dealing with a type of thief, or type of target. Thus, an agency may have an auto-theft detail, a safe and loft squad, or a shoplift unit.

Regardless of the size of a theft section or the degree of specialization within it, this traditional enforcement effort almost inevitably causes a reactive approach to property theft. For example, theft detectives are assigned caseloads on the basis of reported crime incidents --- and because theft events are so frequent and numerous, these caseloads are typically large. Thus, management of caseloads can fully occupy the time of theft detectives, leaving little or no time for investigations of specific thefts.

The traditional enforcement policy regarding property theft has a rational justification. The thief is after all the immediate perpetrator of the event reported to police. Similarly, victims of crimes cannot be ignored by police departments; their complaints must be serviced in some way. Where the traditional policy is inadequate is in its exclusive focus on the thief makes for two major gaps in theft enforcement. These are: (1) inability to follow the dynamics of the crime; and (2) inattention to the fence of stolen goods.

⁸Jerome Hall, "Theft, Law and Society - 1968," Journal of the American Bar Association, Vol. 54, pp. 960-967, at p. 962.

The reactive stance of traditional theft enforcement causes law enforcement agencies to respond to previously committed theft events in a static way. It is based on the narrow but erroneous assumption that the crime has been completed when the thief has made his successful exit from a premises. Where property has been stolen this is not, in fact, an accurate view. The crime must continue to the point where the thief can successfully convert stolen property to a more useful commodity (usually cash or drugs). Failure to respond to the continuing dynamics of property crime by recognizing its transfer function causes law enforcement agencies to focus the greatest attention on perhaps the least relevant part of the crime scene. The original scene of the crime is better viewed as the point at which the reported crime commenced; the more relevant scene becomes instead the transfer point, where the stolen property starts to lose its relationship to the victim --- once it goes out of the hands of the original thief. The agent of this transfer is, of course, the fence -- the other major property theft actor who is all but ignored in the traditional approach.

II. ASSESSMENT OF SHORTCOMINGS AND THE DEVELOPMENT OF NEW PRIORITIES IN THEFT ENFORCEMENT

Inattention to the fence does not stem from any lack of awareness of his importance. On the contrary, theft detectives are nearly unanimous in labeling the fence as a more important crime target in property crime than the thief. The problem is that traditional theft policy and the organization of police response are not structured in a way that allows significant attention to be devoted to the fence.

The working of large victim-complainant caseloads leaves theft detectives little time for independent investigations of fences. Neither does it present much incentive to do so. Theft detectives are evaluated on their ability to "clear" cases assigned them. Activities such as independent fencing investigations, which consume time needed to work a caseload are not expected and can positively jeopardize an investigator's productivity rate as viewed by his/her supervisor.

This is not to suggest that the fence is completely ignored by theft investigators under traditional theft enforcement policies. On the contrary, investigators are likely to develop information on fences in the course of carrying out their caseload responsibilities and as a result of their interaction with thieves. Some investigators regard this information as extremely important, and strive to keep it current in the hope that "someday" they will have the time and the opportunity to use it in making cases against these offenders. Others make current use of such information. They use the fences

about whom they have information as informants, to help clear caseloads and solve particular burglaries.⁹ Thus, while fences may not generally be ignored by theft investigators, neither do they receive systematic enforcement attention. Traditional theft enforcement policy allows neither the time nor the incentive for such efforts.

It is in recognition both of the fence's importance and of the lack of enforcement attention he generally receives under traditional theft policy that law enforcement agencies across the United States have launched special anti-fencing efforts. These efforts differ significantly in terms of scope, nature of fencing problem responded to, degree of correspondence with traditional organizational structures, extent of financial support, and specific investigative strategies employed. Their diversity, however, has generated a rich store of knowledge and expertise for the law enforcement community.

The experiences of anti-fencing efforts around the country provides information not only on the potential of such strategies themselves, but also on what it means generally to set new priorities in property theft enforcement. They have shown that in the property theft area, which is so frequently viewed as frustrating and not susceptible to law enforcement impact, new success can be achieved and a new story can be told. Unlike many proposed innovations of the past, anti-fencing efforts offer great promise to both law enforcement agencies and to the communities they serve.

III. OUTLINE AND APPROACH OF THE MANUAL

This manual is designed to give law enforcement agencies a composite picture of the rich and varied experience of anti-fencing efforts across the country. The general nature and details of that experience have been gathered through correspondence with many agencies involved in anti-fencing enforcement, site visits to 16 operating programs, and interviews conducted at those sites. The information gathered has been catalogued and organized here for presentation in a way which will make this manual a general sourcebook regarding the rationales, approaches, needs, and relative strengths of various anti-fencing strategies and techniques employed in this country. It is also intended to show the more general dilemmas and problems raised by these efforts, and the ways in which these have been handled or solved. Because this manual is designed to present a composite of national anti-fencing experience, it does not address every possible issue in this enforcement area.

⁹This particular stance with regard to the fence is discussed in more detail at p. 12.

This manual devotes its primary attention to strategies for identifying, investigating, and convicting fences on criminal charges. This focus by and large therefore excludes civil and administrative remedies that may show some promise. The criminal emphasis is stressed because most experience has been in this area, and also because it is expected that law enforcement has greater interest in the potential of this approach. While civil and administrative strategies are, therefore, noted where appropriate, they are not discussed in as much detail as are criminal anti-fencing approaches.

This manual does not attempt to recount in detail the individual experiences of the sites visited. This is not done for two reasons: (1) many efforts are on-going and of a covert nature such that a detailed documentation could prove jeopardizing to officers involved; and (2) the general lessons from diverse efforts visited are considered to be more valuable to the law enforcement community than the specific outcomes of individual programs.¹⁰

The manual does not address two areas of fencing activity that while considered important were adjudged to be beyond the scope of this document. These areas are the fencing of stolen securities and commercial documents and the fencing of cash itself. They are eliminated here because the audience interested in these fencing situations is deemed to be only a small segment of the more general law enforcement audience the manual seeks to address, and because these situations raise substantially different enforcement issues.

With these exceptions, then, this manual will generally describe the current state of anti-fencing enforcement efforts, their prospects, their challenges, and their potentials. It focuses first on the nature and scope of the problem, describing roles commonly played by fences, and the impact of fencing operations. It will also set out the most frequent fencing situations confronted. Next, it describes the design of an anti-fencing effort, identifying the typical structure and manpower arrangements used and specifying the particular administrative and support needs of such an effort.

The manual next addresses alternative anti-fencing strategies, including an analysis of their appropriateness when applied to different kinds of fencing situations and with regard to basic legal requirements in fencing cases. Next, the manual turns to management of anti-fencing efforts, focusing on evaluative considerations and the relationship of the effort to other agency activities. Finally, the manual discusses the promise of anti-fencing enforcement, identifying impacts that have been experienced and can be anticipated.

¹⁰In addition, the need to specifically detail each effort is not considered necessary since a roster of contributing agencies is provided at Appendix A, the members of which can be separately contacted by those with an interest in their experiences.

CHAPTER ONE

THE FENCE OF STOLEN GOODS AS A LAW ENFORCEMENT TARGET

I. DEFINITION OF THE PROBLEM

The fence of stolen goods does not represent an easy target for law enforcement action. To begin with, his activities in buying and selling stolen property are generally of a covert and highly conspiratorial nature not readily detected or penetrated. The fence will not advertise his association with thieves, nor will his activities be immediately apparent to those not participating in them. Similarly, because the fence's crime is that of providing an illicit service rather than the performance of an overt act, it will leave little evidence of its occurrence. Thus, while evidence that a theft has been perpetrated is easily available (i.e., a break-in is shown and a loss of property discovered), no similar overt acts alert us to the fence's crime. In this sense, fencing is very much like other "service" crimes such as loansharking or the management of illegal gambling activities. In addition, most of the fence's acts in perpetrating the crime of criminal receiving are not in and of themselves illegal. The buying, selling, storage or transport of merchandise, for example, is not against the law. Thus, the fence, in performing these activities with regard to stolen merchandise, is not behaving in a clearly illegal manner.

Detection of fencing activities by law enforcement is further hampered by the fact that criminal receiving is unlikely to be a reported crime. This is because the fence does not overtly victimize anyone. Typically, then, there will be no complainant to initiate a fencing investigation. Instead, a fence must be proactively sought for investigative purposes. Actual penetration of the fence's activities will itself be difficult because most of those with whom he comes in contact will serve to further insulate him. Thus, thieves will only reluctantly compromise the fence because of the important service he provides in buying stolen goods from them and because they must compromise themselves in order to do so. The fence's customers, on the other hand, may either be ignorant of his illicit activities or, if they know of it, be as reluctant as the thief to divulge the nature of the fence's operation.

Finally, considerable conventional wisdom exists which underrates the seriousness of the fence's conduct. Such wisdom has allowed the view to prevail that the fence is little more than a harmless street peddler or a somewhat shady pawnbroker. Overcoming this impression of the fence and replacing it both with more realistic portrayals and with an understanding of the serious influence the fence has on property crime, constitutes a

major challenge to law enforcement. It is a challenge that may be confronted within a police agency itself as well as among members of the general public who may eventually become jurors.

For too long the fence has been protected by a lack of interest and attention, because his importance is underestimated. In part, receiving laws themselves may contribute to a confused notion as to what the fence actually does. A typical fencing statute, for example, might describe the fence as: anyone, other than the thief, who knowingly receives, possesses, transports, conceals or withholds stolen property with the intent to benefit himself or to deprive the lawful owner thereof. Such language, taken by itself, conveys little idea of the critical role(s) played by the fence in property theft.

In order to better understand the serious nature of the challenge the fence presents to law enforcement and of the harm he represents to society, we next turn to a discussion of roles typically played by the fence. Then, in order to appreciate the broad influence the fence exerts on property crime, the specific impacts of the fence are presented and discussed.

A. THE ROLE(S) PLAYED BY THE FENCE

The first role played by the fence is that of providing a market for stolen property, and hence for theft crimes themselves. By showing a continued willingness to receive and purchase stolen property, the fence gives economic or commercial value to stolen property which it would not otherwise have. This willingness to acquire stolen property provides the incentive for its theft in the first place. Without this market provided by the fence stolen property loses much of its attractiveness as a theft object. The market role of the fence serves to reward the thief's criminal conduct and to create the incentive for future, similar conduct. At minimum, then, the fence can be seen as a critical factor supporting and maintaining thievery.

More serious, however, is the extent to which the market role played by the fence is active or passive in nature. Fences can be seen to display different degrees of activity/passivity in influencing the thief's conduct. The most passive fence is one who will buy anything and everything that is brought to him. This type of fence merely provides a general demand for stolen goods and hence the incentive for general victimization of property owners by thieves. As a practical matter, such fences are not very numerous. Instead, most fences distinguish among types of property either by refusing some or by paying different percentages of the value of goods, depending upon the kinds of goods which are stolen and offered by the thief.

Distinguishing among stolen property items adds an extra dimension to the fence's role. For example, the mere refusal to handle certain kinds of property indicates a preference for other kinds. The communication has a very real influence over the thief's activities. It will tend to make

the thief limit his takings to those the fence prefers. Manipulation of prices paid for merchandise has a similar effect. Specialization by the fence (i.e., specification that he will buy only certain kinds of goods), is the most directive role played by fences in this regard. Thus, the thief acquainted with specialist fences will steal only those items he knows them to handle. Any indication of a goods preference --- whether by exclusions, price differentials or specialization --- involves the fence in a more active role in determining the nature of the thief's targets. This is because the demand for particular property items is being stimulated and hence more specific classes of property owners are being "fingered" for theft. Thus, for example, the truly passive fence may affect property theft victimization only in an absolute sense (i.e., by increasing it). The specialist fence, on the other hand, will affect the rate of victimization of particular property owners, (those who own CB radios, or expensive jewelry or coin collections for example). Most studies of fences indicate that some degree of specialization is usual, and that the goods preferences of various fences are well-known to thieves.¹¹

The nature and degree of a fence's preference for certain stolen merchandise, then, constitutes an important role in influencing the thief. The fence's role is not limited to goods preferences, however. Instead, fences are often found to assume roles far more active than these. The most typical of such active fence roles are (1) the financial staking or other support of the theft; (2) the theft-to-order; and (3) the set-up.

The provision of support necessary to the commission of a theft can range anywhere from acting as tipster, to the supplying of transport vehicles or the advance of monies for acquisition of tools or information. Practically speaking, the latter case is the more unusual. Fences rarely advance cash on a promise to perform except where the thief is of such competence that his success is inevitable. Even then, the more likely situation is for the thief to acquire money from others (loan-sharks, for example) using his anticipated success as "collateral." While fences are somewhat more likely to rent transport vehicles or warehouse facilities necessary for thefts, acting as tipster is perhaps the most common function played by the fence in an active, support role.

The second kind of active fence role, the theft-to-order, is really specialization at its highest point. In this situation, the fence not only specifies a type of property to be taken but also orders the specific

¹¹Specialization usually occurs because the fence is typically a legitimate businessman who handles either only those stolen items that he is familiar with in his legal enterprise or only fast moving items such as entertainment equipment and firearms. Studies by Marilyn Walsh, in several American cities, showed specialist fences to comprise 90% of local fencing populations. See The Fence - A New Look at the World of Property Theft, forthcoming Greenwood Press, December 1976.

quantity of such goods to be stolen. Auto thefts often fall into the theft-to-order category, where a particular kind and quantity of cars or car parts are ordered by the fence. Usually the destination of property stolen in this manner is predetermined; the buyer is already identified and anticipates delivery of the goods. Thefts-to-order generally occur where two types of property are involved: high-value unique items (art works, jewelry or coins, for example); or large volume, new property (obtained chiefly while in transport channels).

The "set-up" probably demonstrates the most active role played by the fence. What it involves is the fence initiating and planning the theft of a specific victim at a particular time in order to acquire particular goods. In other words the fence becomes the tipster plus. The set-up evolves because the fence by virtue of either a professional, commercial or personal relationship with the victim comes into possession of information important for the commission of a theft. A good example of the set-up is the antique dealer who appraises the property of a client, learns of that client's potential absence from home and plans a theft based on such inside information, i.e., "sets-up" the victim. To facilitate the theft, the fence will often supply the transport vehicle to the thief. In effect, the thief merely executes the fence's plan, retrieving precisely what the fence wants, when he wants it.

It should be noted that the fence, unless he is also a thief, will limit his participation in an actual theft to the level described above. Fences do not as a rule steal themselves. Thus even where the fence has generated and planned a theft in its entirety, he remains in a safe, low-risk background position while the thief incurs the greater risks of detection and arrest.

The roles of the fence can be summarized as follows, listed from most passive to most active:

- | | |
|----------------------------------|---|
| Implicit Influence
Over Thief | <ul style="list-style-type: none"> • passive fencing role, taking everything brought to him. • preferential fencing role, showing property preferences. • specialist fencing role, displaying particular goods preferences, excluding most other property. • support fence, providing tipster, transport or other services necessary to theft's commission. • theft-to-order fencing role, placing orders for specific kinds of goods and their location, pre-arranged deliveries to buyers. |
| ↓ | |
| Explicit Influence
On Thief | <ul style="list-style-type: none"> • set-up fencing role, generating and planning theft of property from a particular victim. |

As one moves down the list, the role of the fence becomes more active, directive, and explicit toward the thief. At the same time it becomes more specific in its effect on theft victimization, narrowing the targets of thieves to particular classes of victims or even to individual victims. All of these roles, then, confirm the critical part played by the fence as he knowingly "receives, purchases, transports, conceals or possesses" stolen property. The particular impacts of these activities are next discussed.

B. THE IMPACTS OF THE FENCE

The fence in his various roles can be seen to impact directly on three sets of individuals: burglars;¹² law enforcement; and property theft victims.

1. THE FENCE'S IMPACT ON THE BURGLAR

The influence of the fence over the burglar was noted above, especially with reference to the fence's capacity to reward the thief's behavior by giving stolen property a commercial value. In this way, we accounted for the incentives for theft activities. The impacts of the fence on the burglar, though less apparent, are far more significant. This is particularly true in terms of the maintenance of the thief in his theft activities. For by his actions the fence does two important things for the thief: (1) he makes the thief less apprehendable; and (2) he makes property theft less risky.

The two impacts are generally related but not quite identical. Their combination, however, serves to make the burglar's occupation far less dangerous. For example, where the burglar executes a theft successfully (i.e., leaves no fingerprints and is not witnessed or apprehended during its commission), the fence removes from him the last incriminating piece of evidence that can implicate him in the crime --- the stolen goods. Because the fence takes possession of such goods fairly rapidly, the burglar's "at risk" time is virtually limited to the scene of the theft itself and a short span of time after that during which the crime may not even be reported. Thus the fence serves in large part to insulate the thief from what are expected to be the likely consequences of his conduct --- apprehension and accountability by the criminal justice system which would stem from his being "caught with the goods."

At a second level, the fence can serve to reduce the risks associated with the commission of a theft in an absolute sense. This is particularly likely where the fence assumes a more active role. In the "set-up," for example, the provision of inside information to the thief often reduces the true risk to zero. Thefts-to-order facilitated by bribery and/or corruption of the victim's agent(s) (the so-called hijack,¹³ for example) similarly

¹²By burglar we mean to represent all property thieves using the most characteristic thief of goods as a general term for all.

¹³Evidence suggests that most such events are really "give-ups" by those involved, that is, the goods are given up without the use of force by the hijacker(s).

make risks associated with the crime practically non-existent. The fence as planner, tipster and set-up assure that thefts have certain and safe outcomes.

In addition, then, to providing a market for stolen property, the fence provides the thief with an even more important service --- the ability to insulate himself from the evidence of his crime. Because of this the thief spends less time having to deal with the logical consequences of his acts, giving him more time to actively pursue his criminal occupation. It permits the thief to specialize in what he may be best at --- theft --- and to eliminate the hazards of functions he is not so good at --- storage and resale of stolen goods in channels of normal commerce.

2. THE FENCE'S IMPACT ON LAW ENFORCEMENT

The second group impacted by the fence are law enforcement agencies. The handiwork of the fence in providing insulation and risk insurance for the thief has a tremendous impact on the police. This impact is well-documented every year as theft rates rise but clearance and property recovery rates remain disappointing. By making the thief less apprehendable, the fence makes police less effective in their crime prevention and control efforts. Thus, police performance in the area of property theft is more often a source of internal frustration than a source of pride.

Among investigative level personnel in a police agency, the morale of theft detectives is probably the lowest, and with good reason. The fence has made the burglary/theft investigator's job nearly impossible. Through him the burglar is far less likely to be "caught in the act" or "redhanded" with the goods in his possession. This, combined with the contemporary thief's lack of a definable modus operandi, gives the theft investigator very few leads to pursue in attempting to catch the offender. Instead, successful performance with regard to his caseload is frequently dependent on the chance event, the gross mistake or the rare, lucky break. As noted earlier, too often this "lucky break" is a tip from the fence who has been cultivated as an informant. Theft investigators, under great pressure to clear large caseloads, may find granting a tacit immunity to the fence in exchange for help in solving burglaries is a "mutually beneficial" arrangement. Because the fence traditionally is not viewed as a major enforcement target, such trade-offs of the fence for the thief or for many thieves may never come to light. No law enforcement agency can or should feel comfortable with this practice. Though extremely subtle, its compromising and manipulative aspects are serious indeed.

Even more serious, however, is the situation in which the fence acquires immunity more directly by corrupting or compromising police personnel or other criminal justice system officials. Some fences operating through legitimate businesses, for example, have attempted -- and often succeeded -- to buy "good will" by offering substantial discounts on merchandise to police officers, prosecutors and judges. Even where such attempts are not successful, the effectiveness of law enforcement is severely compromised by such activities. Other situations have been found in which fences, feeling vulnerable to shakedowns, have directly paid for information or protection from criminal justice officials.

In assessing the impact of the fence on law enforcement, then, both his collusion with the thief and his compromise of enforcement personnel must be considered. For a crime area as prominent as property theft, the impact of the fence on the capacity of law enforcement to perform well is significant indeed, affecting not only the internal morale and integrity of a police agency, but also the confidence of the public.

3. THE FENCE'S IMPACT ON PROPERTY THEFT VICTIMS

The final group separately impacted by the fence is the public itself, which is affected in at least three ways. First, there are those citizens who, as theft victims, sustain actual losses of property. Often property loss is combined with extensive property damage to one's home or business by the thief. Similarly, while little information is available, there is some suggestion that personal injury may not be as insignificant in property theft as was once thought. The fence, by supporting and encouraging the thief, serves to keep the number of citizens who are also theft victims at a high level. In addition he often disproportionately influences the victimization of certain groups or individuals by his goods preferences or active involvement in generating a theft.

The experience of most theft victims is both consistent and depressing. Typically the criminal justice system offers them little hope that the offender will be apprehended and even less hope that they will see their goods returned.¹⁴ Public confidence in law enforcement is continually undermined as theft victimization continues to escalate. The logical progression of society's disaffection with law enforcement has led to a situation in some parts of the country now where theft is an accepted unpleasantness of modern life and where rather than expecting to be protected against theft, property owners take their own steps to minimize losses. The typical step taken is the acquisition of theft insurance. Thus, many theft victims are so cynical about the capacity of law enforcement that they have no interest in the investigation of their cases. They only report the crime to satisfy the requirements of insurers.

This kind of situation, in which law enforcement agencies are put in the position of performing purely clerical validation functions for insurance companies, is a sad commentary on contemporary theft enforcement and on our stamina as a society. It shows a lack of resolve in meeting the challenge of crime, in favor of adopting a way of "living with it." It does not bode well for the kind of citizen-law enforcement partnership that is needed if we are to reverse the trend of crime control efforts. Instead it reflects a demoralization of both police and public that cannot be accepted or justified.

¹⁴In the state of California in 1974, for example, only 10% of all goods reported stolen (excluding autos) were recovered by law enforcement authorities. Statistic kindly supplied by California Department of Justice.

It is difficult to ignore the fence's contribution to this sad state of affairs. Were it not for his insulation of the thief, his encouragement and support of theft, and his impact on the responsive capacity of law enforcement where property theft is concerned, the situation would be somewhat transformed. As it is now, however, citizens are strongly affected by an increased potential for victimization which the fence influences --- causing a profound indifference to remedies which law enforcement could be expected to provide. Finally, whether victims or not, all citizens pay for the fence's handiwork through increased insurance rates and theft inflated prices on most of the commodities they purchase.

The substantial impacts of the fence on thieves, on law enforcement, and on the public are often subtle and intangible, but they are no less real. Our current responses to them represent little more than simple accommodation and subsidization of higher and higher rates of property crime. The potential for reversing this trend is the promise offered by anti-fencing efforts. It is a promise which, if fulfilled, offers much to reverse this trend and is a challenge which must be met.

II. FENCES AND FENCING OPERATIONS - THE SCOPE OF THE PROBLEM

While the roles and impacts of the fence are definable and can be readily understood, the complexity of the fencing problem becomes apparent when the many forms of fencing activity are examined. Not all fences are alike; they operate in different ways; and the responses they call for are also different. Law enforcement agencies around the country are generally found to relate to one or more of the following fencing situations:

- Fencing operations linked to localized theft problems;
- Fencing operations linked to narcotics trafficking;
- Fencing operations linked to syndicated, organized crime activities;
- Fencing operations linked to mobile, professional theft rings.

The nature and scope of these four basic fencing situations are very different as are the kinds of individuals associated with each. In order, then, to understand anti-fencing enforcement, it is important to distinguish among these fencing situations and the particular challenges each creates.

A. FENCING AND LOCAL THEFT PROBLEMS

The most pervasive and persistent fencing situation is that faced at the local level in heavily populated urban jurisdictions. This type of fencing is well reflected in the annual statistics compiled by police agencies in these

jurisdictions, recording endless reports of commercial and residential burglaries and larcenies. The theft victimization supported by this kind of fencing is probably the best reported of any, and we know that only half the picture is revealed by reported crimes.¹⁵ Localized fencing depends upon the activities of local burglars, addicts and juveniles. It operates through direct dealing between the fence and thief, although drops (storage places) for stolen property or agents of the fence may be used. In any case, the fence's identity is likely to be known by the thief whether they meet face to face or not.

Localized fencing tends to be divided into two general marketplaces: one for used merchandise stolen from residences; and one for new merchandise taken from commercial establishments. Addicts and juveniles are generally associated with the first; and other thieves with the latter. The complexity of a local fencing situation is derived from the range and number of individuals involved. Fences may be organized to service geographical areas, or thieves of particular character. Thus, neighborhood or area fences who deal primarily with thieves living in that general area are likely to be a part of the scene. Similarly, fences dealing primarily with addicts or juveniles are frequently observed in a local fencing situation. While a local fencing situation may be highly structured, it is not likely to be hierarchical in nature. Thus, most local fences are first-order fences dealing directly with thieves, rather than as intermediaries for others. Not all localized fencing operations are centrally located within urban centers, but all will depend upon local thieves as supply sources.

Most fences operating in a localized setting are either owners or operators of apparently legitimate business establishments.¹⁶ The types of businesses involved may range anywhere from the corner Ma and Pa grocery store to a successful downtown jewelry establishment. Businesses frequently reported as active in fencing include restaurants and bars, moving and transfer companies, antique dealerships, new and used auto dealerships, furniture and appliance stores (retail and repair), jewelry stores, coin and gun shops, auto repair/service stations, and realty companies.

Another prominent group of fences on a local scene are residential fences operating from private homes. These individuals often employ drops for reception of stolen merchandise, particularly if their residences are outside the urban centers which are their sources of supply. Others receive merchandise directly at their homes. Residential fences tend to handle two kinds of goods: boosted (i.e., shoplifted) clothing; or home entertainment items such as televisions or stereos that are fast-moving and easily sold. Local fences who are businessmen also tend to specialize either in goods they handle legitimately or in fast moving property items such as CB radios, or color television sets.

¹⁵Criminal Victimization Surveys in 13 American Cities, note 2, above.

¹⁶See Walsh, footnote 11, above, in two studies, businessmen-fences made up 67% and 71% of local fences known to police in two different metropolitan jurisdictions.

Because a fence depends on local supply sources does not mean that his goods are resold locally. Generally, the larger the volume handled, the more likely it is that there will be transportation to other locations for resale. Even the residential fence may transport stolen property, particularly if it is new merchandise.

The major characteristics of a local fencing situation, then, are these:

- dominance of direct-dealing, first-order fences, depending upon local thieves as sources of supply
- large number of both thieves and fences involved, handling both new and used merchandise stolen in local residential and commercial burglaries and larcenies
- dominance of market by fences operating primarily from a wide range of local business establishments, and secondarily from private residences.

B. FENCING LINKED TO NARCOTICS DEALING

The second basic fencing situation is also a localized one, confronted mainly in urban jurisdictions and characterized by the bartering pusher-fence. Often this type of fencing operation will coexist with those described above but it will be an important aspect of a local fencing situation displaying some distinct characteristics of its own.

To begin with, the narcotics/fencing situation has a restricted clientele, primarily involving addicted or drug-using thieves. Thus, while pusher-fences may coexist where other types of fences operate, they will attract a large proportion of the addict population away from non pusher-fences. This is because the pusher-fence allows the addict-thief to accomplish two goals in one transaction: selling stolen property and acquiring drugs. The trade is nearly always in a barter format.

Next, the use of the street level pusher as a key figure in such fencing operations introduces a hierarchical dimension to a local fencing scene. The pusher becomes in effect the collection agency for stolen property, but he is really only an intermediary. The true fence responsible for the resale of property items is of a different order and stands in the background. Thus, unlike many local fencing situations, the addict-thief dealing with a pusher "fence" will not know the identity of the true fence or final destination of the stolen property he supplies. In some instances, it is not clear that the pusher himself even has this information. The shrouding of the fence through levels of intermediaries gives him an insulation not possessed by the local fence who deals with thieves directly.

The final dimension introduced by the narcotics/fencing situation is the double loading of a distribution channel to accomplish more than one illicit objective. The pusher-fence operation demonstrates the adaptability of a set

of illegal relationships to a range of criminal activities. The organizational and transport capabilities of a narcotics import operation are also well-suited for the acquisition and redistribution of stolen goods. This two-way operation is more complex than the usual localized fencing situation.

While narcotics/fencing operations are more restrictive, more hierarchical, and more complex than other localized fencing operations, they are vulnerable to law enforcement in a number of significant ways. For example, their first order operatives (street level pusher-fences) are decidedly more apprehendable than are other local fences. The latter group is frequently composed of apparently reputable business people handling goods whose stolen character may not be provable. The pusher-fence handles not only merchandise of this type but also a commodity(ies) that is per se illegal, i.e., controlled substances. Similarly, individuals involved along the entire narcotics chain are generally considered to be of a less reputable ilk than are most local fences and their contacts.

The narcotics/fencing operation does not appear to have a preference for new over used merchandise. It accepts both. It does, however, tend to specialize primarily in home entertainment equipment and other light household items. This type of fencing enterprise acquires a volume of stolen goods because of frequent dealings with its thief suppliers, and because it is also supplied by the trade of a number of street level pushers. It does not, however, rely on a large volume per transaction traffic and is unlikely therefore to generate victimization due to large-scale theft.

One final note must be made before summarizing the major characteristics of the narcotics/fencing operation. This type of fencing situation is more frequently observed in the western part of the United States, particularly the West Coast, than elsewhere. The major reason for this appears to relate more closely to the nature of narcotics trafficking in the West rather than to any particular differences in fencing between East and West. Thus, the less monopolistic nature of Western narcotics importation and distribution allows a free-wheeling style that permits other illicit entrepreneurial ventures. In other parts of the country, greater monopoly in the narcotics trade tends to make it a more restrictive business with little opportunity for fencing. Thus, in the East fencing and narcotics pushing are more likely not to mix but to remain distinctly separate illegal activities conducted by decidedly dissimilar types of individuals.

The major characteristics of narcotics/fencing operations are these:

- a restrictive clientele comprised primarily of addict and/or drug-using thieves
- a multi-level structure based on the street-level pusher as first line operative and collection agency

- does not permit direct dealing between supply sources (thieves) and the true fence
- introduces a complex set of illicit relationships accomplishing several criminal objectives (i.e., distribution and sale of drugs and theft and redistribution of stolen goods)
- does not handle proceeds of major thefts, although stolen property is acquired in volume through frequent transaction with addict-thieves and through use of many first order intermediaries
- is most frequently observed as a phenomenon of local fencing in the western United States

C. FENCING OPERATIONS LINKED TO SYNDICATED ORGANIZED CRIME ACTIVITIES

The third basic form of fencing operation is that linked to the activities of organized crime syndicates. Operations of this type acquire their supplies of stolen goods because of widespread corruptive and/or coercive activities of such syndicates, particularly in the transport sector of the economy. The actual fences in this situation are generally businessmen, far removed in involvement and location from the activities that make the thefts of goods possible. Sometimes, even the stolen character of the goods they receive may be unknown to these businessmen-fences. This type of fencing situation has the greatest complexity both in terms of the number of individuals involved and the roles they play.

An example of such a fencing operation in action will testify both to its complexity and its efficiency:

A truckload of color television sets leaves a secured railway yard for a regional distribution warehouse. The number of the truck, its cargo, and time of departure are known because individuals inside the railway yard have access to and have provided this information. Their reasons for doing this are that they owe their jobs to the corruptive influence of others and expect to continue to be rewarded for such activities. The driver of the truck, who may also owe his employment to others, is given a chance to earn extra money if he follows certain directions. In this case, he is told to collect his cargo and proceed on his way, stopping at a certain truck stop for coffee. He is also told to have a long coffee break.

At the same time another individual of a very marginal type is given the chance to make \$50.00 cash. He is told to proceed to the above noted truck stop, given a description of the truck, and told to drive it away to another location and disappear. When he has gone, several individuals arrive

with smaller trucks and unload part of the cargo into each. They then proceed to destinations given them. In this case the destinations are three different television and appliance stores some 200 miles from the event. The owners of these stores expect the shipments and on arrival the trucks are unloaded and the television sets placed in the store. A predetermined amount of cash is given to the driver who then leaves. It is likely that this will all have occurred before the original truck has been located, and in some cases before the crime has been reported.

This crime may look very much like a hijacking; it probably will be reported and classified as a hijacking. It is, however, the classic "give-up" perpetrated and made successful by a large number of individuals none of whom knows very much about the overall operation. Each performs a small part of the larger task and then ends his involvement. All, however, are orchestrated in their activities by a set of contacts that exist for purposes other than these. They are illicit relationships involving labor racketeering, gambling and loan sharking. Like the narcotics situation described earlier, however, they are relationships that are equally capable of generating further, lucrative criminal activities.

The fences in this situation are of two kinds: businessmen who serve as outlets for the goods;¹⁷ and broker-type fences who facilitate these arrangements. The broker is not necessary where the businessman-fence is involved because of indebtedness to or corruption by organized crime groups but is important where the businessman-fence is not under such control. Neither of these kinds of fences are themselves members of organized crime syndicates. Instead, they maintain a relationship with it either because they must, or more likely because it is profitable.

Organized crime-generated fencing operations are generally the concern of law enforcement in more than one local jurisdiction or, alternatively, of agencies that have broader jurisdictional authority. This is primarily because the total activity is likely to cross many jurisdictional lines. Often in the past it has been assumed that the capacity to initiate and pursue far-flung investigations of the numerous and varied individuals involved in syndicated crime-related fencing cases resides only or mainly in state and federal agencies. This assumption is not necessarily justified. There are many examples of successful efforts taken against this kind of fencing operation by local law enforcement agencies, either alone or in coordination with others. Local law enforcement has a duty and responsibility to provide follow-up investigation of crimes reported in its jurisdiction. Where jurisdictional lines are crossed by perpetrators, such a follow-up response may include coordination or cooperation with others at local, state, regional or federal levels.

¹⁷The concept of the "outlet" fence is borrowed from Professor G. Robert Blakey of Cornell University.

There now exist many newly-formed associations that have developed mechanisms for both cooperative information exchange and actual case follow-up assistance. Some examples are the International Association of Airport and Seaport Police, state intelligence units, burglary-theft investigators' associations, etc. Such associations and groups have the potential for greatly enhancing the capacity of law enforcement agencies, at all levels, to pursue complex, multi-jurisdictional investigations. As such, they offer many investigative alternatives to local law enforcement beyond immediate referral of cases between one another.

A separate challenge presented by the organized crime-based fencing operation is that fencing operations of this type often involve thefts that go substantially unreported. Thus, many diversions of property that are more subtle than the "hijacking" described above, are accounted for as "losses", "damaged" or "short-loaded" cargoes; and no crime report is filed. Law enforcement agencies at all levels overwhelmed by reported theft often have little time or opportunity to investigate these unreported thefts. The allocation by law enforcement of already over-committed resources to the investigation of unreported crimes is a problem that goes beyond the fencing situations described here, although the challenge of a failure to respond is particularly significant in this area. It may be that the same kind of groups and associations noted above, that serve to enhance the follow-up capacity of law enforcement, may also provide for the pooling of resources to pursue self-initiated or pro-active case investigations of this type.

Diversions from cargo-handling terminals form the bulk of the activity of the organized crime type of fencing situation. This means that the goods handled in this situation consist primarily of new merchandise in large quantity. The only significant departure from quantity theft that will interest such an operation is the theft of high value unique items.

It should be noted that while organized criminal syndicates often plan and execute these large-scale thefts, their members retain little more than a monetary interest in them. Rather, the actual handling of goods is contracted out to those more specialized individuals --- in particular businessmen-fences. The fact that willing business partners are so consistently and easily found makes this type of fencing situation especially disturbing. It cuts to the heart of the commercial integrity of the legitimate marketplace.¹⁸

The major characteristics of an organized crime supported fencing operation are these:

- the existence of an organized criminal group whose illicit activities give it influence over the behaviors of key transport personnel

¹⁸Staff investigations by the Senate Select Committee on Small Business, e.g., raised serious questions in this regard. For a separate discussion, see White Collar Crime, Everyone's Problem, Everyone's Loss, U.S. Chamber of Commerce, 1974.

- the presence of broker-fences or of legitimate businessmen willing to or coerced into providing outlets for stolen merchandise, to resell stolen goods
- substantial diversions of goods either underreported or poorly reported by victims
- concentration on large-volume diversions of new merchandise or high-value items
- use of marginal individuals (in transport occupations) rather than identified thieves to carry out thefts

D. FENCING OPERATIONS TIED TO PROFESSIONAL THEFT RINGS

The activities, contacts, and modus operandi of professional theft rings have in the past been well known and of great concern to law enforcement agencies. In more recent years, however, changes in the theft population, influenced greatly by a high incidence of drug use, have shifted attention to thieves far more active and far less skilled than professionals. Indeed there are proportionately far fewer professional theft groups existing now than when most thefts were skillfully perpetrated. Now, the bulk of theft statistics reflect the work of marginally skilled individuals victimizing a wide range of the population.

Still, the professional theft ring and its contacts, notably its fences, represent a distinct and troublesome problem. They put at substantial risk a significant portion of the public owning property of high intrinsic value. Three key contacts are relied on by professional rings: the tipster (the information source or set-up); the fence; and the fix (the corrupter who minimizes criminal justice system consequences for group members).¹⁹ Both the professional theft group and its contacts form a geographically dispersed but closed fraternity. As such they represent a significant challenge to law enforcement.

A recent examination of professional theft by the Pennsylvania Crime Commission²⁰ found considerable involvement of syndicated crime figures as

¹⁹The latter two contacts were discussed by the President's Crime Commission. See The Challenge of Crime in a Free Society, (Washington, D.C.: G.P.O., 1967), p. 46ff.

²⁰See Clifford L. Karchmer, "Professional Crime in Pennsylvania: A Report on the Activities of Large-Scale Theft Rings in the Commonwealth," 1971-72 Report, Pennsylvania Crime Commission, pp. 109-149. Available free from the Commission at 523 East Lancaster Avenue, Saint Davids, Penn. 19087.

tipsters or set-up, or professional theft rings. This raises the concern as to whether, in the intervening decades between the time when the professional thief was a common part of the theft population and now, the nature of persons performing the important roles of tipster and fix may not have changed considerably with the entrance of organized crime figures in such roles. Such changes would, of course, affect the world of the professional thief and possibly his crime targets as well.²¹ In this regard, the Pennsylvania Crime Commission was alarmed by the incidence of professional theft occurring in rural, underpoliced areas in which little or no law enforcement response was available. The question which must be asked is: who is, or should be, "minding the store" on professional theft? Given the infrequency with which the professional works, this may be the most lucrative form of theft perpetrated today, and the kind of theft least subject to law enforcement agency response.

But if the professional thief largely falls through the cracks, his fence remains even more remote. Highly specialized, having nationwide interests and often quite respectable, this individual supports and profits handsomely from the professional ring's burglaries and robberies. Evidence seems to suggest that the role of fence to professional theft rings has not been usurped by others, and he remains a stable element in the perpetration of high value theft.

Because this fence operates across jurisdictional lines and serves geographically dispersed professional thieves, it is likely that federal authorities will usually have major responsibility for confronting him. Nevertheless, local and particularly rural and suburban jurisdictions, must be sensitive to professional theft operations and alert to the far-reaching support such crimes receive from fences who may conduct business far from the area where the thefts take place.

Fencing operations tied to the professional theft ring are the most exclusive, restrictive, specialized, cosmopolitan and lucrative of all. While they are only infrequently activated, they are a continuing challenge to all levels of law enforcement.

III. INDICATORS OF FENCING ACTIVITIES

Because fencing situations differ in scope, complexity, and nature of the individuals involved, it is critical that law enforcement agencies interested in anti-fencing enforcement make some assessment of the particular situation(s) they face. There is no magic formula that will answer questions of who and where all the fences are. In fact, some of the best answers are likely to develop in the course of an anti-fencing effort

²¹The concern expressed does not suggest that professional thieves are "controlled" by organized crime groups, but rather questions the extent to which a total independence from these groups continues to be maintained by the professional.

and not prior to its initiation. Nevertheless, because many organizational and policy decisions relating to the design of anti-fencing efforts must rely on a basic understanding of the situation "out there," a serious attempt to generally describe the problem(s) faced is needed.

Probing the fencing situation confronted by a law enforcement agency is not easily undertaken through use of traditional law enforcement approaches. Statistics on fencing activity, for example, are generally poor, non-existent, or largely unidentified.²² Assessment of fencing, therefore, requires a new approach to existing data and the seeking of additional information not generally considered for such a task. The following sections suggest three kinds of indicators that an agency should investigate to gain a general picture of the fencing situation(s) faced. Systematic review of the presence or absence of the three kinds of fencing activity indicators identified --- statistical, observational, and collateral --- will provide a firm basis on which anti-fencing enforcement decisions can be made.

A. STATISTICAL INDICATORS

The statistical indicators of fencing were earlier noted but deserve repetition here, for while they are all too familiar their association with the fence may not be well-understood. Three main indicators signal the active presence of fencing activity: (1) high rates of theft combined with low clearance rates for theft, (2) low arrest rates for theft, and (3) low property recovery rates. Such statistics are often erroneously interpreted to suggest that police have become less competent and thieves more adept. Such interpretations fly in the face of fact.²³

Police officers today are better trained educationally and more highly compensated than ever. Thieves are, on the average, less educated, less competent and less well compensated than ever. What these statistics challenge is not the competence of police in performing their tasks but rather the wisdom of the particular tasks assigned them. The unhappy consequences revealed by the above-noted statistics do not ask "What are the police doing?" but rather "Why aren't they doing something else?" Any law enforcement agency which faces annual statistics like those described above makes a mistake if it ignores the fence, for that offender has already and will continue to reflect on the agency's capacity to successfully serve its citizens.

B. OBSERVATIONAL INDICATORS

Observational indicators of fencing activities fall into two broad categories: those which police, by actual surveillance, can themselves

²²Criminal receiving is classified as a Part II offense in the Uniform Crime Reports making the guidelines and required reporting procedures for the offense less stringent than with Part I crimes.

²³For some examples of how to graphically display agency theft statistics see Appendix B.

observe; and those which can be learned from the observations of thieves and other informants and the debriefing of prisoners or arrestees. Police surveillance may be most useful to confirm information gained from these other sources.

To the extent that a police agency with an interest in anti-fencing finds little internal information available, the quickest study it can do is to solicit such information from informants and/or thieves and arrested suspects. Often thieves are not systematically asked about fences or fencing operations dealt with or known. It should be remembered in interviewing thieves that the fence is a key to their "business success." Thus in the absence of other, more compelling pressures, the thief will not be particularly motivated to place his fence in a vulnerable position. He may, however, be willing to confirm information or talk generally about other fences he's heard about but never dealt with.

Informants can be an extremely lucrative and cost-effective source of information on fences. They must be handled carefully, however. Informants should be programmed to develop information on specific targets of investigation. Their police contacts should not be satisfied to accept only what the informant wants to tell, but should insist on corroborative information and hard evidence, if possible.

The debriefing of prisoners is another valuable information source that can be greatly enhanced by prosecutor involvement. The prosecutor can assist, for example, by convincing a prisoner that it is in his interest to provide information on fencing operations. Any questioning of informants, thieves, or prisoners should begin from a base of knowledge about the local fencing situation, which many theft detectives already possess but have not had the time or resources to exploit. Mere fishing for information is likely to produce falsehood. The thief can and will tell an uninformed interrogator anything that seems remotely plausible. His veracity will only be assured where he feels or fears he will be caught in a lie. In this regard, some agencies have established a policy of polygraphing prisoners following debriefing, to ascertain the veracity of information given and to avoid allocating resources on the basis of erroneous or incomplete information.

Informed questioning of theft offenders can be based on information gathered from trusted informants, or from limited investigations undertaken by police officers. In such questioning, it will be important to confirm items such as the following about suspected fences: type of stolen property handled; kind of thief dealt with; volume of trade in stolen goods; and location of receiving activity (including any "drops" that may be used). Once a lead has been obtained, surveillance can validate much of this information. Observations of known theft offender arrivals and departures at a suspected fence location; logs of transport vehicles and other vehicular traffic at or near premises; the carrying of goods into a premises and exit without them; the volume of the traffic coming and going from the location; all serve to confirm in a preliminary fashion that specific suspects warrant further, more intensive investigation. It should be remembered, however, that surveillance is an extremely costly investigative technique that, if not skillfully accomplished, can jeopardize future operations. Where utilized, it should be undertaken in conjunction with and on the basis of information generated from the sources described above.

Both observable and statistical indicators are, of course, most useful in connection with an appraisal of the localized fencing situations described earlier. This is because in both of these types of situations, locally reported crime statistics can be expected to be reflected in the activities of the individuals observed and interrogated. Similarly, thieves and informants relating to localized fencing operations can be expected to have better knowledge of the fence's identity than is true in organized crime-type situations, for example.

The usefulness of statistical and observational indicators is somewhat less helpful where fencing operations linked to organized crime or to the professional theft ring are to be appraised. There are several reasons for this. First, statistics regarding the organized crime-based fencing situation may be quite misleading due to substantial under-reporting or poor reporting by those victimized. Second, in both the organized crime and professional theft ring situations, observable indicators are likely to occur in a locale some distance from the one in which the victimization statistics have been logged. Third, the complexity and secretiveness which mark both these types of situations is likely to limit knowledge of their activities to those directly involved. Finally, observation is made difficult by the fact that the activity level of the fencing operation in both these situations is likely to be more intermittent and less continual than is true in either of the first two types of fencing situations. In order, then, to appraise fencing operations related to organized crime or to professional theft groups, a third set of indicators, those relating to collateral crimes, are of more potential value.

C. COLLATERAL CRIMES AS INDICATORS OF FENCING

All fences commit collateral crimes in the furtherance of their stolen property dealings. The most common but potentially most difficult for non-tax authorities to prove are those of income and sales tax fraud and evasion. For the businessman-fence collateral crimes may also involve such things as civil wrongs relating to unauthorized extension of service guarantees and warranties, or business licensing regulations. Though such illegal activities may run parallel with a fencing operation, they are not necessarily indicative of it. Their principal law enforcement significance is that they may provide prosecutive alternatives, or expose fences to investigation by non-police agencies, e.g., tax or regulatory, which may be of value to anti-fencing squads. Such activities as the falsification of transportation documents and/or merchandise invoices, together with unusual inventory accounting procedures, are of direct significance to appraisal of the true nature of a fence's business, notwithstanding its legitimate cover.

The narcotics-related fencing operation obviously commits collateral crimes associated with the possession, transport and sale of controlled substances. In effect, criminal receiving of stolen property in this situation is often ignored in favor of drug-related investigations. This is in spite of the fact that it may be difficult to determine which is the collateral and which the primary activity. A probing of this type of fencing operation, then, requires the full investigation of its drug-related components.

Organized crime-related activity produces a range of criminal conduct collateral to fencing that can provide substantive indications of fencing activity. Common collateral crimes associated with the organized crime type fencing operation are loan sharking, illegal gambling activities, corrupt labor practices, bribery, and extortion. Additional acts may involve assault, forgery, and falsification of shipping and invoice documents. It is critical to consider these collateral crimes in appraising fencing operations because successful development of supplies for the fencing market will depend upon the commission of most or many such crimes. Thus, for example, investigators in Florida concerned with cargo theft and labor racketeering found these activities totally linked with mechanisms for fencing major thefts of cargo. Investigation of collateral crimes also helps to identify those individuals who are key to the fencing operation.

Fences who service the needs of professional theft rings tend to commit fairly subtle collateral crimes. These may involve violations of trust, extortion, and insurance fraud. Because of the sub rosa nature of most of the activities, they are really more signposts than true indicators of fencing. That is, their presence may signal the need for an investigation of fencing rather than serve as an absolute indicator of it. Similarly, theft investigations into crimes committed by the professional theft ring should consider such collateral crimes as worthwhile investigative targets which will spin-off evidence which can be used to make cases against fences.

Although fencing activities may almost compel certain other crimes such as tax evasion and fraud to be committed, these should be distinguished from those collateral criminal acts on which the fencing enterprise is directly dependent or which serve to facilitate its success. When these latter crimes, such as corrupt labor practices, are probed as such, a fencing operation which is neither easily observed nor statistically verifiable can be described and brought into focus for further investigation.

D. ASSESSMENT OF THE FENCING PROBLEM

Once a law enforcement agency has established the nature of the fencing problem it faces, it should address itself to the skills and resources of the targets of investigation. This is an important preliminary step to take in planning an anti-fencing program since it will determine the level of effort and resources necessary to combat the problem. In assessing a fencing problem, it is well to remember that unlike many theft activities, fencing is a highly lucrative criminal business. The fence is likely, then, to be an individual of some means. If he or she is also a respectable business figure, then financial means may be combined with significant social and political power. Such characteristics are not legitimate reasons for avoiding the fencing issue. Rather they suggest that resource and security concerns be given serious and early consideration in planning an enforcement program.

Indicators noted above as important for documenting a fencing problem can also be useful in assessing the scope and magnitude of fencing activity. Theft statistics, for example, may be very revealing in determining the resources of

the fence. Thus, a pattern of frequent large scale theft events suggests a capacity for much greater volume than does a pattern where such events are infrequent. Significant changes in either the nature or volume of what is stolen may suggest new and important changes in the stolen property marketplace. Observation of a "drop" for stolen goods suggests greater volume for that operation than where a fence personally meets the thief to take delivery.

One assessment that is often of considerable concern to law enforcement agencies is the degree to which syndicated organized criminal elements are present or influential in a local scene. While no real blueprint exists to precisely determine this, several rules of thumb can be helpful guides in such an assessment.

Interstate or long distance shipment of stolen goods is not a reliable indicator of syndicated organized crime involvement.

Often some confusion arises regarding the presence of organized criminal elements where long-distance transport of stolen property is shown. This is not a good measure. Quasi-legitimate relationships between "reputable" commercial firms can easily facilitate the movement of goods out of a local area with no assistance from a criminal superstructure. What is often significant, however, is not the movement of goods itself, but when movement takes place. Thus, interstate operation by a businessman-fence is likely to involve the shipment of locally received goods to another location for resale. The classic organized crime operation, on the other hand, involves the transport of goods to a separate location for both receiving and resale purposes. The critical difference is the distance between the location of the theft and the fence. In the case of the businessman-fence the distance is relatively short; in the classic organized crime-type fencing operation, the distance between the crime and the fence is likely to be greater and often of considerable distance.

The impact of an organized crime syndicate, where it exists, is not uniform for all types of fencing situations.

Even where substantial organized crime activity and influence is known to be concentrated in a local area, its impacts on fencing will vary. A fencing operation linked to localized theft operations will not be greatly affected by organized crime. Its scope and main characters are either not significant enough or too remote for that. Rather, such fencing activity will occur independently.

Fencing operations linked to narcotics trafficking are likely to be significantly affected by the presence of organized crime elements, in that pusher-fences will be far less numerous where organized crime activity is strong. This is because of the monopolistic tendencies of organized crime in the area of drug distribution and a concurrent lack of interest in the merchandise stolen by the addict. Pushers in this situation will tend to be pushers only and not collection agents for stolen property as well. If anything, then, the localized fencing operation can be strengthened by organized crime through the virtual elimination of the pusher-fence as a competitor.

The greatest organized crime impact on a local area will be that associated with fencing operations linked directly to an organized crime syndicate and with fencing operations linked to mobile, professional theft rings. That is because operations of the former type require substantial corruptive activity as well as the development of outlets for goods stolen; while those of the latter type may also necessitate the involvement of organized crime figures as tipsters and for facilitating the fix. Where, then, high volume new goods and/or high value thefts are involved, an organized crime syndicate presence can be extremely important. It may result in substantial public and private corruption and in significant victimization that might not otherwise have occurred.

It is highly unlikely that organized crime influence over local theft and fencing is present where there are not present other traditional types of syndicated organized crime activity.

It should be noted that the fence himself, because of his influence over the thief, can fashion a local theft operation that is highly structured and organized. In addition, he can by his financial means and "legitimate" status create a climate of manipulation and corruption not unlike that traditionally associated with organized crime syndicates. Because one discovers such structure, organization and corruption does not therefore justify an assessment that syndicated crime is present. Fencing is not itself a major activity of organized crime syndicates. It is quite likely, therefore, that where organized crime has no direct interest in local vice, gambling, narcotics or loan sharking activities, it also has no involvement in theft and fencing. The "organized crime" dimensions apparent in a local fencing scene are more likely to be those of the local fence rather than those associated with a larger criminal syndicate. Syndicate interest in fencing, where it does actually exist, tends to evolve from other activities and not from an interest in fencing itself.

IV. THE FENCE AS A LAW ENFORCEMENT TARGET - A SUMMARY

The complexity of the challenge presented by the fence to law enforcement comes first from the nature of his crimes. Covert and conspiratorial in character, these crimes do not leave a clear imprint except on the behavior of others. Thus, evidence of fencing is revealed most clearly in the decreased apprehension of the burglar and the diminished rate of recovery of the property he steals.

In another sense, the complexity of the fence's challenge comes from the variety of roles he plays in property theft. The more active the fence becomes in directing the thief's activities, the safer and more insulated from law enforcement detection they both become. Whether through property specialization, thefts-to-order or the set-up, the fence serves to generate criminal activity to which the traditionally reactive posture of law enforcement is ill-suited to respond successfully.

Add to this the varied settings from which the fence operates and out of which he acquires stolen goods, and the extent of the fence's influence is even more impressive. Whether he is merely encouraging the delinquency of a few juveniles or sustaining the occupation of a career thief; whether making viable the addict's thefts or those of the professional thief; whether merely lining his own pockets or helping to add extra revenues to the coffers of organized crime; the fence is silently and covertly making victims and potential victims of us all.

To understand the fence in these contexts and roles is to understand that the "simple" act of receiving stolen property is not very simple at all. Instead it represents one of the gravest challenges faced by law enforcement. It is a challenge that comes not only from the seriousness of the fence's conduct but also from the resourcefulness and ingenuity which that conduct requires of law enforcement in order to successfully meet it. Normal operating procedures just won't apply in the fence's case; he calls instead for both a new policy and a new commitment in theft enforcement. Neither is the fence's challenge one which law enforcement can reasonably afford to ignore. For while the fence is creating a positive benefit to the activities of the thief, he is taking a separate negative toll on the rest of us. Stealing not only property but a measure of confidence from the public and an equal measure of vitality from law enforcement itself.

The challenge of the fence is a difficult one, but it can be met. What it takes to meet it in terms of manpower, resources, policy, and ingenuity is the major concern of this manual. These are the subjects to which discussion now turns.

CHAPTER TWO

THE COMPONENTS OF ACTION: RESOURCES AND MANPOWER

1. DESIGNING AN ANTI-FENCE EFFORT

Once a law enforcement agency has adequately appraised the fencing problem it confronts and assessed its capabilities and scope, it is ready to plan in more detail the response it will make and the effort it will apply to the situation. Careful and intensive preliminary appraisal is absolutely critical to the design of an appropriate anti-fencing effort. Misreading of the nature of the problem faced can lead to ineffective strategies that hold little promise of achievement, and perhaps strengthen the position of local, established fences.

It is clear from the experience of law enforcement agencies around the country that while resource requirements for anti-fencing programs are substantial, they are not extraordinary when compared with those associated generally with pro-active enforcement efforts (such as narcotics enforcement, for example). Regardless of the particular strategies to be adopted or the specific tactics they will employ, anti-fencing efforts require resources of four kinds:

1. An anti-fencing effort must have adequate manpower to do its job. Experience from around the country has shown that such units need not be very large. They may, in fact, be more effective to the extent that they remain small and cohesive. "Small" in this case, means five or six officers in addition to a field commander.²⁴ The necessary roles and functions in a fencing detail make it nearly impossible for two or three officers to accomplish all tasks, and where too many are involved the efforts tend to get diffused and lose focus. While manpower needs may not be large, it is essential that they be dedicated as a strong commitment to anti-fencing and not be pulled away for conflicting or collateral duties.²⁵ If there is such a diversion, no amount of manpower can be expected to successfully work the fence.

2. Anti-fencing officers must have access to an investigative fund from which informants can be compensated. Access to such funds is a minimal requirement, but as a practical matter it is preferable for an anti-fence detail to have a fund that is separate from a larger departmental allocation and over which they have direct control. There are several reasons for

²⁴This size is common for the average sized police agency visited, an 800 person department. It can be adjusted downward for smaller departments, but large increases in the size of such a unit, even in larger departments, does not appear to be either useful or cost-effective.

²⁵A fuller discussion of specific manpower needs is found at pp. 34-37 below.

this: first, fencing investigations generally represent a new enforcement focus in an agency, but its needs may not compete well for a single source of funds when matched with more traditional efforts in the area of narcotics or vice. Thus, fencing investigations are sometimes treated like step-children when a common fund is to be allocated. Second, the ability of a fencing unit to assess and control its own investigative funds facilitates better planning of its enforcement effort. Its officers will know exactly how much is available and can better assess how and when to utilize it. Third, control over a separate fund allows better security and control over the informants utilized and the investigations conducted. This is particularly important where an informant fears reprisals from a powerful fence and desires that the fewest number of people know of his cooperation. Finally, a fencing detail's use of investigative funds is likely to be intermittent and will often occur at irregular times of the day or night. The detail is better able to operate, then, if it is not necessary to rely upon the working hours of others in order to receive funds.

An anti-fencing unit should, therefore, have an agreed-upon latitude in disbursement of its investigative funds. This is not to suggest that such latitude should be without some limits placed upon it by pre-determined administrative personnel who have audit and control responsibilities. While many deals can and will occur after normal working hours, they can almost always be anticipated or delayed if necessary. This means that at the same time that the fencing detail has its own funds and control over their use, it should not have procedures for disbursement of those funds that depart substantially from those normally required. Thus, rigorous audit and control considerations should guide the unit's disbursement practices. There are many benefits to pursuing a policy of latitude tempered by rigorous audit control review in the use of funds. Two of the most important are: first, rigorous disbursement procedures prevent investigators from buying large quantities of unidentifiable items; and similarly, such procedures will provide the unit commander with the opportunity to assess the effect of a large disbursement on his projected plans, other pending cases, etc.

The general rule should be this: anti-fencing units should have control over and latitude with respect to use of investigative funds --- with equivalent stress placed upon accountability for their use.

3. The third kind of resources needed by an anti-fencing unit is a pool of money and property to finance its business interaction with a fencing operation. While a fencing situation can be observed for preliminary purposes of confirming the activities being perpetrated, mere observation does not usually provide the quantum of evidence necessary to prove a charge of receiving stolen goods. Rather a fencing investigation must interact with the offender(s) involved. To do so, it must be able to deal with the fence on his terms. This means having either goods to sell or money to buy goods, or both.

"Buy money" should be thought of as a separate resource although it may be held and accounted for under the same procedure as that used for informant funds.²⁶

²⁶These procedures are further elaborated at pp. 55-57 when accountability and audit controls are discussed.

The same rigor noted above for review and control of informant funds should also accompany the disbursement of buy money. Such control will be likely to create delays in disbursement that would not otherwise exist, but these delays may work to the investigator's advantage. Thus, once a deal with a fencing suspect has been made, putting the transaction off until monies can be acquired can produce a "story" that enhances the investigator's credibility with the subject. Excuses such as "I want to check the market before I buy that much" or "I want to pay you in cash and will have to get back to you tomorrow after I get to the bank" are good examples of delaying tactics that may build rather than destroy credibility. They also allow time to identify the subjects or property that are part of the deal. Depending upon the length of an investigation and the speed with which an arrest is planned, buy money funds may need to be little more than a flash roll. In this case, a fencing detail may be able to make use of flash rolls held by other investigative units.

Access to property items is helpful, but often more complicated to achieve. Property recovered by a police agency that is unclaimed can be a valuable source for such items. Usually, however, special arrangements must be made in order to use such property. This is especially true where local ordinances, municipal codes or state statutes require a particular disposition for such property. In this case, temporary exceptions to these ordinances or codes should be arranged beforehand. Alternatively, fencing details may be able to obtain permission from victims whose property has been recovered to use it further. Similarly, private insurers or other businesses may be willing to donate property for investigative use. In these cases it is best to obtain formal releases for such items and to ensure that all parties understand the risks of loss involved and agree to them.²⁷

4. The fourth type of resources needed by an anti-fencing effort is surveillance and monitoring equipment, including surveillance vehicles. A fencing detail cannot easily make use of standard unmarked police vehicles. Instead, it requires vehicles not easily identified as of a law enforcement type. Some anti-fence efforts have found it practical to make leasing arrangements for vehicles that allow them to change them frequently. Others have found it useful to rebuild or disguise old fleet vehicles or to use impounded and unclaimed vehicles for this purpose. If special arrangements need to be made for acquisition of such vehicles, this should be taken care of beforehand. Depending upon the nature of the surveillance to be conducted, a detail may require a surveillance van that can serve as both a field command post and a surveillance point. These are somewhat more expensive than other vehicular purchases or expenditures.

Other surveillance needs will include field radios, body transmitters, 35 mm cameras and film, video taping equipment and film, and lenses that give appropriate clarity at various distances. The inclusion of many of these items will depend first upon their permissible use in a jurisdiction and then upon the degree to which the nature or length of the investigation

²⁷The public and the private sector as resources are discussed further at pp. below.

requires detailed documentation and corroboration. Thus, a long-term covert operation will need the greatest documentation where memory can not be expected to serve exclusively; short-term field operations resulting in immediate arrests, on the other hand, may require less documentation of the way in which events occurred. Who will testify may also influence the degree of external documentation used. If a police officer is to testify, fewer corroborative devices may be necessary than where an informant or co-conspirator is expected to testify.

What equipment is needed, then, very much depends on the nature of the tactics to be employed. The same is true of all the resources committed to an anti-fencing effort -- each must be justified by the nature of the effort planned and by budgetary constraints and limitations. The budgetary matter should be given separate consideration.

A. BUDGETARY JUSTIFICATIONS FOR ANTI-FENCING

As might be expected, most anti-fencing efforts have thus far been supported by external grant monies. Often there is considerable dissatisfaction on the part of law enforcement with the grant situation. In particular, grants often cause delays in start-up and implementation that are confusing and frustrating. In the case of anti-fencing efforts, these frustrations should be weighed against the very real advantages of prior planning which the grant situation requires. Because anti-fencing enforcement is a relatively new investigative area, such prior planning can be extremely valuable to the officers involved. It will mean that the effort and its tactics will be thought out in more detail than might otherwise be the case. And it will give some direction and guidelines to the unit once work is begun. The grant process, then, can insure that anti-fencing officers are equipped with adequate resources and tools to do their job. Lackluster attention to grant planning, on the other hand, can leave highly motivated officers with either inadequate or (what may be worse) inappropriate resources. The grant process, then, should be viewed as an opportunity to think through and provide guidance, direction and specificity to an enforcement effort in an area where few guidelines and specifications are available.

Generally, justification is needed at two levels of the grant process. First, justification for devoting attention to fencing is necessary. Annual departmental statistics showing losses from theft and subsequent recoveries can provide ample justification for the effort at this level. The second level involves justifying the amount of effort and expenditure devoted to the project. Here the ability to translate statistics into a definable enforcement target is critical. The capacity to ably describe the nature of fencing in a jurisdiction will greatly assist in defining strategies and the resources needed to implement them. Analysis of the problem, then, becomes the basic justification for effort and expenditure.

Experience from around the country shows a range of effort and funding levels. Description of the kinds of efforts utilized is reserved for the next chapter, but some idea of costs is appropriately discussed here. The

average annual cost of anti-fencing programs is \$160,000, ranging from a high of approximately \$275,000 to a low of \$56,000. Generally, the biggest variation is determined by whether or not the salaries of officers are fully contributed by an agency or are supported to some extent by a grant. Often overtime pay, if provided for at all, is applied for in a grant. The other major source of variation among program costs is the amount of equipment purchased. It is not uncommon to find that equipment acquisitions, including office furniture and surveillance equipment, runs as high as \$35,000 to \$50,000.

The level of buy money and informant funds does not generally vary greatly among programs. Average annual investigative funds were \$15,000, with a range of from \$27,000 to \$6,000. Where a separation in the allocations has occurred, buy money has usually taken a smaller chunk than has informant funding.

A fully equipped and well financed anti-fencing program, then, can cost annually as little as \$50,000 or as much as \$300,000. What a particular effort should cost will depend on the nature of the problem perceived and a reasoned appraisal of what it will take in resources and manpower to successfully confront that problem.

B. SELECTION OF OFFICERS FOR ANTI-FENCE EFFORT

Once an anti-fencing program has been developed and carefully thought through, the next critical decision involves the selection of officers to implement it. Where practical, it is advantageous to make this selection before the effort is fully planned in order that the interested officers can have a part in that process. Often this is not possible, but at minimum, the individual who is to serve as the unit commander should be involved in the design and planning process.

(1) The Field Commander

A fencing detail should have an active, field level commander. Generally officers at sergeant or lieutenant rank fill this role but the rank is not as important as is the active involvement of the commander in the investigations conducted. The unit is weakened to the extent that its leader performs merely desk or administrative functions. Where there is great concern for such desk duties they should be reserved for a higher direct supervisor, and the field responsibilities of the unit leader should be emphasized. There is good reason for this. The nature and speed of the field decisions that must be made in anti-fencing investigations make arm's length management totally inappropriate. In addition, the complexity of many fencing cases require that a unit commander be in close contact with his officers so that decisions only he can make can be made quickly. Often there is little time for lengthy briefings by an officer; he needs to rely instead on his commander's intimate knowledge of the investigation being conducted.

(2) The Property Officer

Another important function in an anti-fencing detail is that performed by a property officer. His is a key role, easy to underrate, but to do so is dangerous. Not all anti-fencing units make use of a separate property officer but it is an important role to consider including in a unit. Generally the property officer performs two vital functions: (1) on-going review of theft reports and compilation of files on recently stolen goods; and (2) maintenance of documentation on goods seized, recovered, and/or needed as court evidence. The volume of property recovered by anti-fence units is large and most anti-fencing units have found their departmental property rooms to be inadequate for their purposes both in terms of space and procedural standard of care. Where a property officer is utilized he or she takes major responsibility for the tagging and recording of all evidence, recoveries, and seizures. Usually a unit will request its own space for storage of property items. Where a property officer is not used, these duties fall on all officers involved. Because these duties can be time consuming, they can take considerable time away from investigation for house-keeping chores.

That is not, however, the only advantage of specially designating the property officer role. Often when a large seizure is involved, many citizens call to find out if their property is included. Similarly, each item of property seized must be traced to an owner for evidentiary purposes. In order to facilitate the viewing and identification by potential property owners, it is helpful to have one officer assigned the task. This will insure uniformity of procedures for identification and release to owners if that is possible. Where anti-fence investigators are working undercover, the property officer fills a particularly important function by protecting other officers from the risk of public exposure while an investigation is continuing.

Finally, specialization of property responsibilities in one officer facilitates the achievement of a high level of expertise that other officers, concerned only part of the time with property, could never gain. Investigative advantage can thereby be accomplished. A property officer, for example, can advise other officers on which property items to seize in a search because he will know how likely it is that various items can be identified and traced to owners. Similarly, he will be well acquainted with recent thefts and may recognize relevant property on a premises that others might ignore. In addition, he can make important contacts with manufacturers and distributors that may help in identifying property. All of these investigative support tasks make the property function of major and continuing importance to an anti-fence detail, and make the inclusion of a property officer essential in an anti-fence detail. The role can be played in a more limited way by all other officers on the detail but not with as much efficiency or with as much expertise. In addition, the time savings to investigators provided by the property officer may make the position important enough to justify trading off an investigator position for a property officer.

(3) Secretarial/Clerical Role

Another role, important to an effort but often overlooked, is a secretarial and/or clerical function. Anti-fencing units involved in long-term, continuing investigations have particularly emphasized the critical

nature of this function. The gathering of recorded evidentiary material that must be transcribed, the maintenance and upkeep of extensive files, and the preparation of briefing and debriefing materials, warrants, and case reports are common needs in anti-fencing enforcement efforts that are greatly facilitated by dependable access to secretarial resources. Often the sharing of such resources is impossible for security reasons or impractical because of work load requirements. Separate secretarial resources, then, should be considered a fully justified expenditure in anti-fencing enforcement. They have a very distinct and important functional role.

(4) Investigators

The rest of an anti-fencing detail will consist of investigators --- its critical mass. The selection of these officers is the single most important decision in assuring unit success. Because few officers will have had experience in fencing investigations, most units have looked instead for the following kinds of background and experience: demonstrated ability to do undercover work; demonstrated ability to develop and control informants; and a stable home and family life that can sustain commitment to long hours to the job. In addition, many anti-fence efforts have sought to represent a range of background experience, particularly in theft, in the unit. Thus, officers with narcotics, auto theft, burglary, or robbery experience may be chosen so that full coverage of the theft area and its participants can be obtained. By pulling officers from many background areas it can also be anticipated that a valuable pool of informants can be generated. Other units have made personnel decisions that involve "choosing the man" and not rank or background. Additional qualities generally looked for are the capacity to think on one's feet, an understanding of the importance of the fence, and an enthusiastic commitment to the tasks outlined.

(5) Selection Procedures

Selection procedures that have been used to choose anti-fencing officers are almost always some departure from a straight-bid system. Some units have chosen members from a self-selected pool of officers who have requested the assignment. In this case background experience is weighed along with performance in an interview situation to determine selection. Usually the interview board consists of the unit commander and other command staff personnel.

Where the nature of the assignment will require extensive and specialized undercover work, units have often been more restrictive in selection procedures. In this situation, units have chosen a pool of eligible officers from personnel records by eliminating all those whose experience is not comparable to that being sought. The eligible pool is then contacted and those who are most interested are interviewed. Final selection is made on the basis of the interview and of background investigations conducted.

Where there are strong multi-ethnic communities in a jurisdiction, final selection between officers with similar background and experience may be

based on a special skill such as command of a second language or on a special characteristic, such as sex, race or ethnic extraction.²⁸

(6) Orientation and Training

Because anti-fencing is a relatively new enforcement field, with few training materials available, most units received training and orientation of a more general nature. Training in the use of surveillance and monitoring equipment is considered essential since these tools are to provide important corroborative evidence. Sources of such training have included special schools, federal agencies (including the Secret Service), and manufacturers' representatives. Units visited around the country reported that while a minimal level of technical mastery was essential, it is equally important for officers to understand the appropriate use of equipment in the field setting. Thus where the latter was not provided for in initial training, unit members were further taught through performance on surveillance mock-ups and dry run situations that were later critiqued.

The second major orientation need for anti-fencing unit personnel relates to legal and evidentiary requirements. Officers are provided information on the essential elements of proof required to sustain a fencing charge, procedures to be used for filing cases, and for obtaining warrants. Ideally this should be done by a representative from the prosecutor's office, but where this is not possible it can be done on an ad hoc basis by the unit leader who has received general information on each issue from the prosecutor. Another method is for the unit to take responsibility for its own legal expertise, developing its own information on the current law and its interpretation, as well as its own protocol for official interface with other agencies in the criminal justice system.

Finally, all members of the unit must be thoroughly briefed on their individual responsibilities for the maintenance of unit records. An anti-fencing detail must be meticulous in the care of its records and in the integrity of the procedures it follows. It cannot afford to "lose" property through slipshod record-keeping or to have any slippage in the investigative fund it controls. All procedures relating to the use of investigative funds, buy money, property used as bait, property recovered, property seized, property used as evidence and property released to owners must be developed before operations begin and must be adhered to strictly. All expenditures should be regularly checked and audited by the unit commander who should retain ultimate responsibility for the proper maintenance of records. In addition, each officer's individual responsibility for logging entries in files and for documenting the use of monies must be very clear. While many of the unit's investigative techniques in the field may be developed by the seat of their pants, their official files relating to money, informants, and property cannot be. The paperwork of an anti-fencing unit is as important as its field work -- a point which should be clearly stressed in orientation and re-emphasized as the unit proceeds to work.

²⁸Because selection almost always departs from seniority-based bid procedures, the capacity to so select anti-fencing officers should be clearly spelled out and not allowed to raise labor problems later.

II. PLACEMENT OF THE UNIT IN THE AGENCY

An important consideration in the formation of an anti-fencing unit is where it is to be placed in an agency. Placement of the unit will affect not only its own orientation as to agency expectations but also the way in which it is perceived by others in the agency. Both will have a tremendous impact upon the unit's capability to do a good job.

In order to determine the appropriate placement of an anti-fencing effort, four key questions must be answered: (1) What relationship should the unit have with command staff? (2) What relationship should it have with other theft units? (3) What relationship should the unit have with regard to a larger intelligence function? and (4) What degree of secrecy should surround the unit?

A. THE COMMAND RELATIONSHIP

Anti-fencing units have generally been run in one of two ways with reference to their relationship with the agency's command staff. The first way consists of the traditional line/staff relationship with the unit leader reporting to the agency head through several levels of supervising commanders. The second way is the creation of a special relationship between the anti-fencing effort and the agency in which the unit commander reports directly to the chief or assistant chief with other command staff involved on a need to know basis. Neither way is necessarily appropriate, given larger agency goals and interests. Anti-fencing is not a traditional enforcement effort and there is some justification, therefore, for its not being treated traditionally in the internal structure of the agency. On the other hand, anti-fencing cannot be considered so unusual an enforcement effort that significant departures from the normal police hierarchical command structure are justified.

The level and nature of supervision for an anti-fence unit will determine the command relationship chosen and to some extent, the location of the effort. Thus, for example, to the extent that the anti-fencing effort is viewed as a special operation, undercover in nature and/or requiring intermittent activity briefings to departmental command staff, a special, streamlined type of command relationship is justified. This will give the unit a status not unlike that of an intelligence unit except that its activities and briefings will be limited to anti-fencing enforcement efforts. Often this will require a physical location for the unit which will be separate and apart from other agency facilities. Such physical separation will by itself convey a special status to the unit that will in turn justify a streamlined relationship with command staff.

Great care should be given in establishing such command and locational arrangements, since they will affect how the unit is viewed internally not only by command staff but by other units as well. Many special squads could undoubtedly argue for similar treatment and may be frustrated and resentful when a "new" and "untried" effort is allowed special treatment.

Unless the agency is certain that the pattern it uses is justified, the special status may seem arbitrary and favoring some individuals or one unit over others. A special command relationship is best justified where the anti-fencing effort is largely covert in nature and intelligence-like briefings are intended to be the basis for supervision. This style of supervision is a demanding one. If top agency personnel are not truly committed to it, a streamlined command relationship should not be used.

The subtleties of locational placement of the anti-fencing unit should not be overlooked. Often an agency has no intention of conferring a special status on a fencing detail with regard to command staff but still locates the unit in facilities separate from the agency. The reasons for this are simple enough -- a new squad presents major space problems and a fencing unit will need a place to store property recovered. However, locational distance does convey an impression of special treatment to others in the agency; this may be dysfunctional. Where a separate location is, therefore, merely a spatial convenience and not an operational component of the effort this should be made clear. Similarly it should be recognized that a special location may infer special treatment in other areas -- an impression that should be corrected if untrue. In this regard, some thought should be given to the fact that overcrowding in an existing facility to accommodate an anti-fencing effort may be less dysfunctional as far as internal resentment is concerned than the acquisition of additional, off-site space for the fencing unit.

A delicate command balance must be struck between the goals envisioned for the anti-fencing effort and the integrity of internal command/staff relationships generally. The command relationship decision is not an easy one and should not be lightly taken.

B. RELATIONSHIP WITH OTHER THEFT UNITS

Often the command relationship decision can be simplified when a determination is made regarding the desired relationship of the effort with other (particularly theft) units in the department. This in itself is not as straight-forward a determination as it may seem. Anti-fencing is, of course, a component of burglary-theft enforcement, but it does not necessarily follow that an anti-fencing unit will work closely or easily with other theft units. To begin with, an anti-fencing detail will adopt a working style very different from other theft units. It will not and should not have an assigned caseload but will generate its own enforcement targets. Its methods and procedures will be largely dictated by those targets rather than by prescribed departmental guidelines. It will, or should, have access to resources not possessed by other theft units. And, it may be located some distance away from the agency or at a site unknown to others in the department.

In the latter case, it is clear that little or no relationship with other departmental units is feasible or likely, and the pluses and minuses of this isolation should be weighed in advance. In the other situations, management decisions relating to placement can serve to either foster or minimize inter-relationships between the anti-fencing unit and others. Placement in this context, has three components: a location component; a personnel component; and a paperwork/procedural component.

The location decision as it relates to internal relationships has two dimensions. The first of these is the question of physical location of the unit, discussed above to some extent. Its importance cannot be stressed too much, however. If some degree of working relationship between the anti-fencing effort and other theft units is desired, then they must have spatial access to each other. Where actual contact between personnel in various theft units is difficult because of spatial distance, working relationships will be minimized. This is not to say that locating the anti-fencing unit in an office adjacent to other theft details insures a working relationship, but rather that it will be an encouraging factor where other placement and policy decisions are positive.

The structural placement of an anti-fencing effort in the organization of the department, for example, will have a significant impact on the development or internal interrelationships. Thus, where an anti-fence unit is expected to interact with other theft units, it is advantageous that the unit be placed organizationally in the general division of the agency housing those other units. Where an agency has a crimes against persons and a crimes against property section, then, the anti-fence unit should be placed in the property crime division. This may seem rather obvious, but this has not always been the experience of anti-fencing efforts around the country. Some have found themselves placed rather inappropriately in a departmental division separate from other theft units. Usually this occurs where "special operational squads" are placed under a separate command from more routine investigative details. This probably represents a greater dilemma for a fencing detail than for other special squads since it makes unclear its relationship with broader departmental concerns in the property theft area. It also calls into question the legitimacy of anti-fencing as something more than a trivial innovation designed to acquire internal funds. Few circumstances therefore justify a structural placement of an anti-fencing effort in a division separate from other theft enforcement units,²⁹ if it is to have any reference to a broader theft enforcement commitment.

Even where an anti-fencing unit is in the crimes against property section (or analogous division) and on the same floor as other theft units, differences in work routines can make interrelationships difficult. A theft detective, for example, with 50-60 burglaries in his caseload may find it quite difficult to relate to investigators with no assigned cases. Some agencies have attempted to minimize these difficulties by drawing anti-fencing effort personnel from existing theft details. The rationale here is that the anti-fencing unit can draw upon prior personal relationships with other investigators to insure some coordination of effort. Drawing of personnel from existing units can, however, be a double-edged sword. This is especially true if they are not replaced by other personnel. In this case, burglary/theft details are beggared to form the anti-fencing unit, leaving the remaining detectives with even larger caseloads. The resulting resentment may thereby defeat any possibility of developing good working relationships. Even where

²⁹The only departure truly justified is that which finds the anti-fencing effort in the intelligence section --- discussed further below.

burglary theft units do not experience a manpower reduction to support an anti-fencing effort, they may feel that the investigative resources allocated to the new effort could be better used to alleviate their caseload problems.

Acceptance of an anti-fencing detail, then, takes some important "selling" internally. The paperwork component of the placement decision is perhaps the most effective tool in this selling process where other theft units are concerned. An anti-fencing effort has the best chance of acceptance by other theft enforcement units to the extent that its activities are seen as directly relevant to the crime problem faced by the traditional theft detective. Paperwork/reporting procedures can assist in strengthening the common interests of all theft enforcement units (including the anti-fencing detail). Thus, procedures which encourage and reward the sharing of fencing and burglary information between theft units and the anti-fencing detail form an important basis for working relationships. Similarly, a consciously and carefully developed procedure for anti-fencing responses to referrals by other theft units is a valuable tool for building mutual respect and trust. Thus, an anti-fencing detail that is designed to operate as a traditional investigative detail, with a line/staff relationship similar to other investigative units, should develop ahead of time a procedure for responding to investigative leads and requests from others in the agency. A pre-defined procedure is critical so as not to fall prey to two common dilemmas.

First, an anti-fencing unit should not become so totally responsive in nature that it fails to initiate proactive enforcement efforts in the property theft arena. It should not, therefore, get itself in the position of servicing the needs of others at the expense of its own mission. To do so is to be held captive by the case-loads of others and to defeat the very objectives which justified the non-case assignment in the first place. Under no situation should the activity of an anti-fencing effort be totally dictated by the referrals of others. Should this occur, the operations of the unit should be questioned and reviewed to determine whether it still is viable as an independent unit. On the other hand, an anti-fencing unit operating wholly within a traditional agency structure should not be allowed to totally ignore the appropriate enforcement referrals of others. The key is careful definition of those referrals appropriate for response, and the development of a procedure to service them. This should be done prior to implementation of the effort and the criteria to be followed should be clearly enunciated to all concerned.

One final paperwork dimension that serves to "place" the anti-fencing detail in its relationship to other theft units should be considered. This dimension relates to the scope and nature of reporting requirements of the anti-fencing unit. Anti-fencing unit responsibilities in reporting should be analogous in nature but distinct in scope from other theft enforcement units. The scope of reporting is particularly important. If the enforcement lines between the anti-fencing detail and other theft units are not made clear, a competitive situation may develop that can become quite dysfunctional. Thus, anti-fencing efforts should not be seen to "work" burglars in competition with other burglary details; and similarly, fences should be worked through the unit and not independently.

The problem can be partially solved by requiring similar reporting responsibilities for all units but using a longer time frame for the anti-fencing effort. For example, if theft squads are required to produce activity summaries on a weekly basis, the anti-fencing unit might report on a monthly basis. Anti-fence units that report too frequently tend to degenerate into "super" burglary details and lose sight of their larger mission. This is because it is unlikely that an anti-fence effort will have much to report in a short time frame. Proactive investigations take time to develop and are more appropriately supervised through less frequent briefings. The usual response to inappropriate reporting requirements is to work easier targets (often thieves) and hence end up competing -- somewhat unfairly -- with other theft units. Nothing can defeat a potential working relationship with traditional theft units faster than to be seen to compete with them for the same enforcement targets. Paperwork decisions prior to implementation can avoid these problems and insure a more constructive working relationship.

In locating the anti-fencing effort in the agency, then, its relationship with other theft units should be considered and well-defined ahead of time. The decisions that will foster a working relationship between traditional theft enforcement details and the anti-fencing effort are as follows:

- Location of the anti-fencing unit in spatial proximity to other theft units.
- Location of the anti-fencing unit in the same organizational division as other theft units.
- Selection of anti-fencing personnel on the basis of commonality of interests with traditional theft investigators.
- Clear definition and distinction between enforcement missions for anti-fencing unit and other theft details.
- Adoption of response procedures for anti-fencing unit to referrals from other theft units.
- Implementation of distinctive reporting requirements for anti-fencing unit compared with other theft details.

Each of these decisions, it should be made clear, will tend to strengthen the institutional viability of the anti-fencing unit within the agency. Each in turn assumes there is some advantage to be gained from a coordination of the anti-fencing effort with other theft enforcement operations. From a long-term perspective this is undoubtedly an accurate view, but for the short-term institutional viability may be gained at some expense to operational effectiveness. Thus, some of the most effective anti-fencing efforts around the country are divorced either partially or totally from other theft units in the agency or from the entire agency itself. Such efforts have allowed total, undiverted attention to be devoted to fence targets with high impact results. At the same time, little internal commitment to these efforts below

top command staff is apparent. The precise trade-offs between institutional integration and operational effectiveness of anti-fencing efforts are not clear. The enforcement experience in this area is still too limited to judge. What is clear is that the trade-offs are real and remain one of the most serious unresolved issues in anti-fencing enforcement. They also represent one of the most important administrative choices to be made in the location and organizational placement of the anti-fence effort.

C. RELATIONSHIP WITH THE INTELLIGENCE FUNCTION

Some jurisdictions have sought to strike a balance between the integration of an anti-fencing effort with other theft enforcement activities and its independence from them, by placing such an effort in an intelligence role or directly in the intelligence section of the agency. Such a placement can allow for an unusual and highly flexible relationship to develop between the unit and other departmental components. Thus, placement of anti-fencing efforts in the intelligence section of an agency has justified total independence for covert field operations as well as more integrated efforts relating directly to traditional burglary/theft details. Linking anti-fencing enforcement to the intelligence function clearly provides the greatest range of organizational options. It is not, however, a cure-all for the design of a successful effort. Rather, placing an anti-fencing effort in an intelligence environment creates its own serious dilemmas.

To begin with, the totally independent, covert effort is probably best justified as an intelligence operation and will thus create the least amount of internal resentment. It will still, however, leave the unit with a problem of institutional viability as discussed above. Anti-fencing efforts of an intelligence nature that are more integrated in the department, however, must depend for their success on three internal agency characteristics. First, they will depend upon the manner in which the intelligence section generally is viewed within the agency. This is critical, for if the intelligence section is seen primarily as a dossier-gathering bureau with little relevance to day-to-day enforcement, an anti-fencing effort will have grave difficulty in establishing internal credibility. Even more difficult, however, will be the unit's task of fitting with other parts of the intelligence section, since it will perform a more active intelligence role than is usually the case in intelligence units. This may cause significant administrative problems that impact not only on anti-fencing enforcement but also on the intelligence section as a whole. Where the intelligence section has operated only in a dossier-gathering role, a major reshuffle is likely to be in order since the agency will not be getting much value from it. Such a reshuffle should occur before an anti-fencing effort is established, however, and not as a result of it. To do so is to sacrifice the anti-fencing effort to major organizational changes that should have been undertaken independently. It should be noted, however, that placement of an anti-fencing unit within the intelligence section assumes a strong, well-regarded, highly functional intelligence operation. If this is not already the case, internal dilemmas of large proportions can be anticipated.

The second problem of linking anti-fencing with the intelligence function relates to the extent to which the intelligence section has additional responsibilities for internal investigations and inspections procedures. Such combinations of responsibility under the umbrella of "intelligence" are not unknown and can prove quite dysfunctional to an anti-fencing effort. In this situation, bonafide attempts to assist and coordinate enforcement efforts can be extremely intimidating and can be interpreted as negative value judgements made by the agency. Efforts by the anti-fencing unit can also be viewed as highly competitive vis à vis traditional theft units. Locating an anti-fencing effort in an intelligence section that has internal investigative or inspectional responsibilities, then, should be done in a way which ensures a separate existence for the effort, unrelated to other internal, administrative functions.

Finally, placement of the anti-fencing effort in the intelligence section should depend upon the willingness of unit personnel to perform interdependent roles in investigations. For example, a highly effective model of an intelligence-related anti-fencing effort consists of the development of investigative leads and evidence in the unit to the point where a warrant can be secured. The case is then turned over to a theft, tactical, or patrol unit for completion and follow through. While this is a highly rational model, it is not often the most practical. This is because it is frequently unsatisfying to all concerned. The intelligence officer, for example, may prefer to personally complete the cases he has developed; and the theft detective or patrolman may not find satisfying the closing of someone else's investigation, or the sense of being used as a process-server for others.

These dilemmas can be more easily resolved than others associated with linking anti-fencing to intelligence,³⁰ but not without conscious effort. Innovative personnel evaluation procedures, for example, that motivate divisions-of-labor on investigations can enhance collaborative investigative efforts. Similarly, drawing on operating units earlier in the investigative process can enhance the satisfaction and participation of all those involved. This assumes a capacity to pull officers throughout the department from assigned duties for temporary stints in the intelligence section. Such a capacity can make for a dynamic and vital anti-fencing effort if well-planned procedurally and organizationally. If not, it can make for extreme disorganization and very disagreeable internal departmental problems.

Still the range of options available for implementing an anti-fencing effort are greatest when it is placed within the intelligence function. Such placement allows for the greatest innovation and flexibility because it does not dictate any rigid organizational or administrative requirements. At the

³⁰A completely external issue associated with placement of an anti-fencing effort in the intelligence section relates to the manner in which "intelligence" is viewed in the community. In some parts of the country "intelligence" activities by police have generated considerable negative feelings among citizens who view them as repressive and unconstitutional enforcement practices. Where the intelligence function has fallen into such disrepute in a jurisdiction (whether correctly or not), it will not be advisable to associate the anti-fencing effort with the intelligence function. Such a placement will impose an undue burden on the unit and is likely to hamper successful operations.

same time it offers that proactivity potential of the intelligence function which is so critical to anti-fencing enforcement. The advantages, then, may far outweigh the disadvantages; and the dilemmas are noted primarily so that they can be anticipated and hopefully avoided.

Several rules of thumb should guide an agency's decision to locate an anti-fencing effort in the intelligence section or to place it under the intelligence rubric:

1. where the intelligence section has internal credibility problems relating to past activities or to its current mode of operation, the anti-fencing effort is best located elsewhere.
2. where the intelligence section has additional responsibilities for either internal investigations or staff inspections, the role of the anti-fencing effort should be clearly distinguished from these other functions before being located there.
3. where the anti-fencing effort is expected to perform primarily an intelligence role, appropriate steps should be taken to encourage collaboration and the sharing of responsibilities in the investigation process. (This may require new procedures for personnel evaluations.)

D. SECURITY VERSUS SECRECY

The final decision having a locational impact on an anti-fencing detail is that relating to security considerations. The considerations here, of course, are intimately linked to other locational decisions. Thus the desire for a given level of security regarding an anti-fencing effort's activities may dictate the kind of command relationship to be established. Similarly, it may determine the need for off-site location of the unit, or for its organizational placement within the intelligence structure of the agency.

Undercover, covert anti-fencing efforts have a higher degree of necessary security than do more traditional investigative efforts, but all anti-fencing units need to meet some minimal security requirements. Such minimal requirements are necessary to insure the security of three components of the anti-fencing effort: informants, investigative funds, and evidence.

Since anti-fencing units rely heavily on informants, files relating to these individuals including their identities and monies paid them, must be kept secure. Access to these files should be restricted to unit members and designated command staff. Informant anonymity within the squad can be preserved by the use of code names, but in every case a master file with true names should exist with access limited to a designated member of the command staff and the unit commander. This latter file should be given tight security since its major purpose is authentication and verification of an informant's

existence. It serves no investigative function, but rather that of a back-up function in the event a significant challenge is raised or if an officer fails to report following a meeting with a particular individual and is believed to be in trouble. A secured file cabinet (keys held only by the unit commander and another designated command staff member) within a secure office (keys held only by unit members) is an adequate procedure in most situations.

Adequate security procedures should also be provided for investigative funds. Large sums should not be kept in the unit office for any length of time, but monies should be drawn in small amounts as needed from either a secured internal safe or from a bank account.³¹ Access to any secured source of funds must be severely restricted to designated individuals, preferably the unit commander and one other command staff member with audit responsibilities.

Evidence must similarly be the subject of careful security planning. Large amounts of seized or recovered goods should be placed in a storage area to which only unit members have access, at least until the time the goods are tagged and given a case number. Where separate storage facilities for anti-fencing unit evidence cannot be provided within the department, provision should be made for rental of temporary storage facilities on an as-needed basis while property is being identified.³² Once identified, property may then be secured in a general property holding facility if other arrangements cannot be made.³³ Because of the large amounts of property typically recovered by anti-fencing units, and since special release and identification procedures for victim owners may be instituted, it is preferable for the unit to have its own property storage area either as a separate portion of a larger property room or in a totally separate facility. Evidentiary property is the key to any successful fencing case and it should be given a security priority equal to the other major components --- informants and investigative funds.

Beyond these minimal security requirements, care must be taken to assure the security of the activities and individuals involved in the anti-fencing effort itself. The highest level of security, that of total secrecy, should be given to the long-term, covert operation in which location of the field headquarters and exact squad membership and functioning are known only

³¹More discussion on such procedures is found at pp. 55-57, below, as part of this manual's discussion of audit and accounting requirements.

³²Where a grant is sought to support an anti-fencing effort, budget provision can be made for this item. In addition, a number of state codes provide for storage fees to be charged by police in some situations; where this is permissible, some expenses may be defrayed in this manner. Consideration should, of course, be given to possible negative publicity that may attach to such charges, even where they are allowable and justified.

³³Where a unit is working undercover over a long period, use of departmental facilities is not feasible and other arrangements must be made. To do otherwise constitutes a serious security breach.

to designated command personnel. Such secrecy is always met with some resentment and concern for internal lack of trust, but there is no alternative. Undercover officers in long term assignments must be given the highest degree of security possible.

In other situations, a delicate balance between reasonable security and secrecy should be struck. Secrecy for its own sake is inappropriate and should be avoided since it contributes to elitism. Information other than that potentially dangerous to the health and well-being of an officer can be appropriately secured by being released on a need-to-know/limited access basis, with some of it being easily available and other kinds of information provided only to designated individuals in the department.

The closer anti-fencing efforts approach conformity to traditional specialized squad operations within its agency, the less it will be able to maintain a degree of security (beyond minimal requirements) that is significantly different from other analogous units. The further removed -- both locationally and operationally -- from traditional agency functioning, the more feasible special security measures become.

E. PLACEMENT OF THE ANTI-FENCING EFFORT: A SUMMARY

What may have seemed like a simple decision -- where to locate the anti-fencing effort -- is in fact one of the most difficult and problem-filled considerations to be made in this enforcement area. It should not be made lightly and without concern for the four questions discussed above. Unfortunately there is no textbook answer that will work for every agency every time. There are, however, two first-level decisions which once made can serve to simplify the process.

Decision I - Will the anti-fencing effort be covert and undercover in nature?

If the answer to this question is YES, the following affirmative decisions relating to placement are likely to be justified.

1. A streamlined command staff relationship is called for.
2. Little or no relationship should be expected with other departmental units.
3. Structural location of the unit should be as a special intelligence operation.
4. The effort should be accorded total secrecy in its activities.

If the answer to Decision I is NO, proceed to Decision II.

Decision II - To what degree is long-term institutional viability of anti-fencing enforcement more important than short-term operational impact?

Two general decision trees can be envisioned depending on the answer given in Decision II.

Where long-term viability emphasized

1. Traditional command/staff relationship most appropriate
2. High level of integration with other theft units is desirable including organizational and spatial proximity.
3. Unit should be designed to have full operational capability for the short-run but should be phased to result in an intelligence servicing function for burglary/theft details.
4. Special steps will be undertaken to encourage collaborative investigations by and with the anti-fencing unit.
5. Level of security beyond minimal requirements relating to informants, investigative funds and evidence, will be same as that followed by other special details.

Where short-term impact emphasized

1. Some departure from traditional command/staff relationships consistent with unit structure, is appropriate.
2. Procedures for responding to other theft unit concerns should be established but a close working relationship is not a priority.
3. Stress in unit should be given to complete investigative capability with lesser emphasis on providing intelligence to others.
4. Steps necessary to motivate collaborative investigations will be the responsibility of the unit as they deem appropriate.
5. Level of security beyond minimal requirements relating to informants, investigative funds, and evidence will be similar to other special units of a pro-active nature such as narcotics units. Thus, raids and seizures may be accorded special security procedures.

These are broad decision guides that generally follow from the questions raised in Decision I and Decision II. They are based on the experiences of others and of the thinking which went into those experiences. They are not blueprints for specific action but rather larger scenarios designed to serve as guides to informed decision-making.

It should be remembered that locational decisions cannot be made in total isolation from resource and manpower considerations. The best of plans relating to organizational placement, for example, can fail miserably because of a poor personnel decision. Similarly, the work of first rate personnel can be severely restricted by poor organizational placement, inadequate security, or insufficient resources.

III. INTERNAL MANAGEMENT OF THE ANTI-FENCING EFFORT

Closely related to placement decisions are decisions concerning the internal management of the anti-fencing effort. The difference is that placement decisions are made in the planning phase to guide the design and implementation of the effort, whereas internal management decisions are determinations made in the planning phase to guide the on-going functioning of the unit. Internal management decisions will affect the day-to-day operation of the anti-fencing effort.

Internal management policies must be established in three areas: A) setting of goals and priorities; B) resource and manpower utilization; and C) audit and accountability controls.

A. SETTING OF GOALS AND PRIORITIES

Before all else a clear management policy regarding the goals and priorities of the anti-fencing effort must be established. It is particularly important that these goals be distinguished from the goals of other theft enforcement units. The general goals of an anti-fencing effort should be to detect, investigate, and criminally convict fences of stolen goods; to recover from them the property belonging to others; and to reduce the incidence of property theft by such interdiction of the fence. Thus, the fence is to take first priority over the thief as an enforcement target. This priority arrangement provides the major distinction between the anti-fencing unit and other theft units, since traditional theft enforcement places greater emphasis on the thief. If there should be one cardinal rule to guide an anti-fencing effort, it would be: fences before thieves.

Anti-fencing units may in the course of their activities arrest thieves, but a unit that concentrates solely on thieves is not doing its job and should be called to account for its activities. Similarly, an anti-fencing effort should not be diverted from its primary goal by other department needs or crises. Many anti-fencing units have experienced the situation in which top command staff members have made special requests of the unit to investigate other criminal activities. Thus, some units have been diverted intermittently to investigate armed robbery suspects, to track down fugitives, or to make arrests in bombing cases. Because an anti-fencing unit will typically be comprised of a small group of skilled investigators without assigned cases, it is tempting to temporarily "borrow" them for current problems. This is a policy to be avoided. It shows not only a lack of appreciation for the intrinsic importance of the major task assigned the unit, but also a lack of agency commitment to the anti-fencing goal and a lack of understanding of how such an effort must be implemented. Internal policy formation relating to goals and priorities for the unit should make specific the agency commitment to anti-fencing enforcement and serve to insulate the unit from requests for temporary assistance in other areas.

In meeting the goal of combatting the fence, the unit may adopt any one of several priority strategies. Some agencies have predefined the particular targets on which the anti-fencing effort is expected to focus. Most have allowed

unit personnel to determine their own priority areas. In any case, the strategic targets of the anti-fencing effort should be clearly specified in advance. This does not have to be an irrevocable decision, but the general strategy parameters under which the unit is operating should be clear at any point during the unit's operation.

Agencies around the country have used a variety of methods to determine priority enforcement targets for anti-fencing efforts. Five are presented here.

1. Targeting fences identified by burglary/theft units. This method of prioritizing fences has been used by at least one agency and has some attractive features. It consists of a polling of all burglary/theft detectives asking them each to list the 25 fences that from their perspective have the biggest impact on the local theft scene. The lists are then collected and the individuals most frequently and most prominently mentioned are selected as the prime target group of the anti-fence enforcement unit.

This method has several advantages. First, it is likely to generate a target group directly relevant to the current theft problem and against whom actions taken can be expected to show demonstrable effects on theft statistics. This is because the burglary detective will be motivated to list those fences who are currently most active and having greatest impact on his caseload. From an effectiveness standpoint, then, they are likely to be a high impact target group. In addition, because these fence targets are of the sort whose apprehension and conviction will be directly in the public interest, this will represent one important motivating factor for the unit. Second, this method is uniquely advantageous for an anti-fencing unit that is expected to work closely with other theft units. It provides a basis for interaction, demonstrating common enforcement interests and showing a willingness to relate to the problems faced by the traditional theft detective. The agency interested in building long term viability for the anti-fencing effort is well-advised to consider this method. Finally, the method serves not only as a prioritizing mechanism but also as an educative tool for the department. It serves to alert the agency to the anti-fencing effort and to relate it directly to an important enforcement problem --- property theft. In this way, the view that an anti-fencing unit is an elite grant program unrelated to "real" problems is avoided.

This method does not come without some significant disadvantages, however. To begin with, it can serve to lock in the anti-fencing unit to the targets and priorities of others. This can lead to a mode of operating that is completely dictated by others. In this way, the benefits of a proactive enforcement perspective in the property theft area may not be realized. If this method is to be used, then, it should be made clear that the concerns of others will be used as priority guides but that the anti-fencing effort reserves the right to set its own specific targets and to determine other priority arrangements developed through its own activities. The second disadvantage of this method is that it may create unrealistic expectations on the part of others. Thus, any good will established by the anti-fencing unit can rapidly vanish when the

expectations of others are not rapidly or precisely met. Similarly, if a fence other than one of those in the target group is acted on, others may come to view the original process as having been a sham merely to acquire information. Third, while burglary/theft investigators can be expected to provide a specific set of target suspects for enforcement purposes, the group listed may be so wide ranging and amorphous in nature that little focus can be given to the effort. Thus, it may be difficult using the lists provided, to develop standard operating procedures under which to work. Similarly, burglary/theft detectives may not be able to precisely describe the nature of the target group's activities, making it difficult to determine the results of enforcement action.³⁴ Finally, this method is generally limited in its applicability to non-covert, anti-fencing efforts developed for local jurisdictions. The larger the geographic area to be covered, the more difficult the method is to apply. Also, those electing to launch a planned covert effort may not be willing to employ this method for security reasons.

2. Targeting of specific individuals method. This method is very much like the one described above except that the anti-fencing unit itself selects the individuals to be targeted. Generally this is done following the unit's own analysis of the fencing situation faced, based on the information of its members, that provided by informants, or that received from others in the department. Because the priority target group is determined by the unit itself, the disadvantage of being locked in to the concerns and expectations of others is avoided. On the other hand, this method does not have the advantage of binding the unit closely with traditional theft units. It is a method, however, that is useful for both undercover and traditional investigative efforts.

This method has two major pitfalls. First, the target group selected may not, for any number of reasons, be directly relevant to the theft problem about which the agency has the broadest concern. Thus, individuals may be included in the target group who are of general law enforcement interest but are not really significant figures in fencing. Often this occurs, for example, where alleged organized crime figures are involved. Second, the unit may select inappropriate or insignificant targets that can be worked easily and against whom there is little chance of failure. Everyone likes to be successful in a new undertaking, but where exclusively trivial subjects are selected for anti-fencing enforcement action, the agency is getting a very poor return on its investment. Paperwork and statistics may look superb but little benefit will be derived.

Both of these pitfalls can be overcome, of course, by sound personnel decisions that place first-rate investigators in the anti-fencing unit. Such individuals will not be satisfied to select irrelevant or trivial enforcement targets. Additional insurance against these pitfalls can be gained by

³⁴The extent to which burglary/theft investigators may use certain fences as informants should also be considered in evaluating those individuals identified as active fences by investigators. This may have an impact not only on the objectiveness of the lists given but also on the security with which an anti-fencing unit may be able to proceed with its work.

requiring the unit to pre-define the criteria it will use to select individuals as enforcement targets. Targets chosen can then be reviewed by designated command staff in light of those criteria. A supportive environment, where the consequences of "failure" are not overly negative, similarly helps to assure appropriate target selection.

3. Targeting by type of fence method. Unlike the first two methods for prioritizing anti-fencing enforcement, this method does not focus on individuals but rather on types of fences as strategic targets. For example, under this method fencing operations tied to narcotics dealing might be targeted as enforcement priorities. Alternatively, businessmen-fences dealing in volume commercial thefts might be selected as priority targets. The rationale of this method is that by selecting a well-defined segment from the total fencing population, a clear focus can be given to the effort that can be tracked and measured. Under this method general operating procedures relating to separate classes of fences can also be established.

The major advantage of this method is that it specifies a target group, but still allows flexibility of efforts to be applied within that group. Thus, the unit is not restricted to a discrete set of names but can respond flexibly to new individuals and new targets of opportunity as they are developed. To avoid selecting inappropriate targets, the criteria characterizing the fence-type should be pre-defined. Similarly, the class of fences selected as the target should be relevant to theft problems in the community.

Depending upon the manner in which the target group is selected, this method may or may not serve to integrate the anti-fencing effort with other theft enforcement units. It is, however, a very flexible method that is generally applicable to most kinds of units.

4. Targeting by geographic area method. This method is not unlike that described above, except that it segments the fencing population not on the basis of type of operation but rather on the basis of geographic or area impact. Under this method, the anti-fencing effort prioritizes its activities by targeting discrete areas of the jurisdiction for enforcement impact. Thus, for example, sections of a city might be selected with the goal of systematically cleaning out the fences operating there. By focusing on a discrete area, it is likely that the impacts of the enforcement effort can be more readily observed and measured. This method may make it easier to trace and identify owners of recovered property, if it can be assumed that these fences and thieves will tend to victimize people in their immediate areas. Thus, the method may be extremely valuable when applied to high theft areas. Where this is not a correct assumption, however, the focus of the effort can become somewhat clouded and its real impacts difficult to trace. Thus, use of this method should take careful account not only of the fence's geographic location but also of his geographic sphere of influence. His influence sphere may be the more relevant criterion for enforcement action than his street address. This method is most applicable to large metropolitan jurisdictions and can be adopted by both undercover and traditional investigative units.

5. Targeting by type of thief method. Where specific short term impacts on current theft activities is desired, this method which targets the fence(s) serving a particular group of thieves may be utilized. The basic idea of this method is to impact on an active theft ring by eliminating the specific market (i.e., fences) it is dealing with. Thus, the target fence is determined by the thief(ves) he services.

Where distinguishable theft rings can be observed, this may be a very useful prioritizing method. It carries with it, however, two major dangers. First, this method can disintegrate into a competitive strategy with burglary/theft details over busting theft rings. Second, and closely related to the first danger, is the risk that this method, by focusing continual attention on thieves, will make the anti-fencing effort lose sight of its primary enforcement target -- the fence. This method should be used very carefully and judiciously. It is probably most useful to agencies of larger jurisdiction (i.e., state and federal authorities) against the mobile professional theft ring whose contacts are discrete and definable in number. At the local level, use of the method too often transforms the anti-fencing effort into a thief-catching detail where pursuit of thieves inappropriately becomes the major preoccupation.

6. Setting priorities - a summary. The methods for setting anti-fencing priorities discussed above are not exhaustive. Often mixes of these strategies have been used to some advantage. They are offered here as guides, and that is how they should be used. Most anti-fencing efforts around the country have had general priority guidelines but have also had the flexibility to respond to targets of opportunity which developed in the course of their activities. Over-restrictive use of a priority method can be as disastrous as having no priorities at all. *The major guiding principle that should shape the work of anti-fencing enforcement is that the fence is the prime target.* Beyond that priorities should be established that serve to focus anti-fencing activities rather than to restrict them to narrow operational arenas.

B. RESOURCE AND MANPOWER UTILIZATION POLICIES

The second internal management area in which the anti-fencing effort will need clear policy guidelines is that of resource and manpower utilization. Here the watchword should be "flexibility." Regardless of the level of resources available to the anti-fencing effort, resources can be rendered useless unless applied appropriately. There must be wide latitude as a matter of policy in the anti-fencing unit's use and deployment of equipment, manpower, and investigative funds.

One of the major dilemmas in anti-fencing enforcement is created when an operational effort is forced to fit into a prescribed standard operating procedure. Unfortunately, neither the fence nor the squad charged with combatting him will fit neatly into the usual way of doing things. Manpower utilization is a good and very important example. Many jurisdictions, because of budgetary constraints, have strict rules relating to overtime charges or the use of compensatory time. Fighting the fence is not, however, a nine to five job. It is more likely to be a late night activity or one that rarely conforms to a predefined schedule. Rigid work routines conforming to the normal business day are inappropriate schedules to work the fence. Rather the anti-fencing unit will need the capacity to flexibly work irregular hours. Similarly, a surveillance cannot be shut down after eight hours and be reinstituted the next day, it must be maintained. Without the authority to use compensatory time or overtime allowances, even the most traditionally designed anti-fencing unit is dead in the water. An undercover unit simply cannot operate in such a situation.

In setting up an anti-fencing unit, this dilemma should be squarely faced and the remedies argued for before operations commence. The points to be made within the agency are these: First, the policy in most cases will be a departure from normal procedures and must, therefore, be established as an exception. This will avoid internal problems that may arise in which command staff is believed to have a general capacity to grant overhead and compensatory time privileges but is withholding them arbitrarily. Thus, other units, seeing the anti-fencing effort's irregular work schedule, for example, may demand similar treatment. Once a policy is established as an exception, however, it can be defended and justified as such.

Where an anti-fencing unit is located will have much to do with how it is perceived by the rest of its department. A traditional investigative unit located within an agency will cause more resentment in this regard than will the covert or intelligence-based unit whose operating procedures are little known. This is why manpower and resource policies are so important and so difficult to establish. They tend to confer a privilege or special status on the anti-fencing unit that may be much envied. To some extent, resentment can be softened where it is clear that special resource allocations come from external funds rather than being skimmed from limited internal resources. Another softening strategy applicable to the intelligence-based operation is the establishment of a manpower policy that allows the anti-fencing effort to draw upon resources in other parts of the agency. In this way, many in the agency get to share in the flexibility generated by the unit. Where other units, either tactical, patrol, or investigative, are expected to play a follow-through role in investigations generated by an intelligence-based anti-fencing unit, clear guidelines must be established for drawing on such personnel.

The second reason for a clear policy on resource and manpower utilization relates to the increased record-keeping responsibility made necessary because great latitude is given. Thus, the privilege of flexible utilization carries with it an additional record-keeping burden. Records must be maintained which verify hours worked, compensatory or overtime accrued, and resources used. Because of the irregularities involved, this burden must be assumed by the unit commander reporting to the personnel office. For security reasons, the commander may wish to report only total hours worked rather than the particular schedule involved, although some record of actual time on the job should be separately kept. The record "burden" is not a mere bureaucratic requirement. Attention to it is essential to ensuring the integrity of the unit's performance and to the ability of the unit to demonstrate that integrity.

Like work schedules, personal appearance and dress should also be the subject of policy guidelines. A line supervisor of one anti-fencing detail remarked, for example: "Sometimes I get embarrassed going back to that room and seeing all those grimy-looking guys. But that's what it takes, they've proved it!" Often, because that is what it takes, the best measure of the appropriateness of attire is staff performance. Appropriate attire can in most cases, therefore, be left to the discretion of the unit commander, although some limits can be specified.

Flexibility in resource and manpower utilization is an important policy prerequisite for an anti-fencing effort. Flexibility should not be tantamount to a carte blanche, however. The unit should be particularly sensitive to the internal resentment their freedom of movement, attire, and schedule may create. Both the agency and the unit, then, will be best served if these "freedoms" are used responsibly. Similarly, both the unit and the rest of the agency should be aware that attached to the latitude given are requirements for a high standard of accountability for its judicious use.

C. ACCOUNTABILITY AND AUDIT CONTROL POLICIES

One final set of policy guidelines for the internal management of the anti-fencing effort is that relating to accountability and audit procedures. Some discussion has already been devoted to this area, but its importance cannot be over stressed. Informants and investigative funds must be strictly controlled and rigidly adhered-to procedures must be followed in the maintenance of records regarding them.

Audit and accountability requirements will flow from three sources: an external funding source; internal agency policies; and intra-squad requirements. The requirements of each may not be the same or of equal stringency. The best policy is to adopt control procedures for the unit which are more stringent than would be otherwise required by external or agency standards. This does not mean merely balancing at the end of the week or month; it means accounting strictly for every expenditure. Log books should be designed for this purpose. Each expenditure should be separately entered, together with the date of the transaction, purpose, and to whom payment was made. (For informants, code names may be used.) In addition, a separate log should be kept for informants, itemizing individual payments, the individual's record of reliability, and notations regarding the value of the specific information given. Such logs will make it possible for the unit at any point to review how much and how usefully funds have been expended; which informants are of most value; and whether or not new priorities are needed.

In some situations it may be possible to have additional audit services provided by others. One covert operation, for example, has made use of bank cards (in bogus or true names) for "entertainment expenses" regarding informants and fence suspects. This device provides the undercover officer with a verified receipt which can be included in a log book and monthly charges against such accounts are separately audited by the bank card company. (In this particular case, a separate corporation holds the cards.) Where external audit controls are used they should be considered as back-ups to a primary internal system.

The greatest effort expended in an accountability control system is in its development. Once developed and implemented, maintenance should and can become routine. A good example of a rigorous, but easily maintained informant control system is that used by the Iowa Bureau of Criminal Investigation. The informant control cards employed in this system are shown in Figure 1. Card A is a representative master file card to be kept under tight security. Card B is a logging card, in which individual payments to the informant can be entered and a record maintained. In addition, the full procedures used by this agency relating to confidential informants are included at Appendix B.

Unlike other proactive enforcement efforts, however, anti-fencing enforcement generally must cope with a situation in which the prosecutive agency is both unfamiliar with and inexperienced in the handling of fencing cases. Additionally, anti-fencing efforts are likely to face the situation in which the prosecutive agency is far less aware of the significance of such cases than is the case with narcotics and vice investigations. One reason for this is the fact that fencing is a low visibility crime, ill-defined in the public mind. The prosecutor, therefore, sees a better return on his investment when applying resources to thieves rather than to the fence. Another and perhaps more important reason is the fact that the prosecutor's office, like the police, is traditionally a reactive agency. It is organized, therefore, to react as efficiently as possible to the processing of large numbers of cases that come before it. The deployment of resources for proactive tasks, which anti-fencing enforcement calls for, is then as unusual a dilemma for the prosecutor as it is for police. It may be difficult for the prosecutive agency to justify diverting resources from obvious processing tasks to the relatively unfamiliar and uncharted reaches of a fencing effort.

The same arguments applied in justifying the police anti-fencing effort must also be weighed at the prosecutive level. That agency is no less susceptible to internal resentment regarding drains on resources than is the police department. Involvement in anti-fencing enforcement is not an easy commitment to be made by the prosecutor's office. Getting the prosecutor interested becomes, therefore, something of a selling task. Where considerable resistance is met, a situation all too frequent, it is unlikely that the anti-fencing unit can perform this task alone. Instead it will take the energies of top agency personnel to press for responsiveness on the prosecutor's part. The efforts will be well-invested, however, for the prosecutor can make or break an anti-fencing effort. This is particularly true in regard to covert efforts which are ill-advised without prior commitment from the prosecutive agency.

One additional problem which the prosecutor faces, and which the anti-fencing unit must take into account is that the fence, like many criminal offenders of "white-collar" status, does not fit into the traditional picture of the offender who is the day-to-day subject of prosecutive activities. This is particularly true of the businessman-fence, only a portion of whose activities involve trading in stolen goods, and where proof of knowledge and intent may be quite difficult to organize and present. The businessman-fence is, after all, likely to have a clean record, and to be well regarded in his community. The investigator can accomplish more by recognizing this problem as he proceeds with his investigation, and so organizing his case as to meet this prosecutive concern. The challenge can be met by better coordinated case investigation and preparation.

The specific roles that can be played by the prosecutor are several. First, the prosecutor can provide a general orientation to the legal requirements of fencing statutes and the manner in which an investigation should proceed in order to satisfy them. Next, the prosecutor can outline the permissible evidence-gathering techniques that can be employed. Third, the prosecutor can set procedural guidelines for obtaining warrants, for authority

to use electronic surveillance, for handling seized evidence, and for filing cases. Fourth, the prosecutor can grant formal or informal immunity to burglars in exchange for testimony against fences. Fifth, the prosecutor can use the subpoena power of the grand jury to complete an investigation where essential elements are beyond the scope of the unit's evidence gathering power. Sixth, the prosecutor can link cases together before a grand jury or inquiry judge for coordinated prosecution. Finally, the prosecutor can recommend jury instructions and sentencing levels. Without prosecutor involvement a fencing investigation can be a confused and complex affair. With the prosecutor, it will still be complex but it has a far greater likelihood of being procedurally smooth-running and confident.

Extensive involvement of the prosecutor incurs certain obligations on the part of the anti-fencing unit. It requires that the prosecutive agency be kept apprised of the course of the investigation; that the investigation be shaped for courtroom presentation; and that a commitment be made beyond the arrest stage to the final conclusion of the case. Essentially it means that investigations are not ended once a case is turned over to the prosecutor but rather that the investigation be a shared product concluded only when a verdict has been reached and a sentence meted out.

For the prosecutor, similar obligations arise. To begin with, the prosecutive agency should be prepared to assign a separate deputy to cases of the anti-fencing effort. Fencing cases are too complex to be handled by a series of deputies at different stages. Next, the prosecutor should be prepared to offer constructive guidelines in the form of legal memoranda for fencing investigations, and not just enumerate restrictions. Third, the prosecutor must be willing to consult with anti-fencing investigators before taking pleas or making sentencing recommendations. Finally, the prosecutive agency must be willing to sacrifice some number-crunching with regard to burglary cases, in exchange for more taxing and time-consuming fencing prosecutions.

The police/prosecutor partnership incurs significant obligations on both sides. As might be expected, it is not a partnership easily or frequently forged with success. It is, however, a partnership that must be developed if anti-fencing efforts are to be effective. In addition, it is a partnership that must be nurtured on a continuing basis as cases develop and new investigations proceed. How police agencies around the country have enlisted the commitment of prosecutors, have overcome resistance or have operated in spite of resistance, becomes an important topic of consideration.

B. STRATEGIES AND MODELS OF PROSECUTOR/POLICE INTERACTION

If the experience of the anti-fencing efforts around the country can be generalized with regard to the police/prosecutor interaction, four dominant operating models can be observed. The first model, and by far the most successful, is that in which an up-front commitment to the anti-fencing effort is made by the prosecutor in the planning and development stage. Often this occurs where the prosecutive agency possesses an independent concern and interest in fencing and shares that concern by responding to the interest of the police agency. The effort thus becomes a joint one with each agency committing resources, manpower, and support. Unfortunately, this model of police/prosecutor interaction is rarely seen.

More frequent is a second model of police/prosecutor interaction in which a partial commitment to anti-fencing enforcement is made by the prosecutive agency. This situation develops out of informal associations between theft investigators and deputy prosecutors, during which prosecutors become interested in fencing. The police agency may be committed to an anti-fencing effort but the prosecutive agency may not feel it can afford to devote its resources to such an effort. Still, there is some interest in the prosecutor's office. Often this interest can be formalized by a police grant request in which funds are asked to totally or partially provide salary support for a deputy prosecutor. In this event, the prosecutive agency may be willing to commit the needed resources since grant support will provide substitute resources. The grant write-in, as this model might be called, generally follows some establishment of commonality of interests but demonstrates less than full commitment of the prosecutive agency.

Both the up-front mutual commitment and the grant write-in are models of police/prosecutor interaction for anti-fencing enforcement that take place in the pre-implementation stage. As such, they are likely to represent not only prior commitment to anti-fencing enforcement in principle, but also prior commitment to a general set of strategy guidelines. Thus, while they constitute interactive models promising the greatest success, they may suffer from a rigid adherence to strategic guidelines determined before any investigative activities have been undertaken.

These first two models of police/prosecutor interaction represent different responses to varying levels of commitment in the prosecutive agency. But suppose there is no prosecutive interest in anti-fencing enforcement, what then? This is not an uncommon situation and police agencies around the country have adopted various methods to cope with this problem. Two are offered here. The first coping method to deal with prosecutive resistance might be called the "police station lawyer" model. At least one highly successful anti-fencing effort has used this strategy to good advantage. What this unit confronted was a prosecutive office that professed little interest in anti-fencing enforcement. Rather than devoting considerable energy toward persuading the prosecutor to the contrary, the squad devoted its energies to becoming legal experts on their state laws. They read statutes, recent case law, and commentary notes. They developed internal guidelines for searches, for case preparation and filing, and for providing input to probation and parole orders. They became so well-versed on the law in their state that they are recognized as expert sources by the prosecutor's office itself. At this point, they write their own search warrants (and do so for others both in their own detail and for others in their agency) and present full investigative packages to the prosecutive agency whose interest has now been stimulated. They have prepared provisions to be included in probation orders that allow spot searches of fences placed on probation. Their warrants have been consistently accepted and upheld in the face of legal challenges in court. They have little question as to where they stand on legal grounds, and conduct investigations confident that their cases are unlikely to be refused by the prosecutor.

This is admittedly an unusual strategy, and it may be that a rare combination of talents within this anti-fencing detail makes it a success. It does, however, represent a broader response to prosecutive indifference that has been used to some extent elsewhere. Thus other anti-fencing units

have also taken the time to review search and seizure laws, develop internal guidelines to obtain warrants, or to generally bone-up on fencing statutes. The idea behind this strategy really is to meet the prosecutor on his own ground, in his own language and to (sincerely and capably) help the prosecutor in his job. This in itself becomes the basis for interaction, often forcing the prosecutor to do his homework. Where the prosecutive agency is more indifferent than resistant, such interaction tends to lead to the constructive working partnerships.³⁵

Actual resistance in the prosecutive agency is much harder to overcome. Where it exists few strategies seem to do anything more than aggravate the situation. Usually resistance to fencing cases is only symptomatic of a wider gap in understanding lying between these two enforcement bodies. In jurisdictions where the traditional police/prosecutor relationship is little more than a continuing feud, an anti-fencing effort is not advised. The prosecutor is just too important to be left out. Elsewhere, resistance may in part be overcome through some variation on one final strategy. This coping method might be labelled the "resort to outside authority" model since it consists of diplomatically involving external legal authority for guidance. External authority may be either those in positions superior to the local prosecutor (e.g., a state attorney general) or those whose opinions a local prosecutor is expected to respect (a law school faculty, for example). Implicit in this strategy is the marshalling of peer opinion. In one variation on this strategy, local police agencies submit cases to state or federal authorities or appeal to outside "special" prosecutive resources for particular cases.³⁶ This is a strategy that can as easily backfire as get the desired results, so its risks should be calculated. Generally it should be regarded as a last resort where all other alternatives have failed and the police/prosecutive relationship is largely unredeemable anyway. In any case, the quality of prosecutive commitment gained via external authority may be lackluster indeed.

C. POLICE/PROSECUTOR INTERACTION: A SUMMARY

Obtaining commitment and involvement from the prosecutive agency is the one major element separating the successful and the unsuccessful anti-fencing effort. This commitment and involvement must consist of more than "public" support for the anti-fencing effort. In other words, the assignment of a full-time deputy prosecutor to handle fencing cases may not be as important a goal to strive for as that of getting interested prosecutive assistance on a part-time basis. An anti-fencing effort should seek an "active" prosecutor; one who will use all his energy and imagination to assist the investigative process; one who has a "can-do" rather than a "can't-do" attitude; and one who is knowledgeable

³⁵One note of caution, however---investigators should not act as attorneys. Such a role can create both legal and operational problems. Thus, investigators may sometimes have to fill vacuums, but they will not succeed if they try to compete with prosecutors or tell them how to do their job. Rather, they can be most effective if they form a basis for constructive dialogue and interchange.

³⁶In some states, for example, the Attorney General's office has broad authority to prosecute local cases or to assist in the local prosecution of cases.

about investigative techniques and enjoys investigation as well as courtroom presentation. Because fencing cases present many legal challenges and dilemmas, it is likely that the deputy prosecutor who expresses an interest in this area will have many of these qualities. Where the unit has some choice as to which assistant prosecutor it will work with, it should emphasize quality of involvement desired rather than full-time commitment of resources. In this regard, time invested proactively interesting a particular deputy prosecutor in anti-fencing cases is time well spent.

Anti-fencing units that have established and/or developed good working relationships with prosecutors have shown measurably better results than those failing in this regard. Without prosecutive interest, an anti-fencing effort may have to settle for goals that relate primarily to seizures and recoveries. These are not good standards by which to measure anti-fencing efforts. More significant impacts will remain elusive unless there is affirmative and active prosecutorial involvement in the anti-fencing enforcement program.

D. OTHER INTRA-JURISDICTION AGENCY SUPPORT

While the prosecutive agency provides the major intra-jurisdiction resource needed by the anti-fencing effort, other external agencies may also be of some assistance. For example, fencing operations carried on in violation of zoning ordinances may be reported to a local zoning board for action. Generally such boards may be reluctant to cite an individual where criminal charges have not been brought or where the violation is not flagrant, but they can serve as an additional mechanism by which vigilance over the fence can be maintained. The same is true of local licensing bureaus. Businessmen-fences who operate through their legitimate businesses may often be in violation of their primary business license. An aggressive licensing bureau can, in these situations, be a significant resource for anti-fencing enforcement. Where probationary sentences are given to fences, provisions may be inserted which allow spot searches for stolen property (generally in commercial premises) during the probationary period. Interaction with the local probation agency can serve to alert the relevant officer to be on the look-out for particular probation violations.

Generally, the value of zoning or licensing bureaus and probation agencies to anti-fencing enforcement depends upon the intrinsic aggressiveness of these agencies. Where such aggressiveness does not exist, its development by the unit may be too difficult or time-consuming to be worthwhile. In addition, there are some practical reasons why energies might better be placed elsewhere. To begin with, fences are, as Jerome Hall has put it, "equipped both mentally and financially to take full advantage of weakness in the administrative machine, should prosecution be initiated."³⁷ They are typically individuals of means for whom a local ordinance violation constitutes little more than a trivial annoyance. Next, because the fence is an offender with financial means he is fully capable of moving or accommodating his operations to avoid exposure to application of local ordinances. Thus actions taken under these codes may have little lasting impact. Finally, where the fence has been convicted

³⁷Jerome Hall, Theft, Law and Society (Bobbs-Merrill, 1952) at p. 195.

criminally, there may be little sentiment or interest in further penalizing him through administrative processes. This is particularly true of the businessman-fence about whom the prevailing view may be "he has suffered enough." Thus, neither a probation agent nor a licensing board may be interested in or motivated to act on law enforcement requests.

While, then, zoning or licensing bureaus, and probation agencies in the jurisdiction may be of some assistance to anti-fencing enforcement, their value to the effort is likely to depend upon the interest of certain individuals within them. They should not be ignored or forgotten when additional tools for enforcement are considered. Neither, however, should they be relied on as parties likely to be totally interested in the effort.

V. OUTSIDE RESOURCES CONTRIBUTING TO THE EFFORT

Some of the most valuable resources an anti-fencing unit must cultivate are those of other law enforcement agencies lying outside the jurisdiction and those available in the private sector, among citizens, the media, and the business community. Discussion will focus on each in turn.

A. OTHER LAW ENFORCEMENT AGENCIES OF SIMILAR JURISDICTION

Fences do not confine their operations within jurisdictional boundaries. In fact, they will often purposefully operate across jurisdictions in order to further hamper detection, or for strictly business reasons. This does not mean that a single jurisdiction can do nothing about fencing, but rather that it may not be entirely sensible to try to act alone. As a practical matter, most anti-fencing efforts have developed some association with other police agencies around them. Thus, large city efforts have often reached out to nearby suburban departments; state law enforcement agencies have contacted local police departments for assistance, and companion efforts in nearby cities generally maintain contact with each other.

In general, coordination is sought first to alert those agencies with a potential interest in the anti-fencing effort to its existence; and second, to develop contacts for future assistance in investigations expected to fall in those jurisdictions. Coordination is not sought for its own sake but rather because there is a reasonable belief that it will become necessary. Thus, while there may be an interest in informing all nearby agencies of the effort, greater energies should be devoted to the development of cooperation with those jurisdictions most likely to become involved in investigations.

The experience of most anti-fencing efforts is that at one time or another they have needed the services of other jurisdictions in two areas: pick-ups on arrest warrants or for questioning; and serving of search warrants. In addition, nearby agencies have helped some units in identifying recovered property items stolen in their jurisdictions. An anti-fencing unit at the

local level can get authority to operate outside its jurisdiction,³⁸ making coordination for warrant activities unnecessary. But even where units have had this capability, it has not generally been used to exclude the concerned police agency. In fact, this is not an advisable strategy to pursue. The concerned agency should at a minimum be notified that actions are to be taken within its jurisdiction, and preferably be involved in the action in some way. The only exception to this rule applies to the covert, undercover operation which will need broad authority, given under secure conditions.

Because many surrounding jurisdictions may be small and probably in any case lack the resources which a specialized anti-fencing detail possesses, there is a tendency to involve them but to ask only for a manpower assistance. This is not always a good practice. Real involvement and commitment occurs when there is a real stake in the shared endeavor. Thus, where a coordinated effort must rely on informant information, each agency involved should share some burden of that expense. Similarly, equipment needs should be contributed, where possible, by each. In some cases, this may be somewhat difficult for the outside agency, but generally it is true that the quality of cooperation received is directly related to the stake each has committed to the outcome. Thus, an outside agency allowed only minimal involvement (for appearance sake) will often provide assistance of far less quality than one which has committed men, investigative funds, and equipment to the effort. Where time permits, then, outside involvement should be such that a real shared commitment is represented.

One of the more subtle benefits of involving outside agencies in the anti-fencing effort is the intelligence information they may provide. Having become more sensitive to fencing operations, they may see activities or hear of events that the unit could not discover (outside its own jurisdiction) but which may be of great importance. Intelligence coverage of a wider geographic area is thereby accomplished with a relatively minor resource investment by the anti-fencing unit.

It should be noted that successful involvement of outside agencies may incur obligations that the unit is not fully equipped to meet. It may, for example, require that increased security precautions be applied to unit operations. Similarly, it may slow the pace of investigative efforts when precise coordination becomes difficult to orchestrate. On an entirely different dimension, involvement with outside agencies may generate numerous requests for investigative assistance in matters, many of which will be of limited interest. This possibility should be recognized and streamlined response mechanisms planned. Many units have overcome this problem by stressing the outside agency's own capabilities and by providing advice and guidance, but stopping short of conducting outside investigations (unless consistent with their own goals and priorities). Mutual cooperation is a worthy goal to work toward, but it should not be permitted to divert the effort from its own priorities, to compromise its security, or to overburden its resources.

³⁸Usually this is done by the limited extension of "commissions" by the heads of other agencies and it generally applies only to immediately adjacent jurisdictions.

B. INTERACTION WITH AGENCIES OF LARGER JURISDICTIONS

1. The Federal Role

Most anti-fencing units have found the need for federal assistance at some point in the course of their investigations. The federal agencies most frequently mentioned as having provided valuable assistance were the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco and Firearms (ATF), and Bureau of Customs. It should be remembered that federal authorities, like local agencies, do not have unlimited jurisdiction. Further, they too have their priorities and resource problems, from which policies are developed which determine what they will and will not undertake. Thus, federal agencies will be best able to respond when cases or investigations pending are clearly within their stated concerns.

Customs, for example, has the best responsive capacity where thefts from bonded shipments are involved. Similarly, the resources of customs are more effectively utilized with respect to imported merchandise rather than exported cargo. ATF, on the other hand, has substantive restrictions placed on its responsive capacity. Its agents cannot be expected to react to situations that do not suggest violations of federal alcohol, tobacco or firearms laws. Particularly where firearms are involved, ATF has been mentioned as providing invaluable investigative and identification assistance to local and state efforts.

The Federal Bureau of Investigation has perhaps the broadest substantive authority of any federal law enforcement agency, but it is restricted in theft-related investigations to situations in which some evidence of interstate transportation of stolen goods is shown. The one possible exception to this restriction involves the FBI's new Major Thief Program. This program represents a federal thrust against the mobile, professional thief and his contacts. The activities of such offenders are known to continually cross state lines, calling for the broad federal monitoring and surveillance capability. Theft and fencing investigations believed to involve such individuals, then, can and should be expected to receive interest and assistance from the FBI.

Particular types of fencing activities are investigated by federal departments and agencies. For example, in cases which involve labor racketeering or where an organized crime fencing operation becomes the subject of attention, a U.S. Department of Justice Organized Crime Strike Force may take an investigative lead. In such cases, the resources of many federal agencies could be involved.³⁹

In most cases, federal investigative involvement will carry with it additional resources in funds, equipment, and expert advice. It may also represent greater flexibility and broader powers in the use of resources in

³⁹For an extensive discussion of federal agencies potentially involved in such crime control efforts, see Attorney General's First Annual Report: Federal Law Enforcement and Criminal Justice Assistance Activities (U.S. Government Printing Office, Washington, D.C., 1972).

investigation and prosecution. Thus, state and local authorities often acknowledge that regardless of how flexible their internal policies are with respect to investigative funds, federal agencies usually have a more responsive capacity in this area. Similarly, federal surveillance capabilities under Title III of the Omnibus Crime Control Act are likely to be broader than those of many state and local authorities.

Often overlooked are federal capabilities and resources at the prosecutive level. Federal subpoena power, the witness support program, and the financial resources to undertake lengthy judicial proceedings, all represent capabilities not generally available at the state or local level. Fiscal considerations alone may often make it preferable for a local agency to contribute to a federal fencing investigation, especially where out of state witnesses or a potentially lengthy trial, consuming too many local resources, is expected to be involved. Federal resources in the prosecutive sector, then, should be carefully weighed, for they may be far more significant in determining the level at which a case is pursued than are the considerable resources of federal investigative agencies.

2. State Agency Roles

Usually when a local police agency looks to the state level it thinks in terms of traditional state law enforcement authority. Where this authority serves primarily a traffic enforcement function, other resources at the state level may be incorrectly eliminated from consideration. This may mean losing some valuable assistance. Even where state police are not geared to assist anti-fencing efforts, other state enforcement resources may be available. The State of California, for example, has considerable informational and analytic resources in the Attorney General's Department of Justice, which is available to local agencies. Through this capability, local jurisdictions can receive statewide statistics, opinions on points of law, and input concerning specific local problems. The resources of the California Department of Justice are unique in their scope, but are not an unusual example of resources which sometimes exist at the state level to be tapped by local agencies.

Some state attorneys-general offices, for example, have a policy by which assistant attorneys general, acting in a prosecutive role, can assist at the local level. Others have broad statewide investigative powers that can be invoked to supercede local prosecutive functions. Still others have large investigative staffs which can provide assistance to local police agencies. And, of course, where a state police force itself has functional capability and legal authority to get involved, considerable investigative resources may be made available to the local agency in cooperative enforcement efforts.

Both state and local anti-fencing efforts should, however, also look to other state agencies for enforcement tools. A state tax agency, for example, may be willing and even anxious to audit a fence where potentially significant sales tax violations are suspected. Often the seizure powers of revenue agencies are surprisingly broad where business records are concerned. A state licensing board, on the other hand, may possess stiff sanctioning powers that

could be used against fences, shown to be in violation of its statutory authority.⁴⁰ Responses to requests for these kinds of assistance may be neither automatic nor overwhelming. Generally, locally based anti-fencing units report spotty success in initiating state revenue and licensing bureau interest in fencing investigation. Anti-fencing efforts located in state agencies, however, met with much better responsiveness. It appears, then, that the source of the request rather than its nature may make the difference. Thus, a local police anti-fencing effort might be expected to receive a higher level of assistance from the state revenue authority if it submits a request through the state attorney general's office.

3. International Investigations

Stolen merchandise is often transported by the fence from the area where it is stolen to other parts of the United States, or even abroad. Following this trail may be important to an anti-fencing unit's investigation. When the trail leads abroad, the unit can call on the services of INTERPOL, an international criminal police organization which has experience in helping with fencing investigations.

INTERPOL will help the unit by arranging for voluntary cooperation in more than 120 countries abroad. Such assistance covers a broad range, including but not limited to criminal history checks, locating suspects, fugitives, and witnesses, and even full investigations which could lead to arrests and extraditions. Where such help is needed, the unit should contact INTERPOL by letter addressed to the agency at:

Room 1116
Main Treasury
Washington, D.C. 20220

The letter of request should briefly state the nature of the investigation or assistance required, and from whom assistance is sought. No special form is needed. If the unit is not certain as to who should be contacted abroad, INTERPOL will advise. If the matter is of great urgency, and delay would render assistance meaningless, or less valuable, INTERPOL should be telephoned at the U.S. Main Treasury Building in Washington, D.C.

There is no charge for INTERPOL assistance. The United States office is located within the U.S. Department of the Treasury and is staffed by personnel from federal law enforcement agencies (Customs, Secret Service, Drug Enforcement Administration, Bureau of Alcohol, Tobacco and Firearms).

C. JURISDICTIONAL BOUNDARIES: A SUMMARY

It is increasingly clear that law enforcement agencies can no longer afford (often quite literally) to look upon jurisdictional boundaries either as a basis for competition or as brick walls that cannot be scaled. Most proactive investigative areas demonstrate this. It is particularly true in anti-fencing

⁴⁰Great care should be used in seeking such cooperation, since serious legal problems may stem from use of administrative or regulatory tools for the purpose of a criminal investigation. The advice and assistance of prosecutors will be crucial in this area.

enforcement. Fencing operations are complex, and difficult to investigate and crack. They become progressively more difficult the more jurisdictional lines they cross. "Going it alone" with no outside contact or resource coordination therefore, becomes less and less practical as an anti-fencing enforcement strategy except where an agency is pursuing the smallest localized fencing operations. Where transportation of any sort, narcotics, organized crime, or the mobile thief is involved, going it alone is especially unwise. At the same time, however, there is no real reason to involve any person or organization in one's anti-fencing effort unless there is a clear "need to know." How, then, does one guide and shape inter-jurisdictional cooperation?

To begin with, the only multi-agency fencing investigations that make sense are those which truly concern the various agencies to be involved. This is so whether the agencies are within one territorial jurisdiction, have different substantive interests, or represent differing levels of government, e.g., state, federal and local. Thus, the only agencies that should be directly involved in the investigation of a fencing operation are those in whose jurisdiction a significant activity has occurred, (i.e., the theft, the receipt of the stolen goods, and/or the resale of the goods). Jurisdictions through which stolen property has merely been transported are not relevant to the investigation, unless of course, federal or state lines are crossed. Once the appropriate agencies to be involved is determined, the nature and focus of the investigation should be guided by these three questions:

1. Who has the better authority? (i.e., investigative scope and powers)
2. Who has the greater resources? (Both in actual amount and in ability to commit them.)
3. Does there exist a special or unique capability that is not involved and should be? (i.e., is some capacity missing?)

The answers to these questions will vary greatly. Sometimes federal enforcement is better or more appropriate than local. Sometimes local resources are better than state or federal. Sometimes a state agency has a special capacity possessed nowhere else. The important point is that rather than fitting an investigation to limited agency resources, resources should be called upon to fit the investigation. Agencies successful in their anti-fencing efforts have learned this lesson. The dynamics of multi-jurisdiction coordination are not easy to develop and implement, but once in place it can be an advantage rather than a burden.

D. RESOURCES FROM THE PRIVATE SECTOR

1. Citizens Groups as a Resource

Citizen involvement in enforcement in the property theft area is not without precedent. Many burglary reduction programs have solicited the active involvement of citizens in block watch and home security programs. In addition, operation identification projects have enlisted citizen support in marking personal property items. This last program probably comes closest to representing a

really helpful citizen anti-fence strategy since successful and dependable identification of recovered property will make a useful and valuable contribution to an anti-fencing enforcement program. Generally, operation identification has not been presented to the citizenry in that way. Rather it has been introduced as a burglary-prevention strategy, a claim not supported by a recently completed nationwide evaluation.⁴¹

Unfortunately, the national evaluation of operation ID programs did not systematically test its significance against the presence or absence of a police anti-fencing effort. Most anti-fencing units around the country, however, report that poor property identification remains a nagging problem and have supported or assisted operation ID projects in their jurisdictions. Generally, citizen involvement in anti-fencing efforts has been limited to such activities and few units have attempted to initiate greater participation by private citizen groups.

The citizen as victim may be another matter entirely. Many anti-fencing units systematically review current theft reports as an investigative tool. This task may be performed by the property office, or a clerk or analyst assigned to the unit. Where this is done, frequent experience has been that in a case that seems potentially significant to on-going investigations, follow-up with the victim often results in the acquisition of information not available in the original crime report. Many times the victim can provide additional identifying characteristics for his or her property, or the victim may be able to isolate an unusual event or experience immediately preceding the crime. One anti-fencing unit in particular, noticing a commonality of prior events among theft victims, has developed a "common factors form" (reproduced in Appendix B) for use in burglary follow-up investigations within the agency. What the common factors form does is solicit information from the victim regarding services rendered in the home or business (such as repairs or catering services), visits by salespersons at the door, or any change in the victim's household or business routine (a vacation, for example) in the 8 to 12 weeks prior to the theft. The form is to be used in all follow-up visits by burglary investigators.

The potential value of the citizen-victim as an investigative resource has been similarly recognized in other jurisdictions. In one city, a study of burglary cases revealed that the "active victim" was not only more likely to have his or her burglary solved (the probability increased by 33%) but also to have stolen property returned. Another part of that same study found that the one factor that most insulated the burglar from arrest was the precision with which he selected the victim. Burglars who developed detailed information on victims themselves or were provided it by fences or tipsters stood the least chance of detection.

Victims and their prior experiences, then, can be helpful investigative aids on a case-by-case basis. This fact, however, is little justification for systematic, on-going involvement of citizens groups in anti-fencing enforcement. The reason is that citizen involvement incurs tremendous obligations, particularly in terms of the unit's time. Thus, the benefits

⁴¹See the nationwide evaluation of Operation IDENT, conducted by the Institute for Public Program Analysis, St. Louis, Missouri, report issued 1975.

rendered by the group must be considered significant to justify the time investment. The one situation observed in this project that seemed to involve a rational trade-off was one in which a citizen's group provided "surveillance" over weekly antique auctions by organizing its members into "shopping groups." This benefit of coverage of these events was exchanged for the time needed to prepare a list of recently stolen items for the group to look for among the auction merchandise. In most cases, however, citizen groups need too much guidance and direction to assist an anti-fencing effort on a continuing basis.

2. The Media as a Resource

Because anti-fencing enforcement often involves dramatic seizures and recoveries of stolen property, it is usually of great interest to local press agencies. Similarly, most anti-fencing units report that press coverage can be important both in terms of building the effort's credibility and in educating the public. Most units, then, encourage the establishment of positive press relations by the anti-fencing effort.

It should be recognized, however, that national experience has demonstrated three potential problem areas that may arise following extensive press coverage. First, press coverage of an extensive recovery of stolen property never fails to elicit a flood of phone calls from theft victims inquiring whether or not their property is included. To some extent this is useful in helping to identify many items. On the other hand, it can be quite a burden to handle the volume of calls and the volume of victims who wish to look over the recovered items. Most unit personnel believe that the publicity is worth the burden, particularly if such a response is anticipated and planned for.

A second problem that often arises is far more difficult to resolve. What it involves is the development of considerable internal resentment and jealousies because of the extensive publicity attracted by the anti-fence unit. This situation is exacerbated where anti-fencing officers begin to play directly to the press, becoming "media personalities." The best way to overcome this dilemma, and it is a serious one, is to establish a policy at the outset of unit formation by which accomplishments are associated generally with the agency as a whole, or the unit itself, and not with individuals. Individuals in fact should be required to maintain something of a low profile with respect to the media. One strategy often used is to require that once the major story has broken, all follow-up stories and coverage be handled by and through the agency press officer. The idea here is not that individuals be robbed of credit rightfully due them, but rather that the stability of the agency not be sacrificed in the process. Suffice it to say that some otherwise successful efforts have nearly divided their departments because of media coverage. This is a situation in which everyone loses.

A third and final problem arising out of extensive press coverage relates to possible security breaches, where undercover officers or activities are involved. Once the press becomes interested in the effort it may be difficult to discourage further probing and continuation of coverage. Any anti-fencing effort that is partially or totally using officers in undercover roles, then, should reserve press coverage until the conclusion of the effort or take special steps to guard the identities of officers. Again, the agency press officer may be used as the media source for releases rather than the unit itself. This can help to insure that proper security protocol is followed.

With respect to the affirmative aspects of media coverage, great care should be taken to ensure that where there is multi-agency or multi-jurisdictional involvement in an investigation, that appropriate credit be given to all cooperating agencies.

3. The Business Sector as a Resource

Units reported two particular kinds of resources made available to them by the business sector. First, businessmen with expert knowledge of particular kinds of property and industry trade associations, have provided units with assistance in evaluating and identifying recovered property of an unusual nature. Generally, where art objects, antiques, or gems and jewelry pieces are involved such specialized knowledge may only be available from these sources. One agency visited in the preparation of this manual had just recovered a large cache of stolen art and art objects, and had an expert in the property room helping to identify it and its probable origins.

Second, the business sector may also be a source for general commercial information. Thus, some units, in attempting to verify the extent to which a suspect is a fence, have asked individuals in similar businesses about general commercial practice in that trade. If the suspect's activities appear to differ significantly from the normal practice, a suspect is looked at more closely. In this same regard, manufacturers have provided information to some units relating to who is and who is not their designated wholesaler or retailer for an area. Thus, the fence parading as such can be unmasked and questions can be raised (for investigation) as to how a non-authorized outlet came into possession of stock in quantities usually confined to authorized dealers. Property officers who develop individual business contacts have similarly found this sector extremely helpful in providing information on property markings generally and on hidden property identifiers they use. Some manufacturers, for example, place additional identifiers on the inside of home entertainment equipment that can be checked if the outside mark has been removed.

One final part of the business sector about which there surrounds considerable law enforcement debate is the insurance industry. Some anti-fencing units are antagonistic to insurers since they fear becoming mere collection agents for them. Others have reported developing valuable individual relationships within the insurance industry. Like any resource that is cultivated, a unit must avoid becoming the captive of any particular business interest. Insurers can and will be of invaluable assistance under the appropriate circumstances.

A good procedure to develop in interacting with the insurance community is to fully inform its representatives (either singly or collectively) of the nature of the effort and its likely relevance to them (i.e., the unit will be recovering a lot of property in which they may have an interest). In doing so, insurers should be reminded of the following: (1) an anti-fencing effort has an obligation to recover property known to be stolen that comes within its control; and (2) the unit has, however, discretion in the use of investigative funds for the acquisition of stolen goods in a rational and purposeful way. Thus, recovery for its own sake is not an obligation of an

anti-fencing unit, and not all the property with which it comes into contact can and will be purchased. On the basis of this information, it should be possible to institute some groundrules for cooperative action where circumstances dictate. Not all insurers may respond in the same manner, but all will at least be briefed as to the effort, should the need for further contact arise.

CHART 1
AGENCY CHECKLIST: RESOURCES AND RELATED POLICIES NEEDED FOR AN ANTI-FENCING ENFORCEMENT EFFORT

RESOURCE CATEGORY	SPECIFIC RESOURCE NEEDED	POLICY CONSIDERATIONS RELATED TO RESOURCE	RELEVANT POLICY/DECISION MAKER(S)
MANPOWER	Unit Commander	<ul style="list-style-type: none">• should be selected in planning stage• should be active field commander -not desk officer• should be individual with strong investigations background and with strong interest in procedural detail	Agency head, appropriate command staff; planning section of agency
	Unit Officers/ Investigators	<ul style="list-style-type: none">• number not as important as flexibility in their deployment• average unit has 5-6 officers• should have good investigations background; ability to develop informants; no family difficulties• determination should be made regarding deployment will be in undercover roles• selection should not be on straight bid system-anticipate and avoid labor difficulties	Appropriate command supervisor(s), unit commander
	Property Officer	<ul style="list-style-type: none">• function is critical to evidence-gathering and property identification• where no property officer exists, his function will consume large portion of investigator's time.• property officer can forestall identification of undercover officers by public	Planning section of agency, appropriate command supervisors; unit commander

CHART 1 (CONTINUED)

RESOURCE CATEGORY	SPECIFIC RESOURCE NEEDED	POLICY CONSIDERATIONS RELATED TO RESOURCE	RELEVANT POLICY/DECISION MAKER(S)
MANPOWER			
	Secretary/Clerical	<ul style="list-style-type: none"> •special resource most critical for long-term anti-fencing efforts •undercover operations should have separate help for security reasons •substantial paperwork on property recovered must be maintained and updated 	Planning section of agency; appropriate command supervisor(s); unit commander
INVESTIGATIVE FUNDS			
	Informant monies	<ul style="list-style-type: none"> •level of funds should be appropriate to planned operating procedures •fund should be separate for unit •high accountability for use of funds under unit commander's responsibility •strict record-keeping procedures 	Appropriate command supervisor(s); unit commander; internal and external audit agency
	Buy monies	<ul style="list-style-type: none"> •level of funds should be appropriate to planned transactions with fences as evidence gathering techniques •fund should be separate for unit •same accountability as above as unit commander's responsibility •strict record-keeping procedures 	Appropriate command supervisor(s); unit commander; internal and external audit agency
POOL OF PROPERTY ITEMS			
	Unclaimed property room items	<ul style="list-style-type: none"> •variance to local ordinance or state statute on prescribed disposition should be sought prior to unit implementation 	relevant local, state or federal legislative groups; appropriate legal authorities; appropriate command supervisor(s); unit commander

73(a)

CHART 1 (CONTINUED)

RESOURCE CATEGORY	SPECIFIC RESOURCE NEEDED	POLICY CONSIDERATIONS RELATED TO RESOURCE	RELEVANT POLICY/DECISION MAKER(S)
Pool of Property Items			
	Unclaimed property room items (cont'd)	<ul style="list-style-type: none"> •access to property items can offset some but not all cash needs of unit 	Agency head can play important role in political process as necessary
	Recovered property donated by theft victims	<ul style="list-style-type: none"> •release forms for victim signature should be designed prior to unit implementation •should be <u>completely</u> voluntary - victims should not feel pressured to donate 	Appropriate legal advisory body; unit commander; appropriate command supervisor(s)
	Property items donated by business community	<ul style="list-style-type: none"> •mechanisms for receipt of donations of property should be developed in planning phase •release forms for business representative signatures should be developed before implementation •should be <u>completely</u> voluntary - business community should not feel pressured to donate property items 	Appropriate legal advisory body; unit commander; appropriate command supervisor(s)
EQUIPMENT			
	Surveillance vehicle	<ul style="list-style-type: none"> •resource necessary if stake-out/surveillance activity is to be major part of unit operations •panel or camper van can serve as a surveillance command post; experience has shown these to be unobtrusive vehicles •should be directly accessible by unit on a priority basis or under unit control 	Appropriate supervisors; unit commander; appropriate purchasing authority (if new acquisition); planning section of agency

73(b)

CHART 1 (CONTINUED)

RESOURCE CATEGORY	SPECIFIC RESOURCE NEEDED	POLICY CONSIDERATIONS RELATED TO RESOURCE	RELEVANT POLICY/DECISION MAKER(S)
EQUIPMENT			
	Unit undercover vehicles	<p>standard unmarked vehicles are inappropriate for anti-fencing unit</p> <p>several undercover vehicles should be available to unit on priority basis</p> <p>leasing arrangements for constant vehicle changes should be considered</p> <p>old fleet vehicles or unclaimed impounded vehicles are source for unit-appropriate procedures should be developed in planning phase for variance from normal disposition of such vehicles</p> <p>newness of vehicles not as important as access to them, flexibility in deployment and appropriateness to undercover roles of officers</p> <p>use of officers' private vehicles should be avoided.</p> <p>covert unit should have its own "motor pool" for security reasons</p>	<p>Relevant local, state or federal legislative groups (for fleet vehicle or impounded vehicle variances; appropriate purchasing authority (for leased or newly acquired vehicles); appropriate command supervisors; unit commander</p>
	Photographic Equipment	<p>acquisitions should be appropriate to planned tactics of unit and documentation needed</p> <p>short term investigative unit (making quick arrests) should have 35 mm capability with appropriate lens clarity</p> <p>long-term investigative unit should consider videotape capability</p>	<p>Appropriate legal advisory body; appropriate purchasing authority; appropriate command and planning personnel; unit commander</p>

73(c)

CHART 1 (CONTINUED)

RESOURCE CATEGORY	SPECIFIC RESOURCE NEEDED	POLICY CONSIDERATIONS RELATED TO RESOURCE	RELEVANT POLICY/DECISION MAKER(S)
EQUIPMENT			
	Photographic Equipment (cont'd)	<ul style="list-style-type: none"> photographic equipment acquisitions should conform with legal requirements special training will be needed for most photographic equipment - provisions to secure training should be made in planning phase planning should include projections of film needs, procedures for film files and storage 	
	Surveillance equipment (body transmitters, field radios, bugging devices)	<ul style="list-style-type: none"> acquisitions should be appropriate to planned tactics of unit and documentation needed acquisitions should conform with items legally permissible in jurisdiction unit should be trained in use of field equipment (transmitters and radios) special electronic surveillance equipment should be maintained and administered by specialized unit - if available planning should include resources for transcription of interceptions and security of tapes 	<p>Appropriate legal advisory body; purchasing authority (for new acquisitions; command and planning personnel; unit commander</p>

73(d)

CHART 1 (CONTINUED)

RESOURCE CATEGORY	SPECIFIC RESOURCE NEEDED	POLICY CONSIDERATIONS RELATED TO RESOURCE	RELEVANT POLICY/DECISION MAKER(S)
OFFICE AND STORAGE SPACE			
	Unit office or command center	<ul style="list-style-type: none"> • traditional investigative detail should have office on or near agency premises • covert unit should have secured field command center • internal location of unit office should conform with coordination, security and command considerations • planning of unit space should include appropriate file and fund security 	Agency command staff; unit commander; planning section personnel; purchasing authority (where off-premises space is to be acquired)
	Storage space	<ul style="list-style-type: none"> • unit should have separate, secured storage area in addition to regular property room • size of unit storage area depends upon length of property storage expected • procedures for lagging, storage and release of property should be developed in planning phase 	Agency command staff; unit command; planning section personnel; purchasing authority (for off-premises rentals); unit property officer
PROSECUTIVE ASSISTANCE			
	Interested, active and accessible prosecutor(s)	<ul style="list-style-type: none"> • planning phase commitment by prosecutive agency should be secured • prosecutive involvement in planning should be maintained • external support request should consider including support for prosecutive agency 	Agency head; head of appropriate prosecutive agency; agency legal advisor; command and planning section personnel; unit commander; designated deputy or assistant prosecutor.

73(e)

CHART 1 (CONTINUED)

RESOURCE CATEGORY	SPECIFIC RESOURCE NEEDED	POLICY CONSIDERATIONS RELATED TO RESOURCE	RELEVANT POLICY/DECISION MAKER(S)
PROSECUTIVE ASSISTANCE			
	Interested, active and accessible prosecutor(s) (continued)	<p>procedures for coordination in investigation/prosecution should be developed prior to implementation</p> <p>prosecutive agency should be encouraged to provide legal training and orientation for unit officers</p>	
EXTERNAL LAW ENFORCEMENT RESOURCES			
	Assistance from appropriate agencies of smaller and/or larger jurisdiction	<p>protocols for external agency liaison and coordination should be established prior to implementation</p> <p>external letters of support may be solicited from adjacent agencies to accompany a grant request</p> <p>protocols for resource pooling with outside agencies should be established prior to implementation</p>	Agency head, appropriate command personnel; unit commander; external agency personnel (as appropriate)
PRIVATE SECTOR RESOURCES			
	Citizens groups	<p>property marking programs should be encouraged in jurisdiction</p> <p>viewing areas for citizen-victims should be planned for in the event of large seizures</p>	Agency public/community relations personnel; unit commander; appropriate command staff; unit property officer; patrol and investigation sections representatives

73(f)

CHAPTER THREE

TAKING ACTION - ALTERNATIVE STRATEGIES IN
ANTI-FENCING ENFORCEMENTA. FENCING TYPES AND ENFORCEMENT STRATEGIES

Once the general policies to guide action and the resources to implement action have been carefully thought through and planned, the agency is ready to take anti-fencing action. The shape of the anti-fencing effort will depend largely on an analysis of the kind of fencing situation faced and the priorities set for attacking that situation. At the same time, however, there are common elements which serve to distinguish anti-fencing strategies from other theft enforcement programs. The discussion here, then, begins with these common elements. From there, specialized strategies relating to each of the types of fencing situations earlier described are presented and discussed. Most of the strategies to be described have been used by anti-fencing units around the country, although some which have been proposed but not yet tried are also presented.

1. Common Elements in Anti-Fencing Efforts

Strategically, four elements are shared by anti-fencing efforts which serve to distinguish them from other theft enforcement policies. The first element consists of using the thief to catch the fence. Thus, unlike most other theft enforcement units, the anti-fencing effort is not in pursuit of the thief. Instead it looks beyond the thief for its enforcement target. This may seem obvious but the effects this has on operational strategies are quite significant. It means, for example, that the anti-fencing unit members will come to look on the thief more as an investigative tool or evidentiary device than as an enforcement target. It may also mean that the unit will be totally and easily prepared to give up the thief in favor of or in exchange for the fence. Finally, it will most surely mean that the anti-fencing effort will grow more and more concerned with the takings from thefts, and less interested in theft events themselves.

As the unit progresses in its work, then, it is likely to become increasingly incomprehensible to the agency which has traditionally approached theft on the basis of a dominant, if not exclusive, emphasis on the thief. Its use of the thief as an investigative tool rather than as an enforcement end will continue to set it apart. This should be anticipated. It is, in effect, an important sign that the anti-fencing effort has successfully broken away from traditional theft policy and is putting the thief in a perspective proper and appropriate to a successful anti-fencing effort.

The second element distinguishing anti-fencing strategies from those of other theft units is their non-reactive stance. This element is closely related to the way in which the thief is viewed. What it means is that anti-fencing efforts will be less likely to react to the criminal activities they observe, but rather to respond to the circumstances they themselves create out of those activities. Thus, for example, rather than reacting to a

73(g)

CHART 1 (CONTINUED)

RESOURCE CATEGORY	SPECIFIC RESOURCE NEEDED	POLICY CONSIDERATIONS RELATED TO RESOURCE	RELEVANT POLICY/DECISION MAKER(S)
PRIVATE SECTOR RESOURCES	Citizens groups (continued)	<ul style="list-style-type: none"> new agency stress should be placed on victim property description and victim follow-up in theft cases 	Agency press office; command staff; unit commander; agency legal adviser
	Media	<ul style="list-style-type: none"> establish press protocols prior to unit implementation protocol should conform to security needs of unit and long-term agency stability 	
	Business sector	<ul style="list-style-type: none"> unit should have flexibility to contact and utilize technical expertise of individuals and trade associations mechanisms should be developed to facilitate receipt of specific assistance 	

CONTINUED

1 OF 3

hijack situation by interdicting the truck, an anti-fencing unit is more likely to observe that truck's itinerary, and on the basis of that information create a situation by which officers can interact with those at the cargo's destination. Anti-fencing unit commanders continually report that the hardest thing for new officers to develop is the patience and confidence to "let the truck go" or to "let the thing go down." Police officers are trained to react, and react quickly, to situations that are clearly unlawful. Anti-fencing enforcement, however, frequently calls for them to suppress that trained instinct, to watch a crime event fully unfold and not respond. To do this takes patience certainly, but more important, it takes confidence, both in oneself and one's fellow officers. In addition, it takes a strong belief in the job one is doing -- a belief that the goal is important enough to risk letting the smaller crime and the smaller fish go by. It is this belief in the job, and the shared experience of a different kind of law enforcement that tends to make anti-fencing units especially cohesive and self-confident. Often this is interpreted by others as cockiness or elitism, but it is really an intrinsic element of the anti-fencing task. One veteran police officer who commands a highly successful anti-fencing effort, put it this way: "For most of my career [as a police officer], I've always felt like I've been on the defensive and the bad guys have had all the cards. Now for the first time, I'm on the offensive, and it may take me some time, but time I've got and I'm really doing a job!" Patience and the confidence to wait and make things happen are thus a second and important hallmark of anti-fencing strategies.

A third distinguishing element relates to the manner in which the informant is used. In traditional theft enforcement, the informant is used primarily to provide information on known crimes and their perpetrators. Anti-fencing enforcement utilizes the informant for this purpose also, but in addition relies on the informant in a more generalized, intelligence sense. Thus, a fencing informant may provide information on unknown criminal activity, associations or relationships. In addition, the informant may be asked to perform specific tasks important to the enforcement effort such as selling bait property to the fence. An anti-fencing unit will typically develop a wide range of information sources with widely divergent backgrounds, ranging anywhere from past or present co-conspirators of the fence to those in the fence's environment who themselves are guilty of no crimes --- such as legitimate employees of the businessman-fence. The capacity of the unit to develop, maintain, and control a widely varied information group will be the major key to its success.

Finally, all anti-fencing strategies will share a complexity that is derived from the evidentiary needs of a fencing investigation. Proof that stolen property was knowledgeably received by a fence is not always easily acquired by straightforward means. It involves essentially three separate showings: (1) the stolen character of the goods; (2) receipt by the fence; and (3) knowledge. Separate means may establish each element and then need to be drawn together for a case. Even the simplest of investigations may be rendered exceptionally complicated by the time each of these elements is proved sufficiently. Where a sophisticated and well-insulated fencing operation is involved, investigative techniques may be quite round about and

require considerable time to develop the necessary information. Thus, fencing cases typically require special capabilities to analyze and make sense out of bits of information and loose ends. This is why it is important that anti-fencing units not have assigned caseloads or other competing duties that divert attention from on-going investigations.

The common elements of anti-fencing strategies are as follows: use of the thief as an investigative tool; a patient, non-reactive stance; an on-going generalized use of a wide range of informants; and an often complex and indirect method of acquiring evidentiary proof. As each of the particular strategies are described below, the specific place of these elements will also be noted.

2. Specialized Strategies for Localized Fencing Situations

When localized fencing situations were described earlier, their main characteristics were summarized as follows:

- dominance of direct-dealing first order fences with local thieves as suppliers;
- large numbers of thieves and fences involved handling goods stolen in local burglaries and larcenies; and
- dominance of involvement by local business establishments in the fence role, and secondarily by fences operating from residence outlets.

From an investigative standpoint, these characteristics are extremely important for shaping enforcement strategies. For example, because localized fences deal directly with thieves, the thief becomes an especially useful investigative tool. He is likely to know the fence and therefore be able to provide information about his operation. Similarly, following the thief's tracks is likely to lead directly to the fence. Because of direct dealing, then, both informants and thieves themselves can be very useful to the anti-fencing effort.

At the same time, because the goods handled by localized fencing operations are stolen locally, the unit stands a good chance of identifying goods recovered in a search. This is important not only for the building of a good case against the fence but also for establishing sufficient cause for obtaining warrants to search. Finally, although the fence is likely to be known to the thieves with whom he deals and to handle locally stolen goods, because he frequently operates from a legitimate business establishment, it will be necessary to invoke subtle and indirect evidence-gathering techniques that specifically establish his guilty knowledge. This is because the fence's status or public image in the community may too easily overcome a direct accusation. For example, the simple claim by a "respectable" local businessman that he did not know the goods were stolen can be easily believed by a jury in the absence of additional incriminating evidence. This difficulty is perhaps less pronounced with the residential fence but should still be an important investigative consideration.

Localized anti-fencing strategies tend to lie on an active → passive continuum, very much as do local fences. Four main strategies are currently

in use against localized fencing situations:

(a) The traditional surveillance/warrant strategy. This is perhaps the most traditional and most passive anti-fencing strategy. It consists of performing a surveillance or stake-out at the location of a fencing operation. It need not be continuous surveillance but may occur when peak business with thieves is known to be conducted. The purposes of the stake-out are (1) to document the thieves entering and leaving the premises; and (2) to develop specific information on which a warrant to search can be obtained. It is the thieves frequenting the premises that serve as the key element in developing information on which to base a warrant. Once a particular theft can be attributed to one or several of these individuals, the stolen property can be searched for on the fence's premises. Often this means that cases made through the stake-out method will be based on one or two items of property, unless other items in plain view can also be seized and identified as having been stolen.

The stake-out/warrant strategy illustrates the role of the thief in finding and acquiring evidence which will help obtain an indictment and be admissible at trial on the criminal charge. It also shows the need for patience in waiting through many thief/fence transactions before responding to the crime scene via a search warrant. Waiting is necessary so that property identification can be insured as the minimal evidentiary cause for going forward. The stake-out imputes knowledgeability to the fence through its documentation of continuous comings and goings of identified thieves at the premises over a given period of time. This is perhaps this method's weakest element, since this inference may be easily rebutted or the information on which it is based may be excluded in subsequent judicial proceedings.

In a slight variation of the stake-out strategy, an informant may be used to enter the premises before a warrant is sought to confirm the presence or absence of certain property items. This provides additional assurance and documentation that the stolen items believed to be on the premises are in fact there. In general, the stake-out/warrant strategy is a valuable method for an anti-fencing effort that is minimally funded, traditionally constituted, and designed to mesh within a traditional, organizational police agency structure.

(b) The buy-bust strategy.⁴² The buy-bust strategy represents a somewhat more active anti-fencing enforcement method to be employed against localized fencing activities. This strategy may be implemented through a limited surveillance effort, like the stake-out described above, to confirm the scope and nature of a fence's operation. It is more likely, however, to involve acquiring such information from informants. On whatever basis information is gathered, once the fence's activities and interests have been ascertained, application of this strategy will next involve development of specific

⁴²The term "buy-bust" is used to connote the idea that a fence buys a piece of property and is then busted. Some jurisdictions call this the "sell-bust," with the emphasis on law enforcement selling to the fence and then busting him. These two terms are interchangeable.

evidentiary information. Thus, the buy-bust strategy proceeds to acquire and mark a piece of "bait property."⁴³ Then either an informant or an undercover officer will be sent into the premises, concealing a body transmitter and carrying the bait property. The officer or informant is briefed to make certain that the item is represented to the fence as stolen in nature. This is critical and must be skillfully accomplished. The aim is to complete a transaction with the fence for the "stolen" item at which point the undercover operator leaves. Soon thereafter back-up officers who have monitored the conversation⁴⁴ enter the premises to arrest the fence. On that basis they may receive consent to search for other stolen items, as well as to make limited searches in conjunction with the arrest. In any event, they will have one case built around the bait property item.

In jurisdictions where body transmitters are not permitted, the buy-bust has been worked successfully using one-party consent recording of telephone conversations. Here the informant or undercover officer initiates a deal with a fence at the suspect's location. He then arranges to confirm the deal by telephone. After leaving the suspect's location, he telephones as arranged and records the confirming conversation which consummates the deal. This procedure takes a little longer than the normal buy-bust, but legally achieves the same objective.⁴⁵

The essential weakness of the buy-bust strategy is that entry is for the purpose of arrest, therefore limiting the search permitted. This means that the scope of the case developed may also be limited to the bait property item. The strength of the buy-bust method is its development of specific evidence relating to knowledge which is gained from the conversation between the fence and the undercover officer or informant.

Resource considerations make the buy-bust strategy a limited one when compared with the stake-out method. The buy-bust depends first on legal recognition and acceptance of bait property for investigative purposes in the anti-fencing unit's jurisdiction.⁴⁶ Next, this strategy has specific

⁴³This may be obtained from the police property room or other sources as described at pp. 31-32 earlier.

⁴⁴As with any surveillance situation, monitoring of conversations should never be undertaken without prosecutive consultation.

⁴⁵Police officers in jurisdictions permitting one-party consent recording should investigate it fully since it can be a useful evidentiary tool not only in buy-bust situations but in fencing cases generally.

⁴⁶The legal issues surrounding the use of bait property to prove a charge of attempting to receive stolen property are discussed further at p. 99 and in Appendix C. Even where the strategy may not be useful for making cases, it may have investigative benefits. Thus, bait property may be sent into a business establishment to confirm an alleged fence's interest in buying stolen goods.

resource needs in three areas: 1) access to a pool of bait property; 2) equipment sufficient to monitor the conversation on the premises; and 3) a squad constituted partially of officers operating undercover. This means that the buy-bust strategy is best used by anti-fencing units with moderate resources, and which are designed to conform to a less traditional enforcement mold resembling narcotics or vice squads. Such a unit will generally be located within the traditional organizational structure, but will not necessarily be well-integrated with other theft enforcement units.

(c) The undercover buy strategy. This strategy is similar to the buy-bust method described above except that it is a more sophisticated approach. It involves incriminating purchases from the fence rather than sales to him. The undercover buy strategy requires that undercover agents actively work to become customers of the fence, i.e., to buy stolen property from him that he has earlier received from thieves. This anti-fencing method relies heavily on skilled undercover officers and on trusted informants who can successfully introduce undercover officers into a fencing operation.

The undercover buy strategy is a very flexible one. It can be used by both traditionally constituted units with undercover components or entirely covert units. In addition, it can be used to develop a case on a one-shot transaction or as part of a long-term investigation. In either situation, the undercover buy strategy has a particular need for security to protect the officers who are worked into the fencing operation, and must have adequate supplies of buy-money in order to credibly represent those officers as serious customers for stolen property. Property identification is the key to the success of the undercover buy strategy. On the one-shot transaction particularly, the property purchased must be capable of identification as having been stolen. Alternatively, a buy, once set up, may allow entry to a premises from which other property may be recovered for identification. Where the undercover buy strategy proceeds over several transactions, more time is gained for property identification and tracking. This allows a stronger case to be developed based on a consistent pattern of transactions on the part of the fence.⁴⁷

The rationale of the undercover buy is to show the fence in his true middleman role, both buying stolen goods from thieves and selling them to others. Cases based on the undercover buy, then, amply demonstrate the commercial interests of the receiver in property crime, mitigating the impression that a fence is merely someone who "innocently" purchases a "bargain" for his own use. The double dealing of the fence illustrates his role in rewarding the thief and in providing the conduit through which stolen goods re-enter legitimate and quasi-legitimate commercial channels. Repeated buys from the fence also shows the number of thieves his activity supports and the continuing nature of his crime. This clearly counters any defense that the police have "set-up" an otherwise blameless individual, showing rather that the fence attracted police attention because of his continuous and extensive impact on the criminal behavior of others.

⁴⁷In jurisdictions where it is legally permissible, this strategy can be modified in the long term by instituting an electronic surveillance through which telephonic or in-person deals can be recorded. Once again, prosecutive consultation is essential if such surveillance is to be employed.

The undercover buy is best worked by anti-fencing units either partially or totally covert in nature. In addition it requires a significant commitment of resources, both in buy-money and surveillance equipment. It is most successful over the long run where stronger cases can be developed.

(d) The undercover buy-sell strategy. This is the most active of localized anti-fencing strategies. It is best utilized by a covert anti-fencing effort that has a relatively long time period in which to work, 6-8 months for example. This is because the undercover buy-sell will complete several transactions of different kinds with the fence in order to build its cases. Units working with this strategy will actively create scenarios within which to interact with the fence. To do so, they will need access to both property and investigative funds to use in buying and selling transactions.

The most successful anti-fencing unit to actually employ this strategy used an informant from outside its jurisdiction to assume the central role as fence to the real fence who is the target of the investigation. This individual's cover was that he was a major stolen property connection who wanted to make deals with local fences --- to buy stolen merchandise --- deals which would be mutually beneficial and lucrative.⁴⁸ Using an informant for the role avoids placing an officer in dangerous or compromising circumstances, but means incurring substantial responsibilities for monitoring that individual's activities. Thus, this individual is kept under surveillance constantly both in his business and home. Transmitters in both premises and on all telephones record conversations; videotape and 35 mm cameras are posted across from both premises to visually record all comings and goings. Unit members eat, drink and sleep in the informant's shadow --- very important since the informant is not necessarily a person of the most admirable character, and has at least some potential for personal exploitation or theft of buy-money or assets provided to give him a front.

At the same time other unit members, undercover themselves, are creating additional scenarios, picking up intelligence information and monitoring the street for impending theft activities. Stolen goods of significant nature that are not expected to be intercepted by the informant's operation are subject to alternative plans. Usually these entail either the setting-up of separate deals or the leaking of planned activities to the proper law enforcement authorities for interception. Because the effort through its own activities and the activities generated by the informant fence will gradually become "thick as thieves" with a number of fencing operations, it will be able to pick and choose property to purchase and hence on which to make cases. This may mean letting some property disappear entirely in order to keep the operation intact for future deals in which clearly identifiable stolen property is involved.

Because the undercover buy-sell strategy operates for a long period before "official" actions are taken, meticulous record-keeping is essential. All tapes, pictures, and transcriptions must be coded numerically and placed in appropriate

⁴⁸Both wiretaps and bugs were used in this operation along with videotaping and other camera surveillance. This unit had an on-going and total prosecutive commitment and involvement in case investigation and development.

case folders. The volumes of evidence gathered must all be classified on an on-going basis according to individuals and cases investigated. There are several reasons for constant upkeep and updating of files. First, on-going classification and labeling of evidence avoids an exceptionally difficult and time consuming task when the operation shuts down. The volume of evidence gathered will be tremendous, and not only would be burdensome to classify at the end but also would be somewhat risky where memory rather than fresh recollection would be used to reconstruct the events as they occurred. Second, continual upkeep of records permits internal monitoring of investigations by the field commander who must account for activities and expenditures and manage the use of resources. Finally, upkeep is directly related to the intended setting in which investigative results will become official.

The long-term investigations of the undercover buy-sell strategy generally find official resolution in either the deliberations of a grand jury or in a series of formal charging documents issued by the prosecutive agency. Evidence must be gathered and organized to be appropriate for effective and efficient legal presentation to a grand jury and a court, to facilitate case analysis. It must be organized in such a way that it can receive rapid attention. The shut-down of an undercover buy-sell is most successful if immediately followed by the arrest of all those investigated. Typically a mass arrest is coordinated by the anti-fencing unit but performed by uniform divisions of the agency. To achieve the successful shut-down, continuous case preparation and evidence classification during the operation are essential.

The resources needed for the undercover buy-sell strategy are extensive, not so much in absolute levels but in scope. Thus, the anti-fencing unit employing this strategy must have money and property with which to deal, surveillance equipment and vehicles that are for its exclusive use, storage facilities for evidence (both tapes and photographic evidence and property), and a substantial delegation of authority to the unit commander. In addition, the informant, if used, must be adequately compensated and his or her upkeep provided for. This individual must be prepared to testify in all cases and provisions made for his or her future safety after exposure by testifying.

Where used, the undercover buy-sell strategy has been both cost-effective and operationally sound, making strong cases which resulted in substantial sentences. It relies for its success on a total and unfaltering commitment to and trust of the effort by the top agency administrators and on the selection of skilled and resourceful personnel for the unit. It also relies on the highest level of security both as to unit design and activities. Thus it is best applied where a unit is totally divorced from the traditional departmental structure, secretly located, reporting only to the highest agency levels on a "need-to-know" basis, and having essentially no interaction with other agency functions.

(e) Localized fencing strategies: a summary. It should be noted that for the first three anti-fencing strategies time is the key ingredient determining the nature of the impact the effort will have on the fence. Units that have used the stake-out, the buy-bust, or the undercover buy on a short

term, one-shot basis tend to make cases based on one or two items of property. These are often reduced to misdemeanor charges and the fence receives a light sentence (as little as a fine and probation). The hope is to be able to apply the strategy again and again over time. Practically speaking, reapplication becomes more difficult as the fence becomes more wary. The tactic, however, is called getting the fence "on the installment plan." The only problem with this is that each time the fence is busted, even if he beats the case, it becomes that much harder to get close to the fence again using any of these strategies. It is best, then, to pursue the strongest case possible under the assumption that it may be the only real opportunity to apply these strategies. Once again the patience of anti-fencing units becomes important in the timing of stake-out searches, buy-busts, or undercover-buys. This may mean letting property from a number of thefts go by; waiting for the good case results not only in a conviction but in a prison sentence. This is probably why longer term strategies are becoming increasingly utilized since they promise greater total impact and the opportunity to make the first case on a fence a strong one.

3. Specialized Strategies for Narcotics Related Fencing Operations

When the narcotics-related fencing operation was described earlier, its major characteristics were summarised as follows:

- a restrictive clientele comprised primarily of addict and/or drug using thieves;
- a hierarchical structure keyed on the street-level pusher as first line operative and collection agency;
- does not permit direct dealing between supply sources (thieves) and the true fence;
- operates through a complex set of illicit relationships accomplishing several criminal objectives;
- does not handle large scale theft although it acquires stolen property in volume through frequent transaction with thieves and through the use of many first-order intermediaries; and
- most frequently observed as a phenomenon of local fencing in the western United States.

Because the narcotics/fencing situation is restrictive in clientele, it should be recognized as representing only one aspect of the total fencing problem. However, where it is prominently observed, actions against it promise a potentially great impact since it deals with the most active of thieves, the drug users. The hierarchical nature of narcotics/fencing operations make them difficult to penetrate beyond the first-order, street level. Traditional informants, for example, are likely to be of little help in identifying key figures further along in the illicit chain. Police agencies are only beginning to gather information on the nature of the relationships in the narcotics/fencing situation, even from an intelligence perspective. This is primarily because narcotics and theft enforcement are rarely merged for this purpose. Traditionally, narcotics enforcement pursues the sources and outlets for narcotics distribution, while theft enforcement investigates the criminal activity perpetrated by the

addict in order to obtain illicit drugs. The gap between these two enforcement efforts is where the fencing mechanism falls; anti-fencing units interested in these fencing operations must chart new enforcement territory. Usually, the gap is bridged to some extent in the anti-fencing unit by drawing on personnel with experience in narcotics investigation.

Strategies which have been used against the narcotics/fencing operation have primarily been of a short-term nature directed at the first-level intermediary, the pusher-fence. The buy-bust is frequently used against the pusher-fence. This strategy is quite readily applicable to the pusher-fence since an undercover officer can be relatively easily worked into the changeable addict clientele of this fence. In terms of overall, long-term impact, however, such strategies are not likely to be very effective. The pusher-fence is easily replaced by others, and his removal tends to have only a temporary impact on the larger organizational structure of the operation. Strategies capable of yielding more substantial impacts have yet to be tried. Some suggested strategies for use against narcotics/fencing operations are described below. In each, the potentials of the strategy are likely to be better realized to the extent that a joint investigation is pursued in which resources are shared by the anti-fencing unit and the narcotics squad. This means the pooling of intelligence information, manpower, surveillance equipment and investigative funds. In developing the joint-investigative strategy, it should be made clear that the effort is expected to develop dual cases against individuals for both narcotics and theft-related offenses. Similarly, recoveries made by the joint effort should include both property and controlled substances. These guidelines will prevent the effort from becoming one-sided in either direction.

Some agency administrators may question the need for a joint-investigative effort when single cases could be developed separately on significant individuals by either of the units. There are, however, some important management reasons for coordinating narcotics and fencing investigations where pusher-fences are found to be operating. First, investigative economies are likely to occur where informants and investigative funds are pooled. Thus, two units don't end up paying essentially for the same information. Second, because both efforts may have similar investigative targets, coordination will avoid the need for wasteful duplicate investigations of individuals. Coordination will also preclude the investigation and/or destructive and embarrassing arrest of each other's undercover officers or informants, a situation that can often develop where two efforts in the same area are not coordinated. Third, it will allow broader interpretive or analytic capability to be applied to whatever information is generated. Thus, a piece of intelligence information may have little significance to a narcotics officer but will be extremely relevant to an anti-fencing officer and end up contributing to both enforcement goals. Next, because the two illicit operations are closely connected, tracing the stolen property is likely to assist in tracing the drug distribution channel and vice versa; stolen merchandise may move up the same organizational pipeline through which narcotics move downward. Finally, a joint investigative effort allows for individual pursuit of loose ends where the two activities diverge from each other. Thus, it appears likely that up to a point the same individuals handling drug traffic also hold key positions with regard to trade in stolen property. At some point, however, the fencing connection is likely to kick out of the operation and go a separate route. A joint effort allows a separate pursuit of the fencing side when appropriate, and assures that all the dimensions of the operation are penetrated and combatted. Without a joint

effort, only one side of the operation's money making activities will be impacted, leaving an organizational shell that can be reestablished in the future. The narcotics/fencing operation must be broadly probed and all its sources of income investigated.

(a) A model for a coordinated narcotics/fencing strategy. Given the above groundrules, a joint effort against a narcotics/fencing operation would probably best employ a modified version of the undercover buy-sell strategy described earlier. This overall strategy would be to place informants or undercover officers in key roles in the operation in order to develop information on the next higher contact in the illicit chain. Thus, the strategy could begin with the placement of an informant in the first level, pusher-fence role. This individual may be made available through a buy-bust in which charges are dropped in exchange for his cooperation. Or, as the result of a buy-bust, an undercover officer may have the chance to work into an operation as a pusher-fence, to fill the gap left by the individual arrested.

The infiltration at this level is for the purpose of making higher contacts -- not to apprehend and convict addict-thieves. Once these contacts are suitably developed, it is best that the pusher-fence be taken out of the picture, preferably by bogus arrest. This is because maintenance of this undercover role is too costly to continue as a charade, and raises too many problems if maintained for real. Bridges must be burned at each level, though very carefully and with a view toward the maintenance of credibility. Once the level of contacts behind the pusher-fence is established, further associations with these individuals can be developed. These should be arranged through buying or selling transactions related to drugs or property. Preferably, the effort should be able to make limited drug purchases, but it should be able to go both ways on stolen property. This is where the fencing side of the investigation becomes an important asset. It allows the effort to wheel and deal in merchandise that is not necessarily contraband and to introduce bait items into the operation that can later be traced and identified. It also allows law enforcement to stay in the operation longer since property can be dealt rather than narcotics, avoiding potentially serious repercussions which would flow from long term police involvement in narcotics trafficking.⁴⁹

Once the transport connection level is reached, agency capability to monitor the operation outside the local jurisdiction is critical. Generally, this means that the effort should in the first instance be pursued by an agency of a larger jurisdiction, or be capable of being coordinated successfully with state or federal authorities. It is likely that the federal Drug Enforcement Administration (DEA) would possess the most appropriate powers and authorities to assist in such an investigation. While, then, DEA has not to date been greatly involved in anti-fencing enforcement, the pursuit of the narcotics/fencing operation may offer a new and logical focus for that agency.

⁴⁹The possibility of community repercussions relating to such an investigation suggests that the use of electronic surveillance (where legally permissible) in such a strategy could perform both a documenting function and one which serves to demonstrate that undercover officers performed legal and proper roles in the investigation.

The joint narcotics/fencing investigation should structure its efforts over a relatively long period, after which time a shut-down and mass arrests can take place. Both the upkeep of files and the classification of evidentiary materials should occur on an on-going basis as described earlier with regard to the buy-sell strategy. Where federal authorities have participated in the investigation, several options will be available for proceeding at the prosecutive level. Guidelines noted earlier for making these choices are relevant here.⁵⁰

A joint narcotics/fencing effort of this kind should be carefully considered before it is undertaken. It will need in-depth prosecutive input to assure the propriety of all police conduct. In addition, extremely close monitoring of all transactions must occur to protect the integrity of the operation and of the undercover officers involved in it. Possible community repercussions and legal problems must be confronted and dealt with realistically prior to initiation of such an effort. While the stolen property side of the investigation may provide longer range viability for the enforcement effort, it by no means removes the possible negative connotations of such an operation. Despite these serious cautions and caveats, the joint narcotics/fencing strategy remains an option for a covert operation that has significant potential. Since it is a strategy that has yet to be implemented, its true effectiveness cannot be determined. The promise it holds for impacting on this subset of the fencing problem and additionally on the activities of narcotics traffickers is, however, logically attractive and potentially highly significant.

4. Strategies against organized crime-based fencing operations. Organized crime-based fencing operations, as described earlier, have the following characteristics:

- the presence of an organized criminal group whose illicit activities (particularly in the areas of gambling and labor racketeering) give it influence over the behaviors of key transport personnel.
- the presence of legitimate business entities willing to provide or coerced into providing outlets for stolen merchandise;
- low visibility diversions of goods and underreporting by theft victims;
- concentration on large-volume diversions of new merchandise or high value items; and
- use of marginal individuals rather than identified thieves to steal and divert merchandise.

Because in this type of fencing operation one can expect the presence of organized crime figures in important, though background, roles, anti-fencing

⁵⁰See pp. 65-66 for the earlier discussion.

efforts aimed at these operations can clearly serve two purposes: 1) the interdiction of the fencing activities themselves; and 2) the development of information leading to the interdiction of organized crime figures who support fencing activities. Operationally, the first must be successfully accomplished in order to attempt the second. This must be made clear at the outset, and specific enforcement priorities set before the anti-fencing effort is launched. Too often shorter term and more manageable enforcement goals which are essential for the realization of longer term goals are not consistently pursued, and efforts become diffused and amorphous in nature. An agency interested in organized crime, for example, may be only tangentially interested in syndicate involvement in fencing; this despite the fact that pursuit of a fencing operation may open the door necessary to significantly attack its priority enforcement targets. Anti-fencing investigations in the organized crime area should be pursued as if they are ends in themselves. Only then can their long-term potential be realized. Where more amorphous enforcement goals are present, the fencing investigator may wander and get diverted and end up accomplishing very little. First and foremost, then, a clear commitment to anti-fencing enforcement for its own sake must accompany any broad-scale effort in the organized crime area.

Because the organized crime-based fencing operation, like the narcotics related situation, is accomplished through a multi-level organizational structure, first level participants and informants relating to them are unlikely to be of much investigative value. In addition, the climate of intimidation and threat by which property diversions are supported is likely to make few informants available, not to mention victims who themselves may be reluctant to come forward. In most cases, then, organized crime-based fencing operations must be probed by covert undercover units having the most sophisticated and tightest security possible. In addition, many situations suggest the need for joint or coordinated investigation with other agencies.

The undercover buy is to date the most frequently used strategy against operations of this type, and has been applied mainly in the cargo theft area. In this situation, the undercover unit represents itself in the role of a fencing outlet for stolen merchandise. To be successful in penetrating the fencing operation it must make contact with intermediaries above the level of the thieves involved. Only in this way, will the agency know the extent of participation by key individuals inside a cargo terminus. It is essential that the agency document both the participation of these key cargo terminus individuals, as well as the basis for that participation. Thus, it will be important to know the extent to which the activities of insiders is related exclusively to labor corruption, or whether gambling and loansharking activities in and around the cargo area assure the coerced participation of others.

Success of the undercover buy strategy may permit the anti-fencing unit to make cases that relate not only to theft activities, but also to other illicit operations that support the thefts.⁵¹ By and large, then, the undercover buy strategy is an inward-looking one focusing on the range of activities

⁵¹This is particularly true if the strategy employs electronic documentation of the full range of activities in which individuals involved in such cases may participate.

by which an organized crime-based fencing operation is supplied with stolen goods. Unless, then, it serves to effectively eliminate the activities that permit diversions to occur, its impact will be short-lived. Thus, strategies must also be developed to probe and penetrate the regular outlets for organized crime-based theft and fencing operations. In general, these outlets are comprised of those business establishments which serve as continuing markets for stolen merchandise produced by such operations.

To date, information relating to these outlets remains scattered and little probed. Much of the information appears to be of an intelligence nature and has not as yet formed the basis for active investigation. Part of the problem is that the exact nature of the businessman-fence's relationship with the organized crime operation may not be fully known. Similarly, evidence that the businessman knows that he is receiving stolen merchandise must be obtained. One suggested strategy here is to turn the businessman-fence, by using such evidence of guilty knowledge as is available, and gain his cooperation as an informant. On the basis of this cooperation, the operation can be penetrated by undercover officers operating as the businessman-fence's agents. Because the businessman-fence is in this illegal enterprise strictly for the money, and values his otherwise legitimate status in the community, he will more likely be persuaded to cooperate and provide testimony against co-conspirators. Where, however, his participation was compelled as a result of coercive activity on the part of organized criminal elements, or where he is otherwise in fear for himself or his family, his cooperation may not be forthcoming or may need to be exchanged for extensive future support and protection. In this case, he may be unsafe and unreliable.

From whichever direction the organized crime based fencing situation is probed, the investigative effort should be directed toward presentation to an investigative grand jury or inquiry judge proceeding. This mechanism possesses the greatest potential for synthesizing the information gathered, for linking cases and individuals as co-defendants, and for providing grants of immunity to key witnesses. Because these proceedings are the most beneficial outcomes for the anti-fencing effort, extensive involvement by the appropriate prosecutive agency should, wherever possible, pre-date implementation of the effort. Prosecutive involvement should be continuous and serve to shape the investigation as it proceeds. In effect, there may be ample justification for basing the anti-fencing effort in the prosecutive agency, on the strike force model. While the strike force concept may be more easily applied at state and federal levels, it can be used at the local level where officers are detailed to the prosecutive agency. Though limited, there is successful precedent for such an arrangement in the anti-fencing area.⁵²

5. Strategies against the mobile, professional theft ring. The mobile, professional theft ring operates infrequently in any one local area, and depends

⁵²The Buffalo, N.Y. prosecutor's office, for example, used a combined investigative staff from the New York State Police BCI and the local police department to develop evidence for a special grand jury on organized crime. Forty-four indictments of leading organized crime figures and their associates for fencing and allied crimes were handed down as a result of this effort. The investigation centered on activities related to thefts of high value merchandise rather than on the cargo theft situation, but represents a useful model nonetheless.

for its success on an exclusive set of contacts that include fences as well as tipsters and fixers. These contacts are nationwide, allowing the operations of the professional thief to cover a broad area. Because of this it is unlikely that a state or local jurisdiction can justify an exclusive or significant commitment of resources to the professional thief's activities. Smaller jurisdictions should, however, be open and alert to the possibilities of joint investigative efforts with others. In this regard, the activities and effort of the Major Thief Program in the FBI offer the greatest promise for continued surveillance over the activities of the mobile professional theft population.

Where the professional thief's set of contacts is involved, however, it is clear that federal authorities will need the support and assistance of state and local agencies alert to the problem and to the investigative challenges it represents. This is because while the professional thief is himself highly mobile, his fencing contacts will be far more rooted and established. The thief comes to the fence in most cases -- not vice versa.⁵³ Thus, the opportunity to successfully interdict the professional thief is at the fencing stage to which he must proceed (often located far from the original crime scene) to convert the stolen goods. In addition, because the fencing contact of the professional thief is established at some fixed (business) location, the fencing site can be more readily surveilled and monitored than the thief himself.

The key to investigating the fencing operation tied to the professional theft ring is successfully anticipating its use. This requires not only extensive intelligence gathering to learn of well-developed associations and use of informants to learn of an impending score, but also the capacity to intercept telephonic communications between professional thieves and likely fencing contacts. Since the professional will make certain of the fence connection before committing the theft, an intercept strategy holds great investigative promise. It also allows time for a stake-out of the fence and the insertion of transmitters on the premises. When the deal goes down, both the thieves and the fence can then be arrested. Staking out the fence is usually the preferable strategy in this situation since intelligence information may be incomplete regarding the particular target of the professional ring. Thus, intelligence may disclose the fact that a score is likely and the general location geographically may be known, but the precise target will be a carefully guarded secret of the theft ring. Attempting to stake out all potential theft targets in a given area would be inefficient, if not impossible. Staking out the likely fence, even if he is located in a distant geographic area, holds greater promise.

Because the professional theft ring and its contacts are something of an exclusive club, it is unlikely that undercover strategies can be used. Strangers to the group would not be readily accepted and the professional thief cannot be easily isolated before a score and persuaded to turn informant.

⁵³This is with the exception of the entrepreneurial fence acting as tipster also. In this situation, the fence can be seen to initiate the thief's activity, although the thief is likely to have to get back to him once the theft is perpetrated.

Efforts against operations of this type must rely instead on intelligence gathering and the capacity to move quickly on the basis of information generated. Additionally, the ability to successfully predict the actions of the key actors in these operations assures an effective investigative effort.

Because of the mobility of the professional rings, their infrequency of activity, and the diffused locations of their targets; they have not in the past attracted the kind of specific enforcement focus promised by the FBI's Major Thief Program. If this program is to realize its potential, however, it must be able to call upon alert and sensitive state and local authorities both for intelligence information and for stake-out and interception assistance. The general development of anti-fencing enforcement experience and the increases in the number of such units operating around the nation is likely to provide such sensitivity at the state and local level and to stand the Major Thief Program in good stead. Joint federal-local enforcement efforts here should contribute to success of the individual organizational objectives of all participants.

B. THE ROLE OF THE STOREFRONT

A strategy that has been the recipient of considerable recent publicity is the storefront technique, in which police officers pose as fences for the purpose of buying stolen property from thieves. While the storefront is often associated with anti-fencing enforcement, it is clearly not an anti-fencing strategy. Instead it is a strategy directed specifically at the theft problem through wholesale, dramatic apprehension of thieves. As such it does not represent a new approach to property theft enforcement, but rather a new arena for traditional anti-theft enforcement. It is a technique that deserves considerable attention in this Manual for two reasons: (1) to distinguish it from true anti-fencing strategies and to consider its relationship and impact to anti-fencing enforcement efforts; and (2) to provide a documented basis of needed knowledge and experience on how to operate a storefront, pitfalls to be avoided, and the opportunities it provides.

1. Some background on the storefront. Notwithstanding recent publicity suggesting the contrary, the storefront is not a new technique. As far as can be determined, it appears to have been in use in this country since the mid-1960s. In the past the storefront has been used as a short-run tactic (operated for 3 to 6 weeks) designed to impact on active thieving rings whose detection and arrest would otherwise be difficult. Under this rationale the storefront has been evoked when the following has occurred:

- a tremendous increase in theft is observed in a part of the jurisdiction;
- traditional techniques of applying increased patrols to the area have failed to quell the increase;
- fences located in the immediate area are believed to be receiving the property stolen in the thefts;

- the problem is serious enough to warrant expenditure of departmental investigative funds to stop it.

The above analysis is critical to this use of the storefront because it is a tactic applied in a very focused manner. Thus, the particular theft problem of concern must be observable and restricted to a specific area in the jurisdiction. Other techniques must have been tried and found unsuccessful. It must be believed that the goods stolen are fenced in the immediate area so that setting up in that area as a fence can be expected to draw the particular thieves into the trap for arrest. All of these considerations are important since departmental funds, which are always limited, will be spent in the effort. Thus, both the problem and this potential solution must be able to compete with other needs for those same funds.

When a determination to use the storefront is made, a site in the immediate area of the thefts is selected. Usually an abandoned small business in the area that can be acquired quickly and cheaply is chosen (a repair shop, for example). Remodelling to accommodate surveillance equipment is done, and the "store" stocked with appropriate props obtained chiefly from the police property room. The "fence" himself is trained in how to act and conduct transactions. At the same time, word is spread on the street through informants and undercover officers that a new fence connection is about to open. The officer who is to play the fence is fully briefed on the thieves sought, including any descriptions of individuals and full descriptions of property that has been stolen. In the beginning, the police fence will pay a somewhat higher price for stolen merchandise than local fences are believed to pay, in order to attract thieves to him. Since the operation will only last a short time, enough must be known about the thieves sought and their working habits so that the police store can take its cues from them. Thus, it will be open at hours most convenient to them. It will, without ordering merchandise, suggest a preference from among types of property locally stolen, and will show some interest in those thefts reported in the news. All transactions in the store will be recorded and pictures taken of the principals involved. At the end of the predetermined period of operation the store will be closed down -- ending perhaps with a social affair in which all subjects are invited and arrested, or with a series of formal charges and arrest warrants being served on all subjects simultaneously over an eight-hour shift.

The success of the store will be determined on the basis of whether or not the active thieving ring sought has been apprehended. In any case, with any success at all, many thieves will have been arrested and much property recovered. Information gained through the operation will be used to shape on-going enforcement activities. Ideally, there will be a squad who will generally work clean-up in the aftermath of the operation, tracking down those subjects not caught in the initial set of arrests and pursuing cases discovered but not made during the operation. Agency theft enforcement operations then drop back to more usual and customary methods, unless and until similar circumstances again arise.

2. New innovations in the storefront. The traditional use of the storefront differs in some significant ways from its more recent use. To begin with, recent applications of the storefront technique have been less associated with a

specific, localized theft increase and more with a generalized concern about property theft. Thus, the storefront is invoked to impact on the general course of theft activities. Because of this, recent storefronts have been operated for longer periods of time (some as long as 6 months) and as ends in and of themselves. Most recent storefronts have been supported by external grant monies which permitted longer start-up and/or far more resources in money and equipment to support operations. Availability of grant funds has also meant that this tactic is less likely to be invoked in response to a specific problem area, as was the focus of earlier operations.

The considerations that must go into the design and planning of a long-term storefront operation are numerous and complex. Five of the most important are these:

(a) Choice of site for storefront. The site chosen for the storefront must have five main characteristics: (1) it must have a front and a secured rear entry and exit; (2) it must be capable of being remodeled to meet operational needs; (3) it must be accessible; (4) it must be plausible as a fencing establishment; and (5) it must not be too attractive to the general population. Front and rear access is necessary so that back-up officers and camera and equipment personnel can come and go unobserved. Since both equipment and personnel must be secreted on the premises it must be of sufficient size and design to accommodate these or to be remodeled to accommodate them. Remodeling considerations have two dimensions, feasibility (can it be done) and permissibility (do rental, leasing or donation agreements allow remodeling to occur). Accessibility relates first to its general locational convenience for thieves and then to its parking accommodations. If a site is too difficult to find or has no parking space accessible nearby, thieves may avoid it. One storefront operation found, for example, that having a "no parking or standing" sign removed from in front of the premises improved "business" measurably. Plausibility is important both as to general location and nature of the business. Some office or commercial premises may be too intimidating to the average thief (a high rise office building, for example). Similarly, some business covers are more plausible and acceptable than others.

Most storefronts are set up as general merchandise outlets or repair places. Such businesses are not only familiarly reassuring to thieves, but also easier to stock with appropriate props. This leads to the final main consideration -- that the storefront be credible but not too attractive to the general public. This involves both a safety consideration for the public and a concern that the operation not spend too much time conducting legitimate transactions.

Unlike the real businessman-fence, the police fence is not interested in conducting a double trade. The police only want thieves as customers, not average citizens. That is why some of the most typical of local fencing businesses, like the bar and grill, for example, are avoided in the storefront. They take too big an investment in materials and props to give minimal credibility and are likely to be too attractive to the general public.

Beyond these minimal requirements, it is also important for the site to have these additional characteristics. First, it should have available nearby a separate surveillance vantage point. This is helpful for recording license

numbers of suspects' vehicles and for positioning of additional back-up units should things go amiss. It is preferable for the additional site to be directly across from the store so that full view can be had of the premises. Second, the site should be investigated to insure that it is not too proximate to the scene of other illegal activities which themselves are under surveillance. This may be difficult to do since the sites of other surveillance efforts may be as secretly kept as is the storefront operations. Someone at the top command level who has knowledge of various covert operations should, however, review the selected site to prevent close overlap of operations. Some storefronts because of their notorious locations have come close to being busted by other departmental units, a situation embarrassing to say the least; and which caused premature shut-downs when security was necessarily breached by revealing the operation internally within the agency. Finally, the site should be appropriate in size and setting to accommodate its expected clientele without unduly impacting upon its legitimate commercial and residential neighbors. Some storefronts have not been good neighbors; they have allowed their clientele to take advantage of the parking accommodations of nearby businesses. They have caused traffic problems in the immediate area. They have disrupted normal living in the area to such an extent that normal business was discouraged. Such a situation should be prevented not only because it is unwarranted and irresponsible but also because it may be a breach of the security of the operation by causing uninformed units of local police to respond to frequent complaints.

(b) Designing the interior of the storefront. Once the site is selected its interior must be designed properly. Both safety and surveillance considerations must be involved in the storefront's interior design. Under the safety heading, the interior must first include a partition or separate room in which back-up personnel and surveillance equipment can be secreted. It is best that scrimping not occur here. These officers will spend many hours hidden in the space so they should be made as comfortable as possible. It should also be disguised and sound-proofed so that thieves' suspicions are not aroused by odd background noises. Next, the safety of the front officer(s) should be insured. Most operations have used high counters reinforced with metal behind which the "fence(s)" stands and which can serve as protection in the event of a shooting incident. The front officer(s) should not be directly accessible to suspects by being out in the open, so the counter area should be enclosed in some fashion.

Under the surveillance heading, the back-up officers and recording equipment (including videotape machine, tape recorder and other camera equipment) should be located either directly behind the counter area or in a location with an equally good vantage point to record all transactions clearly and accurately. Some storefront operators have hung pin-ups in the area of the camera lens so as to attract attention and get full face shots of suspects. Most operations have carefully located clocks and calendars displayed to cause the date and time of the transaction to be recorded on film as suspects enter and leave. Also from a surveillance perspective, remote microphones should be secreted at the counter and elsewhere, to pick up all conversation on the premises. Telephone calls should also be recorded. Both the capacity to transcribe surveillance tapes and the timetable by which they will be done should be planned ahead of time.

The interior should, of course, be decorated with props suitable to the "business" involved, but not so obtrusively that they interfere with recorded surveillance. For the comfort of the front officer(s), sanitary facilities should be considered, although if provided, they should not be used by back-up personnel.

(c) Selection, training, and orientation of personnel. The selection and training of the police "fence(s)" are extremely important. Most operations employ either young officers or academy cadets for these roles. The young and inexperienced officer is far less likely to be spotted as a police officer, but will need substantial training and orientation. The trade-off is between anonymity and experience; the security of anonymity usually wins.

The front officer must be trained in how to talk, how to negotiate, what prices to quote, and how to react to various situations that might arise. He must know how and when to be tough, and how and when to be calm and cool. Additionally, he must know how to elicit conversation from suspects, particularly incriminating conversation, such as that establishing the stolen character of the merchandise. Next he must know the legal parameters under which he works. He must avoid entrapment of subjects, avoid ordering merchandise or suggesting particular criminal activities to them. He must be a glib and skillful negotiator, yet maintain a passive stance.

Back-up officers need not be undercover personnel since they will not be seen. They are usually experienced officers whose training has included the skillful use of surveillance equipment. They must also be trained when and how to respond to situations out front that appear dangerous. Once they respond the cover is blown, so they must allow the front officer to "talk" himself out of things first. Their sensible use of discretion will save the operation and keep the front officer out of jeopardy. In a few cases a front partner of the police fence has been used in a bodyguard-type role. This has been done to minimize the potential for aggressive behavior on the part of suspects.

(d) Development of security protocols. Security guidelines and protocols for the storefront must be established at several levels. First, because the operation is covert, knowledge of its existence should be limited to the officers involved and to only a few other designated personnel at the highest command level. All information relating to the storefront before and during its operation should similarly be highly confidential and restricted.

Second, protocols must be established for comings and goings from the storefront. Routines to be followed by back-up officers should be determined so that they attract no attention. The front officer may want to vary his particular routine so as not to become the target of a robbery. He should never proceed home directly, so that his family is protected. Third, procedures for the removal and storage of property from the premises should be established. Police facilities should not be used for that purpose. Similarly, the property should not be kept at the storefront where it might become a burglary target and surveillance equipment be discovered.

For the safety of the front officer some protocol should be used to suggest that while he has access to considerable funds, he doesn't have much money on the premises at any one time. In line with this, the till should be inaccessible to suspects. Similarly, a routine should be established to limit the number of

suspects permitted on the premises at any one time. Finally, clear guidelines as to the extent of activities in which the frontman is to become involved should be given. These should include what kinds of property to take and refuse; and how to avoid involvement in any "criminal" activity other than fencing (for example, gambling or narcotics offenses). In this last respect, it is not considered safe to have the police fence involved in too many illicit dealings. Many operations have not anticipated the possibility, and have succumbed to operational pressures to become involved in narcotics and gambling deals. Often this is because storefront operators fear loss of credibility, because they may be tempted by the prospect of making other --- and important --- kinds of cases. Neither of these reasons can justify storefront operators' departure from their designed mission. Saying no has been shown not to affect the credibility of an operation; saying yes has frequently put the front officer in compromising circumstances. Very clear guidelines to meet this problem should be enunciated and observed.

This is not to suggest that the valuable intelligence information about and contacts to be made in the gambling and narcotics areas should be ignored. A major benefit of the storefront is that it puts police actively into the criminal underworld allowing them to gain tremendous information. Contacts relating to other crime areas that are received at the storefront should be picked up by other undercover operatives and pursued. In this sense the police-fence can be an important generator of proactive investigations into gambling, narcotics, and other criminal activities -- even though for security reasons he limits his dealings to stolen goods.

(e) Determination of a close-out strategy. Before beginning a storefront, plans should be made for how and when to end it. When a storefront is supported through grant monies, a particular time frame for operation is stated and envisioned. The natural course of things may, however, modify those expectations. For example, business may be so brisk that funds are expended long before the end of the period for operation. At the other extreme, business may be non-existent (a situation which has occurred) in which case a total re-evaluation should be made. Alternatively, the operation may proceed to a point where no new suspects are developed, but the same old crowd just keeps returning.⁵⁴ In such a case there would be little justification for continuing. Suspected or actual security breaches may end the operation prematurely.

Whether the end of the operation is fully planned or by necessity, some procedures should be pre-determined for the arrest and charging of suspects. Obviously, the close-out procedure must itself be confidential to prevent suspects from scattering. The device of a social gathering/party has been used frequently of late since it manages to get most suspects together at one time. Other operations have presented cases to grand juries near the close of the effort, which returned secret indictments; warrants were prepared for service

⁵⁴There may, however, be a need to continue buying from "regular customers" over many transactions. This is because some operations have found that thieves "test" them for a few transactions by bringing in legitimate property, purporting it to be stolen. It may be necessary, therefore, to wait through a series of transactions before shutting off such individuals.

simultaneously on all defendants, by members of the uniform division. Where close-out is due to accidental or extenuating circumstances, pre-planned procedures should be invoked to salvage the cases already made in the operation, and for processing these cases.

How and when to end the storefront calls for as much planning attention as getting it started. In particular, being able to recognize at what point it has outlasted its usefulness takes a special talent. Because the storefront is often enormously enjoyable and professionally gratifying to the officers involved, they are not likely to be the best judge of this. This decision should be a function of on-going, command review of the operation and its activities.

3. Results and Criticisms of the Storefront

Where a storefront operation has been successful, it will usually result in three accomplishments: (1) the arrest of a large number of thieves; (2) the recovery of a large amount of stolen property; and (3) extensive publicity and press coverage. Unless the operation has been run carefully and methodically, these accomplishments may be accompanied by some negative side-effects. Thus, for example, if the front officer has not been trained properly, cases may be vulnerable to an entrapment defense, or even where cases are upheld a lack of care in the operation may result in disappointing sentences. Similarly, lack of caution in the purchase of stolen property may result in large amounts of it being unidentified for return to owners, taking some of the gloss off the effort.

The negative consequences of media coverage were discussed earlier with regard to anti-fencing units. The media are particularly captivated by storefront operations and grave internal problems in several police agencies have resulted from media publicity surrounding such efforts. Defendants in some storefront cases have complained that the resulting publicity has interfered with their right to a fair trial -- a claim that has not as yet been upheld but should be cause for concern.

It is not what the storefront accomplishes, but what it fails to accomplish -- or alternatively, encourages -- that concerns most critics. To begin with, critics note, the storefront fails to demonstrate any real impact on theft rates. The reason for this, it is suggested, is that it really encourages rather than discourages criminal activity. By performing the fence's role the police may provide the same incentive to theft as does the fence himself. Where the police pay better prices than the fence in order to attract or maintain business, their role in creating an incentive may be even more significant.⁵⁵

In similar fashion, it is argued that the incentive provided by the storefront may be particularly important, given the type of thief that forms its clientele. The thieves arrested in storefronts, critics note, are generally narcotics addicts and often very marginal individuals. Most thieves of any

⁵⁵In this regard, police are advised that a better tactic to interest thieves is to present oneself as part of a larger organization, association with which is likely to remain profitable over a long period of time. Often the perceived stability of a fencing outlet is more important than price to the thief.

consequence have their own fence connections with whom they deal on a continuing basis. The thieves drawn to the storefront, then, may primarily be those with whom other fences refuse to do business or at least to pay well. The storefront treats them better, however, which, critics argue, may be all the encouragement they need. Proponents of the storefront say that their clientele would steal anyway so what difference does it make. Critics respond pointing out that few careful records are kept plotting neighborhood burglary rates as a result of a storefront; they argue that if such records were kept they would show that crime increased as a result of such operations.

Another major line of criticism leveled at the storefront relates to its impact on fences. To begin with, the storefront strategy has no direct enforcement impact on the fence. On the other hand, it may indirectly strengthen the fence's position. Thieves who were tempted to stray to the greener pastures of the police fence can be held up as examples by the real fence, generating greater loyalty to him than existed before. When, therefore, true anti-fencing efforts are undertaken, the fence may be even better insulated and harder to combat. It is because the storefront has no negative consequences on the fence that its impact on theft -- if any -- is believed to be quite short lived. Thieves are easily replaced in the property theft marketplace; fences are not. The resources it takes to set up and run a storefront are themselves good evidence of this fact.

The resource question is the basis for a final major criticism of the storefront. The strategy, critics say, is enormously expensive for what it accomplishes. Buy money alone, for example, has run as high as \$67,000 for a period of less than six months. Add the costs of leasing or rental for premises, surveillance equipment, salaries for front and back-up officers and the price tag for the storefront can be high indeed. Proponents acknowledge the costs but point to the large amounts of property recovered. In response, critics note that much of it often cannot be identified, is refused by property owners who have received insurance settlements or because it has been damaged in some way, or reverts to insurers who end up receiving private benefits from public expenditures. What property is left after all these transactions is sold at public sales for only a fraction of its value or barely recovering the price paid to the thief for it.

4. Assessment of the Storefront from an Anti-Fencing Perspective

On the one hand, the storefront is hailed as a new and effective tool in law enforcement's arsenal for combatting burglary. On the other hand, it is seen as a strategy by which citizens through their tax monies end up buying back their own property which was stolen by individuals who were encouraged to do so by the police. A true assessment of the technique probably lies somewhere in between. The storefront is not and should not be considered an anti-fencing enforcement technique. It simply does not constitute an effort in this field. To the extent that this is not fully recognized it will detract from any anti-fencing effort, by diverting manpower and other law enforcement resources to catching thieves rather than fences. Without truly innovative strategies directed against the fence property theft will continue to climb. If the storefront, by confusing the issues, tends to jeopardize the development and/or support of those strategies, then it must be given a negative score.

This is not to suggest that the storefront operation may not have a useful role to play in the anti-fencing area. In fact, where the storefront is used as the preamble to a later anti-fencing effort, three particular benefits can be obtained: (1) the storefront will serve to document the important role played by the fence in property crime; (2) the publicity received by the storefront can help to build the level of community and political support necessary to ensure future funding for a promising anti-fencing program to follow; and (3) operation of the storefront can generate considerable firsthand information about the stolen property marketplace and intelligence information about thieves and fences operating in it. The one agency that has the longest experience with the storefront has used it primarily for this latter purpose and has received significant benefit from its operation. Unfortunately, the storefront technique has not generally been used for any of these purposes. Instead it has been undertaken in some jurisdictions as an end in itself.

C. ASSESSMENT OF ANTI-FENCING STRATEGIES WITH REGARD TO INVESTIGATIVE REQUIREMENTS

In discussing the various anti-fencing strategies either used or proposed for use against fencing operations, the legal requirements in receiving cases were briefly noted. Each of the strategies described earlier takes into account all of these requirements but may have specific investigative strengths and weaknesses. Similarly, some requirements in receiving cases may be more important in one jurisdiction than in another. Finally, not all of the strategies noted earlier are permissible in all jurisdictions. It is therefore important to assess these various strategies in light of the legal and evidentiary requirements of fencing cases. The bulk of experience and interest in anti-fencing enforcement has involved making a criminal case for receiving or its equivalent, so the following discussion will focus primarily on the elements of that crime.⁵⁶

1. Basic Legal Requirements in Fencing Cases

Perhaps the two most common statutory provisions relating to fencing are criminal receiving or possession statutes, and grand larceny by possession laws. Both have essentially the same minimum requirements. These requirements necessitate the showing of the following: (1) that the property allegedly received or possessed be identified as stolen; (2) that the property be actually received or possessed; (3) that the defendant knew when receiving or possessing the property that it was stolen; and (4) that he or she nevertheless received or possessed it with a criminal intent. Each of these elements, along with the relative strengths and weaknesses of various anti-fencing strategies in proving them, will be discussed in turn.

⁵⁶The elements of other potential statutory tools for use against the fence are presented in the Investigator's Legal Guide at Appendix C. It should be noted that this is only intended to be a general discussion. Anti-fencing units should thoroughly understand the legal issues in fencing in their own jurisdictions. They should begin work with a background of strong legal advice that can avoid problems later. Preferably this advice should take the form of legal memoranda from the prosecutor or police legal adviser.

(a) That the property received or possessed be stolen. This element of receiving laws makes property identification of critical concern to anti-fencing units. The seizure or recovery of property that police know to be stolen but cannot identify as such will not support a fencing case. In fact, failure of identification will probably result in return of stolen property to the fence if he chooses to press the matter.

Property that has been successfully shoplifted from commercial establishments is perhaps the largest category of goods of which most anti-fencing units are wary for this reason. Boosted merchandise is rarely identifiable, and the very fact of its theft is unsupported by any formal complaint of its loss. A cardinal rule of many anti-fencing units is, therefore, to stay away from shoplifted goods. Merchandise in transit presents similar problems where identification is typically by a general lot or warehouse number, making later verification where the bulk has been divided virtually impossible. Units working fences who handle stolen cargo merchandise, then, must be especially sensitive to identification problems.

On the other side of the coin, some property is inherently identifiable. Credit cards, for example, or government checks carry the name and/or address of their owners. Guns are generally one of the best identified property items because of registration requirements. Where possible, then, anti-fencing units should attempt to recover items in these categories in which identification problems are either removed or minimized.⁵⁷

Generally, identification of property is made by comparing serial numbers, distinctive characteristics or descriptions, and other identifiers on recovered property with those listed in theft reports. Alternatively, victims may be used to positively identify property as their own. Or, as is frequently the case, the suspect's own admissions in the course of the investigation may establish its own stolen character.

The traditional surveillance/warrant strategy generally promises the likelihood that recovered stolen goods will be identified as such because the anti-fencing unit will not move to obtain a warrant until property known to relate to a particular reported theft is actually seen being brought into the premises. Thus, while additional property may be seized in the course of the search, at least the one item or group of items seen being brought in are known for certain to be stolen. The undercover buy strategy, on the other hand, may be less certain of the stolen character of an item it purchases, but once that item is in possession, it can be checked out and verified as stolen. In addition, the fence may be used to assist in this process by "volunteering" its stolen nature and where it was obtained. Other property obtained through the undercover buy either via a consent search or on a later warrant may similarly be checked. Often a property officer can greatly assist the identification problems associated with a search by advising, on the basis of his expertise, on the relative identifiability of various items, which property items to take and which to leave behind.

⁵⁷It should also be noted that units which recover weapons, government checks, or securities can depend upon considerable assistance from federal agencies in identifying these property items and in providing other investigative assistance.

The undercover buy-sell strategy, because of its longer time frame permits a considerable period during which property identifications can be made. Those employing this strategy may not want, however, to waste scarce buy money or time on unidentifiable items. Thus, units employing this strategy have used the tactic of taking property on consignment or for inspection, checking it out, and if it comes up negative, returning it to the fence. Rules banning the purchase of boosted merchandise, and requiring great caution where goods from cargo shipments are involved, will make it less likely that the undercover unit will acquire property of little evidentiary value.

Both the phased infiltration strategy proposed for use in narcotics-related and organized crime-based fencing operations, and the stake-out/intercept strategy related to the professional theft and fencing situation, rely on observation of or involvement in the operation of the fence's activity, or on information from informants and other sources to help establish the stolen identity of merchandise. In addition, the phased infiltration strategy, because of its longer time span allows better identification and verification of the stolen origin of items taken in by the fence. Often, however, the ruse must be continued and anonymous goods purchased in order to reach the point where a positive identification relating to at least one set of merchandise can be made. In both of these strategies property identification remains a tricky and sensitive area, because the individuals involved in the kinds of fencing operations against which they are used will frequently be quite sophisticated. Some may have few qualms about denying earlier admissions and others may make admissions in such veiled and cryptic ways that they will be of little courtroom value. Still others may frighten into silence victim-witnesses who can identify property. The property identification element of fencing often tends to be the weakest link of these strategies.

The buy-bust strategy seeks to solve the identification problem by substituting its own "stolen" property as the item in controversy. In some jurisdictions this strategy may present special legal problems --- because of laws unique to those jurisdictions. In no jurisdiction can bait property by itself sustain a charge of receiving stolen property. It can, however, be used as the basis for lesser charges in some jurisdictions. Two prevailing views exist regarding the use of bait property. The more modern and increasingly accepted view looks not to the actual nature of the property in contention but to the defendant's belief about the nature of that property. If the court is sufficiently convinced that the defendant believed he was buying stolen property, it will sustain a misdemeanor charge of attempting to receive stolen goods. An older view still accepted in some jurisdictions holds that it is a legal impossibility to attempt the crime of fencing stolen goods, unless actual stolen property is involved. Attempt cases based on the use of bait property are thus barred under this view. The use of the buy-bust strategy, then, depends on the "standing" of bait property in an agency's jurisdiction and on the jurisdiction's statutory or decisional law dealing with criminal attempts. Use of this strategy, then, should be based upon prior legal consultation.

Despite the complexity of property identification problems, most anti-fencing units have successfully overcome them. Several of these units have, for example, sustained return rates of 90-95% for the property they recovered. This means that

property seized or purchased had been carefully selected and that little of it did not eventually serve some evidentiary purpose.

(b) That the property be actually received or possessed. At one time, receiving laws required a showing that the defendant took actual, physical possession of goods in order for the case to be proved. This is no longer true, since "possession" has been interpreted to mean constructive as well as actual possession and to cover situations in which an individual retains "effective control over" the property in question. Thus, proof of an individual's ownership of a storage facility in which stolen property was recovered has been held to sufficiently show his constructive possession of that property (assuming knowledge, of course). Practically speaking, however, the more distant and circumstantial a defendant's possession of stolen property becomes, the weaker the case against him. This is what makes cases against the broker-fence, or the organized crime figure acting as an intermediary, so difficult to prove.

For the most part, then, anti-fencing units either create scenarios or respond to situations in which the target fence takes actual possession of stolen goods, which can be identified as such. All the strategies discussed above take this investigative and prosecutive need into account. With the exception of the top narcotics trafficker or organized crime figure who purposely remains insulated from any close association with stolen goods, most fencing operations can be shown to have possessed or at least to have exercised effective control over the property in question. Only the stake-out/intercept strategy which deals with the professional ring is particularly weak in this regard, and this is because of the special wiliness of its targets. On a big score, the exchange procedures used by the professional thief and fence may rival those of a major military operation in sophistication and secrecy. Interception at the place and time when possession can be shown will require exceptional intelligence information, careful planning, and no small measure of luck.

(c) That the defendant knew the property was stolen. This element is usually the most difficult and the most important one to be proved in a fencing case. The requirement is not one of mere knowledge but of knowledge at the time the reception took place. Guilty knowledge, as it is called, can be shown in a number of ways. Possession of recently stolen property, for example, creates the rebuttable presumption in most jurisdictions that the defendant knew it to be stolen. Proof that the property was acquired for a consideration far below fair market value may create a similar rebuttable presumption. A defendant's admission to an undercover officer provides an adequate showing (if believed), but the same admission to an informant or to the thief is not adequate without their testimony.

The showing of prior similar acts, if admissible, can raise an inference of guilty knowledge, but the presence of additional stolen items on the premises may not directly support such an inference. It may, however, provide proof of the circumstances and facts surrounding the defendant's receipt or possession of the stolen goods in question, from which a court or jury may circumstantially find guilty knowledge.

Because of the difficulty in proving knowledge, this is generally the one element on which anti-fencing strategies, as a group, are weakest. Their relative strength is determined by their varied capacity to present a scenario of circumstances from which guilty knowledge can be presumed or inferred.

Obviously the longer term strategies will prove strongest on the knowledge element since repeated transactions with the fence over a period of time and under a range of circumstances will provide a stronger evidentiary base for the presumption or inference that the fence acted with guilty knowledge. Thus, the undercover buy-sell strategy and the phased infiltration strategy produce the strongest cases for showing guilty knowledge.

For a direct showing of knowledge, the traditional surveillance/warrant strategy may have special strength where the time between the reported theft occurrence and the documented receipt of property by the fence is short. In this situation, a presumption, based on the recently stolen character of the goods, which permits a finding of guilty knowledge in the absence of a better explanation on the part of the fence, may be invoked. The buy-bust strategy creates its own showing of knowledge by a verbatim recording of the undercover officer's or informant's skillful communication of the property's stolen nature to the fence. In these situations, then, the defendant will have been directly informed at the time he took possession that the property was stolen and still have persisted in obtaining it. There is no better proof.

The weakest strategy for showing knowledge is the straight undercover buy. Unless a buy from the fence takes place soon after the goods are stolen (where a recently stolen inference can be used), little direct or circumstantial evidence of his knowledge upon initial receipt is available. Thus, in the use of this strategy, it is critical that the fence be tricked or cajoled into admitting his knowledge that the goods he is selling have been stolen. Without his direct admission, the strategy provides little independent evidence of the "informed" nature of the circumstances by which he originally obtained possession of the property.

(d) That the defendant took possession for a criminal intent. The rationale behind this element in receiving laws is that the defendant be shown to have received or possessed stolen goods for a purpose other than a lawful one (i.e., to return them to the true owner or report the transaction to the police). Acts tending to show this intent are those of concealment, destruction of identifying marks, offering of goods for resale or for consideration, and in some cases, failure to provide available information in a timely fashion. In operational terms, the most important acts showing criminal intent are those of concealment and resale.

Those strategies strongest with regard to the knowledge element are not necessarily the strongest in proving intent. For example, the buy-bust which provides excellent proof of knowledge, can fail in making a showing of criminal intent, if not timed properly. This, if the bust comes too soon after the buy is made, the defendant may claim his intention was to notify police of the transaction but that he was given no opportunity to do so. The same defense could be made with respect to the surveillance/warrant strategy or the stake-out/intelligence strategy where a recent possession doctrine is used. Since a presumption arising out of possession can be overcome by an explained possession of the property, the fence may "explain" his receipt of the goods was in order to insure their return to the owner. In the absence of a separate showing of concealment, then, both knowledge and intent might not be provable.

The undercover-buy strategy, which is not particularly strong with respect to proving knowledge, does not pose similar problems with respect to proving intent. It is only the defendant's willingness to sell the goods that makes it possible for the buy to take place. The same is true of the undercover buy-sell strategy, in which the defendant's proven willingness over a period of time to both buy and sell stolen property makes a strong case for his criminal intent. Any long term strategy like the undercover buy-sell or the phased infiltration leaves little doubt that the defendant had only criminal purposes for dealing in stolen goods. Were this not the case, he would have had ample time and opportunity during his extended association with undercover officers to have notified police or to have attempted to find the true owners of property handled.

It was noted earlier that the destruction of identifiers or the failure to provide information may tend to show criminal intent. As a practical matter, such acts are really affirmative evidence of concealment and should be combined with other more direct evidence rather than used alone. In some states, efforts are being attempted to enact legislation requiring that permanent serial numbers be affixed to all moveable consumer goods. This proposed legislation in some cases provides that possession of such goods with the serial numbers defaced or removed be prima facie evidence that the possessor knew them to be stolen and criminally intended to deprive the lawful owner of them. Such legislation would be a powerful tool for anti-fencing enforcement particularly with regard to the elements of knowledge and intent. To date, a few states are close to legislative presentation of such statutes and several report being close to passage of them.

(e) Preservation of the evidentiary trail. Because of the frequent need to show the elements of fencing cases via indirect or circumstantial evidence, the development, tracking and presentation of the evidentiary trail in any investigation must be a shared responsibility of both the investigation and the prosecution. In effect, most of the strategic weaknesses noted in the preceding sections can be made real courtroom strengths by a skilled presentation of both direct and circumstantial evidence to a judge or jury. The prosecutor's ability to persuasively request instructions which will help the jury to understand and appreciate the totality of an investigative strategy, will be of crucial importance in obtaining a conviction.

It is the prosecutor who can best evaluate the courtroom potential of the mass of evidence gathered. This is why, particularly where long-term strategies are to be used, the most successful anti-fencing efforts have involved the prosecutor early and have used his advice and expertise in making key investigative decisions. A successful anti-fencing investigation is one that culminates in a successful courtroom outcome. It must be prepared, therefore, for presentation in that forum. It is the prosecutor whose knowledge, training, and expertise are most essential for translating a good, solid investigation into a good, solid court case.

Beyond the intrinsic strengthening which prosecutive involvement can contribute to any anti-fencing strategy, there is an additional policy reason why a premium should be placed on prosecutive participation in the investigative process. Particularly in the course of long, undercover investigations, a number of junctures may arise at which difficult decisions will have to be made.

For example, at some point property may be offered for sale to the anti-fencing unit or its informant which for one reason or another it would be strategically unsound to purchase. The reasons may be that it is unidentifiable, could eat up too many resources, and/or would seriously jeopardize the entire operation. A similar situation might occur where knowledge of a crime planned but not yet committed, is gained.⁵⁸ It is extremely difficult to let stolen property pass by without responding; and even more troublesome to allow a crime to occur without reaction. In practical terms, most units work to insure that someone, though not themselves, make the final decisions in situations like these. The decision to react or not to react directly, should not, as a matter of policy, be the investigator's decision. The responsibility and burden of this kind of decision should be shared, wherever possible, with the prosecutor. Similarly, decisions as to how the event of concern (e.g., a planned crime) can and should be interdicted without jeopardizing the larger investigation should also be shared.

Where long term anti-fencing strategies are to be employed, both outcome and policy considerations logically tend to dictate substantial prosecutive participation. For all anti-fencing strategies, prosecutive involvement serves to mitigate weakness and assure a more successful preservation and presentation of the evidentiary trail developed by the investigators --- not only for the kinds of technical reasons discussed above, but perhaps more importantly, because the prosecutor who has lived with the case is more likely to have that level of understanding and appreciation of it which will ensure a more effective presentation in court.

2. Investigative Tools and Their Limitations

In addition to the statutory tools with which investigators will need to familiarize themselves, the anti-fencing effort will also make considerable use of particular investigative tools about which specific legal advice and guidance will be needed. Among these investigative tools the most frequently used are the search and seizure warrant, and electronic surveillance orders.

An adequate discussion of these tools, the legal issues surrounding them, and the situations in which they are permissibly utilized is far too lengthy to be presented here. In addition, the legal practices and requirements within a particular jurisdiction will be far more appropriate and relevant to an anti-fencing effort than those which could be described generally in a manual designed for a wide audience. Officers are therefore advised to consult at length with prosecutors or the agency or department legal adviser both as to the legal use of such tools, and in designing practical procedures to facilitate their use. The design of an effective process for obtaining warrants or orders for surveillance efforts calls for as much attention as understanding of the legal issues involved in establishing the probable cause to utilize them. Many anti-fencing units have found it helpful to instruct their officers on local law and procedures through the use of internal memoranda. Often these include

⁵⁸Where electronic surveillance is being used such information is quite likely to come to the investigator's attention.

checklists by which officers can compare the situation they are investigating to a set of general guidelines.⁵⁹

In the area of electronic surveillance, law enforcement officers will find valuable information and guidance in the recent report of the National Wiretap Commission. This report, cited below,⁶⁰ provides detailed information on the complex legal issues surrounding the use of all forms of wiretapping and electronic surveillance. Both the Federal law under Title III of the Omnibus Crime Control and Safe Streets Act (1968) and those of the twenty-three states and the District of Columbia which have adopted provisions similar to Title III are reviewed and discussed. The Commission also presents actual case examples of how and where electronic surveillance can be used successfully. Theft and fencing cases are one area described in detail. Indeed, the Commission recommends greater use of electronic surveillance in such cases. Because the Commission report is so comprehensive and includes actual case examples, it can serve as a valuable training document for anti-fencing officers as well as a good source-book to guide their work.

⁵⁹Appendix B provides some models for such memoranda.

⁶⁰Electronic Surveillance: Report of the National Commission for the Review of Federal and State Laws Related to Wiretapping and Electronic Surveillance, 1976. The report is available from the Government Printing Office, Washington, D.C.

CHART 2
ANTI-FENCING STRATEGIES: THEIR RESOURCE REQUIREMENTS, OPERATING TIME FRAMES, DEGREE OF FIT WITH TRADITIONAL AGENCY STRUCTURE, THE FENCING SITUATIONS TO WHICH THEY ARE MOST SUITED, AND THE LEVEL AND TYPE OF RESULTS THEY HAVE BEEN SHOWN TO PRODUCE

ANTI-FENCING STRATEGIES	RESOURCE REQUIREMENTS		OPERATING TIME FRAME	FIT WITH TRADITIONAL AGENCY STRUCTURE				INVESTIGATIVE STRATEGIES*			FENCING SITUATIONS WHERE APPROPRIATE	LEVEL AND TYPE OF RESULTS EXPECTED
	MANPOWER	EQUIPMENT	OTHER	HIGH DEGREE	MEDIUM DEGREE	LOW DEGREE	Proof of Reception	Property "Stolen"	Knowledge	Intent		
traditional surveillance/warrant strategy	4-8 officers; none undercover	surveillance vehicle, photographic equipment	limited amount of investigative funds	x			x	+			localized business or residential fence; street level pusher fence	misdemeanor charges against individual fences; some area impacts
buy/bust or sell/bust strategy	5-6 officers; some undercover	undercover, transmitting & recording devices	buy property, informant fund		x		+	+			localized business or residential fence; street level pusher fence	misdemeanor attempt charges against individual fences; some area impact
undercover buy strategy	5-6 officers; some undercover; property officer	undercover, transmitting & recording devices	buy money, informant fund		x					+	localized business or residential fence; outlet or intermediary fence in organized crime-related fencing	misdemeanor or felony charges against individual fences; consent search for increased recovery; effects on area or type of property stolen
undercover buy/sell strategy	6-8 officers; some undercover; some stakeout or undercover fence	photographic, transmitting & recording devices; undercover vehicles	field office; business front; buy/sell; informant fund; prosecution commitment			x	+	+		+	large-scale localized business and residential fences	felony charges against groups of fences and thieves; increased recovery; impacts on theft and fencing rings
phased infiltration strategy	5-10 officers; both undercover and control; prosecutor close to unit; narcotics & theft investigators	photographic, recording, transmitting devices; undercover vehicles; surveillance vehicle, buying & selling equipment	field office; property pool; informant fund; heavy prosecution; joint or coordinated investigative capability							+	narcotics-related fencing ring, syndicated crime-related (carpo theft) fencing operations	felony charges for thefts, fencing, collateral crimes (e.g., narcotics offenses); medium recovery potentials; impacts on criminal organizations facilitating a range of criminal conduct
stakeout/intercept strategy	5-6 officers; none undercover; intelligence analyst; tactical support unit for surveillance	surveillance command vehicle; undercover vehicles; photographic, buying & selling equipment	high professional intelligence function; heavy prosecutive involvement; coordinated investigative capability, informant fund	x					+	+	professional, mobile theft and fencing ring; any "set-up" to which unit is tipped	impacts professional thieves and their contacts; high value recoveries

*All strategies should be capable of proving, each of the required elements of a receiving case. This section of the chart merely presents the relative strengths of the various strategies.

CHAPTER FOUR

ADMINISTRATION AND EVALUATION OF THE ANTI-FENCING EFFORT

I. THE ROLE OF THE POLICE ADMINISTRATOR

Any new enforcement endeavor needs the backing and support of the top agency administrator, but few enforcement efforts require as definite a commitment on the part of an agency head as does anti-fencing enforcement. The reasons for this are, first, the effort will require the allocation or redirection of a significant portion of scarce resources; and second, the effort will require policy exceptions to be made to achieve its goals. Unless the agency administrator is fully convinced of the importance of the effort and of its ability to achieve significant goals, adequate resources will not be forthcoming, and variations in established policies will not be allowed. Any effort launched under these conditions will be handicapped, perhaps fatally, from the very beginning.

The most important decisions an agency head can make for an anti-fencing effort lie in three areas. First, the administrator can insure that the effort is given latitude and adequate flexibility in the acquisition and use of personnel and other resources. This can be done initially by permitting a selection process for the unit which accommodates the field commander's preferences. In addition, policies relating to the use of overtime and compensatory time for the effort can be pressed for and justified by the agency head. The top administrator can also insure that adequate equipment and investigative resources are allocated to the unit and remain under its control.

Second, the agency administrator can and should set up realistic goals for the anti-fencing effort. The understanding shown by the agency head in this respect will affect the unit's approach to the task before it. Similarly, where the effort is not to be covert, it will influence the expectations held by others in the department. Oddly enough, experience has shown that administrators err not in expecting too much in the way of impact, but in expecting the wrong impacts. Thus, an expectation that the rate of burglary will immediately drop following implementation of the anti-fencing effort is quite unrealistic. In fact, the effort should not be expected to generate immediate results in any particular areas. Rather, the impact of the effort can more realistically be expected to develop only after a period of several months has elapsed, or after the first arrests are made and cases are in court. At that time, impacts should be expected in 1) the rate of recovery for stolen property, and 2) the rate of theft in discrete segments of the theft scene affected by those offenders arrested. When the unit has successfully completed a long series of investigations (possibly after one year of operation), an overall drop in the rate of theft may additionally be anticipated. Again, it should be remembered that accomplishment of this latter goal depends ultimately on the quality of the administrator's commitment in his other decision-making areas.

Finally and perhaps most important, the top agency head can assure an effective anti-fencing effort by his willingness to forego short term needs in favor of long term and longer lasting impacts. This means resisting the temptation to pull the anti-fencing unit away from its own activities in order to investigate some other currently pressing problem. It means reiterating support for the effort in the face of internal complaints that unit personnel and resources could be used elsewhere; and, it means developing a style of supervision over the effort that seeks and expects quality rather than quantity investigations. Often an administrator, by the simple device of an inappropriate reporting schedule, can doom an anti-fencing effort to dismal failure and create internal turmoil without meaning to do so. Requiring reporting by the unit on a weekly or monthly basis, for example, is likely to undercut the effort whether the administrator means to or not, since such a requirement may tell the anti-fencing unit that it is obliged to play a numbers game. And the unit will be able to oblige. Without an assigned caseload, it can flood weekly report forms with lots of numbers. What it will be actually doing against the fence, however, is questionable. Instead it will likely be competing with traditional theft squads over burglary arrests. An anti-fencing detail that can generate extensive weekly reports should be scrutinized. Good fencing cases take substantial time to be developed and are not susceptible to short-term reporting schedules. In order to avoid the disintegration of the effort into a super burglary detail, more appropriate reporting requirements over a longer time frame (quarterly is appropriate) should be used.

This is not to say that periodic reports are necessarily dysfunctional. If the information called for avoids statistical games and orients the agency head as to the consistency and purposefulness with which the unit is addressing its goals, reports can be both a good management tool and a way of ensuring informed and intelligent support.

The resources the administrator commits, the expectations he has, and the time frame in which he anticipates them constitute the three decision-making areas in which his involvement and understanding are important. If he makes appropriate policy decisions in these, both the agency and the anti-fencing effort can proceed with reasonable expectation of success.

II. ASSESSMENT OF THE ANTI-FENCING EFFORT

Once the administrator has made his commitments to the effort both as to resources and policies, he must be able to assess the reports given him and evaluate the results obtained. Because anti-fencing enforcement usually represents a new and unique effort for his agency, he will have little against which to measure the unit's performance or with which to compare its accomplishments. In addition, because an anti-fencing detail can produce bundles of material, he will have to be able to interpret the true significance of the information provided him and discover the ultimate bottom line. Although the specific experiences of others are not necessarily directly relevant or appropriate, the internal evaluation design discussed below is based upon those impacts which successful efforts have shown. It is presented here as a suggested framework which the agency administrator can use in assessing the results presented to him.

A. DESIGN FOR INTERNAL EVALUATION OF THE ANTI-FENCING EFFORT

From the experience of units around the country, successful anti-fencing efforts should demonstrate results directly in three areas:

1. Property Recovery

The anti-fencing effort should significantly increase the departmental rate of property recovery. Increases of 300% to 500% are not uncommon in this regard. Beyond the recovery rate, however, the administrator should look for a return rate signifying the proportion of property recovered by the unit can be identified and returned to rightful owners. Recovery of unidentifiable property may suggest poor planning of seizures and the inability to develop adequate cases on fences such that property seized could not be proved stolen. Unless the recovery rate is accompanied by a high return rate, it should be scrutinized closely.

2. Detection and Arrest of Fences

Unless the objective of the unit is otherwise stated, the administrator should see a substantial increase (1) in the number of fences and fencing operations identified; and (2) in the number of fences ultimately arrested. While the unit cannot directly control the outcomes of judicial proceedings or decisions in the prosecutive sector, felony arrests are preferable to misdemeanors, and ultimate convictions are some measure of unit performance in investigating the case and in working with the prosecutor. In most cases, investigations which do not culminate in arrests should not comprise a significant proportion of the unit's activities, unless separately justified. A good sign of quality investigation is that fencing cases which are developed result in multiple counts against the fence. This shows well-planned investigative action or efforts of a concentrated nature.

Where clear priorities have been set relating to specific kinds of fencing operations, the unit's arrest targets should reflect those priorities. Thus, if the residential fence was set as a primary target, the unit's record of arrests should heavily reflect fences of this type. Units whose arrests and investigations are dominated by thieves rather than fences should be held suspect. Similarly, arrests of fences for activities unrelated to theft or fencing should be scrutinized closely.⁶¹

3. Impact and Assessment of the Problem

An anti-fencing unit should be able to clearly specify the nature of the impact it believes it has had, and where the impact can be seen. Thus, if the unit has worked on a territorial area basis it ought to be able to point to that area and state the kinds of impacts it believes have been or will be felt there. The expected impact may be an overall decrease in reported thefts or a

⁶¹This should not preclude investigators from disposing of an offender's case if a more promising and substantial case offering similar benefits presents itself. Unrelated arrests, if handled properly, can provide valuable intelligence information on the fence to further the criminal receiving case against him. Such arrests, then, should not be automatically given a negative score; rather they should require and receive justification.

decrease in a specific kind of property stolen. Either can be confirmed from internal records. Investigation of area impacts should take into account changes in reporting practices by victims that may have occurred in those areas. The important point is that the unit should be able to present its activities clearly in relation to stated goals and impacts.

Similarly, the unit should be able to provide a clear assessment of the problem remaining and suggested steps that can be taken to affect it. Such a problem assessment can be related to particular individuals active as fences who have eluded action, particular types of fencing operations, or particular theft activities of concern. It should reflect a reasoned assessment of where the unit has been and what still remains to be done. This element of an internal evaluation not only provides the administrator with information regarding the relationship between the overall problem and the unit's accomplishments; it also permits the unit to set alternative priorities for future action, dictated by a new or revised assessment of the problems faced. Thus the problem assessment should help to both interpret the past and shape the future.

4. Indirect Impacts of the Anti-Fencing Effort

In addition to the direct impacts the unit should demonstrate in the above areas, it may also indirectly affect two rates: 1) the rate of arrest and clearance of burglary/theft cases; and 2) the overall rate of theft itself. These impacts are described as indirect, but this is not because they are not intimately related to the anti-fencing unit's activities. Where the arrest and clearance of burglary/theft cases is concerned, for example, effective anti-fencing enforcement should be expected to improve on the average rate by which burglaries are solved. This is because if fencing operations are dried up burglars will have fewer markets for stolen property, making it necessary for them to retain possession longer. This, in turn, should make them more vulnerable to enforcement efforts.

The anti-fencing unit will have no direct control, however, over the arrests of burglars. Instead, it must rely on patrol or detective division personnel to respond to the burglar's increased vulnerability. In some cases, personnel in these divisions may substantiate the impact of the unit's activities on their work. One objective measure that can be used is the proportion of burglars arrested while still in possession of stolen goods. If this compares favorably with previous experience, it can constitute a separate measure of anti-fencing unit impact.

Changes in the overall theft rate, if they occur, are difficult to interpret; such changes can also be quite misleading. Publicity given the anti-fencing effort with regard to property recoveries may itself encourage a greater number of theft victims to report offenses to police. Thus, an actual impact on the theft rate by the unit may appear to be wiped out by other impacts it has in the community --- even if the appearance would be the opposite of what actually has happened. Similarly, an increase in the overall theft rate may constitute a successful measure of unit performance where the anticipated increase was expected to be much higher.

In probing the unit's impact on an overall rate of theft, then, the most appropriate measures may be those which are narrowly defined and which apply directly to anti-fencing actions taken. Thus, if the unit has arrested a

number of fences handling television sets, changes in the proportion of thefts reported in which these items were taken might be plotted. Similarly, if the major illicit dealer in stolen typewriters has been eliminated by the unit, a consequent decrease in thefts of typewriters should be expected. At another level, where the unit claims success in drying up fences in one territorial area of jurisdiction, this could be supported by a decrease in thefts in that area, accompanied by a displaced effect in a comparable or adjacent area. All these are admittedly somewhat minute measures of theft rate impacts. They are, however, likely to be far more reliable and meaningful assessments of unit performance than gross changes in the overall rate of reported thefts.

It should be kept in mind that changes in the overall rate of theft are more the long-term hope than the short-term result of anti-fencing enforcement. Achievement of a reduction in theft rates will ultimately depend upon the existence of well-designed and implemented anti-fencing units in agencies throughout the country. Isolated units in only a handful of agencies across the nation cannot possibly achieve such a result. The police administrator should not institute an anti-fencing effort with the expectation of an immediate reduction in theft rates. He should satisfy himself first with the more discrete area measures described above; and second, with the full knowledge that through an anti-fencing effort he is taking the most affirmative step available to control property theft -- by reducing the market for it. High hopes should attach to an anti-fencing unit; unrealistic expectations, on the other hand, may defeat an enforcement effort that has much to accomplish.

5. An Internal Evaluation Design - Summary

An internal design for assessing anti-fencing unit performance is summarized in the table below.

DATA NEEDED	SOURCE OF DATA	SUGGESTED MEASURES OR COMPARISONS
Amount and value	Anti-fencing unit	Extent of increase in departmental recovery rate. Proportion of property identified and returned to owners.
Detection and arrest of fences	Anti-fencing unit	Increase in the number of fences identified; increase in fences arrested for receiving stolen property or its equivalent; degree to which thieves rather than fences are arrested.
Expected program impacts	Records section of agency	Confirmation of discrete impacts identified by unit.
Problem assessment	Anti-fencing unit	Comparison between clarity of problem analysis before and after program implementation.
Rate of arrest and clearance for burglary, theft cases	Records section	Absolute increase in arrest and clearance rate; increase in proportion of thieves arrested while in possession of stolen property.

III. INTEGRATION OF ANTI-FENCING ENFORCEMENT IN THE AGENCY STRUCTURE

For the long term, anti-fencing enforcement holds the greatest potential for success to the extent that it ceases to be identified as a special or unique endeavor, but is recognized to be a legitimate and essential enforcement task to be routinely assigned. Even where a covert effort has been employed which was divorced from the normal agency organization and activity, future plans should be made to integrate anti-fencing enforcement into the regular organizational structure of the agency. Too often attention to the fence has been allowed to fade with the final phase of external funding or some spasmodic intensive anti-fencing effort. This should not be permitted to happen. Unless the anti-fencing effort has been totally incompetent, it will have demonstrated (if only to a limited extent) the benefits to be derived from this additional agency focus in the property theft area.

In many cases agency administrators have apparently ended anti-fencing enforcement at the conclusion of external funding because the level of resources provided by grant monies could not be matched internally. This is not adequate justification, for while it is unlikely that the agency can support the level of effort maintained by external funds, a much lower level of effort can in most cases be fully supported and should be. The need for an anti-fencing focus continues regardless of the presence or absence of grant funds. Thus, the deployment of a mere handful of investigators, supported by a minimal investigative fund, is often enough to keep anti-fencing enforcement alive and a vital component of the agency's property theft enforcement program. Burglary/theft supervisors interviewed in site visits were unanimous in the view that property theft investigations would show great improvement if even a few detectives could be assigned to do nothing but work fences. This is in the absence of a specially-funded effort. Similarly, anti-fencing unit officers felt that even without all the resources provided by external monies, continued positive impacts would be possible if a small group of investigators, without caseload responsibilities, could continue to be assigned to fencing investigations.

Continuation of an anti-fencing effort, then, does not necessarily require extensive resources. An agency-wide redefinition of the property theft enforcement mission is far more important. This redefinition should identify the fence as a logical enforcement target and provide the framework within which responsibility to combat him is specifically assigned. The fence, in other words, must be someone's job --- someone's only job.

The number of officers assigned to continue working the fence need not be great, and can in fact be minimized to some extent if one further step is taken. This would involve increasing the overall sensitivity of agency personnel at all levels to the fence and his role. This may be accomplished best through the use of curriculum on fencing added to basic training and in-service training courses. Alternatively, anti-fencing investigators could be specifically assigned the task of getting personnel in patrol and detective divisions interested and involved in their activities. A reorientation to property theft, and the role of the fence in it, is essential for continued anti-fencing efforts. Particularly important is an increased sensitivity to property description and identification in theft complaints and investigations, and increased attention given to the likely destinations of property stolen.

Where few officers are available for assignment to anti-fencing enforcement, the effort might best be designed as an intelligence function --- to provide information to other units on active fencing operations, their locations and activities. If the agency has succeeded in redefining the property theft enforcement mission, other units in the agency can provide the operational support necessary to act on the intelligence information.

Formal well-funded anti-fencing efforts are both exciting and dramatic. Their results are often extremely impressive. The true measure of an agency's commitment to anti-fencing, however, is not to be found in its pressure for and encouragement of external funding for an effort but rather in its continued support of a fencing focus once external funds have been removed.

IV. ANTI-FENCING DO'S AND DONT'S FOR THE ADMINISTRATOR

In summary, the following rules of thumb are suggested for consideration by the police administrator:

A. THINGS TO BE SURE TO DO:

1. Do make sure that the anti-fencing effort is allocated sufficient equipment and investigative resources.
2. Do specify clear fence (not thief)-oriented objectives, and delegate substantial operational authority to unit.
3. Do develop a flexible policy for the utilization of overtime or compensatory time by the unit.
4. Do plan for the future integration of fencing as a legitimate agency enforcement target, after the initial effort is concluded.
5. Do develop security protocols appropriate to the nature of the effort.

B. THINGS TO AVOID DOING:

1. Don't divert the anti-fencing unit's attention from its objectives by using its personnel to respond to other current problems.
2. Don't place caseload responsibilities on anti-fencing officers in addition to the fencing task.
3. Don't structure the unit's activity and the reports of that activity on a short-run time basis.

CONCLUSION

GOING THE ANTI-FENCING ROUTE, WHAT DOES IT MEAN?

After reading numerous pages describing the resource needs of anti-fencing enforcement, the complexity of strategies needed to operationalize the effort, and the extent of internal commitment required to successfully implement and administer such a program, many agencies are likely to be discouraged by the apparent size and complexity of anti-fencing operations. The commitments of resources and manpower may seem just too great; the obligations of internal oversight, too burdensome; and the probability of success, too remote; to even contemplate. In this context, it is instructive to remember that experience has shown successful anti-fencing enforcement to be well within the capacity of many local police agencies in medium-sized and relatively small cities. But perhaps the most persuasive arguments are not those that relate to the overall importance and promised results of anti-fencing enforcement, but rather the effects such an effort has on an individual, human level. Going the anti-fencing route is quite likely to have important crime control implications. It is, however, likely also to deeply affect the officers involved, the department they work for, and the public they serve. For good or ill, these may be the most important reasons for taking anti-fencing enforcement seriously.

A. WHAT ANTI-FENCING MEANS FOR THE OFFICERS INVOLVED

With rare exception, anti-fencing officers interviewed in the course of preparing this manual were greatly enthusiastic about this work, but also frustrated. This enthusiasm stemmed from their recognition of the importance of their task, by their chance to really have an impact on the pattern and extent of crime in their communities, and by the successes they had accomplished. Most officers felt that involvement in the anti-fencing unit had been the most challenging, satisfying and rewarding assignment of their police careers. All showed a high commitment to the goals of this enforcement effort.

At the same time, however, anti-fencing officers expressed a degree of frustration about their jobs. They were concerned that more couldn't be done, that sentences levied on fences weren't appropriate to the harm done by these offenders, that a lack of appreciation of the seriousness of fencing existed not only in the public consciousness but also within the law enforcement community of which they were a part. Particularly frustrated were those officers who had worked long and hard on the fence, only to see the agency commitment disappear with the end of external funding. In this they saw a severe lack of understanding of what had been accomplished and of what still needed to be done. Many officers put in long hours for which little or no compensation was received; these were sacrifices (both of themselves and their families) which they readily made, but which lost much meaning when their agencies failed to continue the efforts. Anti-fencing officers did not seek or expect personal glory; they did, however, expect a degree of internal agency understanding that would not allow their efforts to have been in vain.

The impact of the anti-fencing experience on the officers directly involved never failed to be extreme in nature, both in satisfaction and frustration. Many expressed the belief that the experience had changed them and that they would always be different -- and better -- police officers for the experience. Personal regrets were few; there were, however, serious questions as to what had really been accomplished and what the future held.

It is clear that anti-fencing enforcement elicits a level of professional commitment from officers involved which their agencies should find most gratifying. These agencies should build constructively on this skilled professional commitment rather than allow it to atrophy and die. It is better not to embark on this enforcement venture if there is not a simultaneous continuing commitment to the effort.

If, then, an anti-fencing focus is not to be a part of the agency's future, anti-fencing officers should know the reasons why. It will be deeply important for them to know, and important as well for the agency.

B. WHAT ANTI-FENCING MEANS TO THE AGENCY

An anti-fencing unit rarely fails to leave a distinct imprint on its agency. In some cases, the imprint is a negative one. That is, internal jealousies and feared comparisons make the anti-fencing unit intimidating to others. Resistance can build up, resulting in refusal to acknowledge the obvious accomplishments of the unit.

In most agencies, however, this has not been the case. Instead the excitement and exhilaration of the anti-fencing effort has been infectious. It has caused a revitalization and renewed spirit in agencies, particularly among other theft enforcement units which in the past often saw themselves as clerks validating insurance claims. The reason for this seems to be that the anti-fencing unit amply demonstrates that something can be done to reverse the situation law enforcement faces in dealing with crime. One burglary supervisor put it this way: "Before this thing [the anti-fence detail] got going, I was ready to say, 'Let's just hoist up the white flag and declare a stand-off with the crooks!' I don't feel that way anymore." Similar feelings were expressed at many sites visited. For law enforcement agencies which over the past decade have become more and more demoralized and uncertain of their abilities to have any impact on crime, the "can-do" attitude and record of an anti-fencing detail represents an extremely important benefit from anti-fencing enforcement.

While, then, gratification from the success of anti-fencing efforts may seem reserved for unit members, these accomplishments are often shared by others in the agency who need to see and feel the fact that law enforcement can still make a difference. This impact of anti-fencing enforcement goes frequently unnoticed and unappreciated. This is because it is quite intangible and totally unmeasurable. Where it has occurred, however, its effects are unmistakable. It may turn out to be one of the most persuasive reasons for going the anti-fencing route.

C. WHAT ANTI-FENCING MEANS TO THE PUBLIC

The public has in recent years become more and more demoralized with regard to criminal behavior. Increasingly, the public has come to view crime as an inevitable part of modern life and to regard law enforcement as incapable of dealing with it. Continual increases in crime with little prospect for future change has undermined confidence in the criminal justice system and in the police in particular.

Set against this backdrop, anti-fencing enforcement presents a very different picture. It demonstrates law enforcement in an active role producing observable results, huge property recoveries, large numbers of arrests. Citizens know either by direct or observed experience that typically nothing happens once a burglary report is taken. Neither their property nor the police are likely to be heard from again. Anti-fencing efforts seem to reverse that trend and encourage the public to take another and more hopeful view of law enforcement.

This is at the same time one of the benefits and dangers of anti-fencing enforcement. On the one hand, such efforts tend to bolster public confidence in the police. On the other hand, they tend to create greater expectations on the public's part than can be reasonably met, except in the long term. In any case, however, they do provide a basis on which law enforcement and the public can renew their lost partnership in crime control efforts. The publicity surrounding the accomplishments of anti-fencing units has frequently generated public interest and involvement generally in crime control programs. Often it has been the impetus for citizens groups to be formed to continue property identification or block watch programs. Similarly, such publicity has performed an educative function alerting the public to the serious role played by the fence.

It is difficult to determine how important these public impacts of anti-fencing efforts are. No one, for example, can measure what it really means to a theft victim to have his or her property returned, just as no one can determine the real impact when the victim never sees that property again. What is clear is that the return of property is likely to be somewhat more positive than its loss. It is also clear that every law enforcement agency truly interested in serving its public, owes itself the chance to find out just what difference it does make.

American citizens deserve a far greater measure of security in their homes, businesses and property ownership. Law enforcement, on the other hand, deserves a greater measure of support from the public in attempting to provide that security. The public cannot continue to subsidize property theft through escalating insurance premiums and the payment of theft-inflated prices for most of the goods it buys. Similarly, law enforcement can no longer afford to continue a policy that serves to accommodate rather than to combat increasing rates of property theft. It was in recognition of both these facts that anti-fencing programs around the country were developed and implemented.

The experience of anti-fence details has been varied, but all have shown in some degree an ability to reverse the picture of frustration and demoralization all too common in contemporary property theft enforcement. In every case, agencies which have gone the anti-fencing route have demonstrated to themselves and to the public that law enforcement still has the capacity to make a dramatic difference. Traditional theft enforcement policies have been inadequate, responding to only a part of the problem, omitting response to another and most significant part. Anti-fencing efforts, if they demonstrate nothing else, show that to change direction and to recognize the full scope and breadth of the problem, is rewarded by a greater ability to cope with theft on a broad front.

APPENDIX A

APPENDIX A

CONTRIBUTING LAW ENFORCEMENT AGENCIES WITH EXPERIENCE
IN THE ANTI-FENCING AREA

California Department of Justice
O.C.C.I.B.
P. O. Box 13357
3301 C Street
Sacramento, CA 95813
Agency contact: Mr. Larry McNeely
Fencing Analyst

Denver Police Department
13th and Champa Streets
Denver, Colorado 80204
Agency contact: Sgt. Dick Scherwitz
Anti-Fencing Unit

Iowa Public Safety Department
Bureau of Criminal Investigation
Lucas Office Building
Des Moines, Iowa 50319
Agency contact: Mr. Thomas Ruxlow
Assistant Director

Memphis Police Department
128 Adams Street
Memphis, Tennessee 38103
Agency contact: Lt. John Talley

New Orleans Police Department
715 S. Broad Street
New Orleans, Louisiana 70119
Agency contact: Sgt. Fred Williams
General Assignment
Section

St. Louis County Department of Police
7900 Forsyth Boulevard
Clayton, Missouri 63105
Agency contact: Sgt. William Blake
Anti-Fence Team

San Diego Police Department
P. O. Box 1431
San Diego, CA 92112
Agency contact: Lt. David Crow
Fencing Detail

Dade County Public Safety Department
Organized Crime Bureau
1320 NW 14th Street
Miami, Florida 33125

Agency contact: Lt. Thomas Lyons

Indianapolis Police Department
50 North Alabama Street
Indianapolis, Indiana 46204
Agency contact: Sgt. Charles Boyd
Crime Action Team

Long Beach Police Department
Public Safety Building
4000 W. Broadway
Long Beach, CA 90802
Agency contacts: Sgt. Jack Locke
Sgt. Thomas Repecko

New Jersey State Police
P. O. Box 7068
West Trenton, New Jersey 08625
Agency contact: Major William Baum

Portland Police Department
222 S.W. Pine
Portland, Oregon 97204
Agency contact: Sgt. Harry Boggs
Anti-Fence Detail

San Jose Police Department
P. O. Box 270
San Jose, CA 95703
Agency contact: Sgt. Jay Martin
Fence Detail

Seattle Police Department
Public Safety Building
Seattle, WA 98104
Agency contact: Sgt. Paul Jasperson
Commercial Squad

CONTRIBUTING LAW ENFORCEMENT AGENCIES WITH EXPERIENCE IN
STOREFRONT OPERATIONS

Federal Bureau of Investigation
Washington Field Office
Washington, D.C. 20535
Agency contact: S/A Robert Lill

Metropolitan Police Department
Washington, D.C.
Agency contact: Lt. Robert Arscott
Second District
3320 Idaho Ave., N.W.

Pinellas County Sheriff's Office
250 West Ulmerton Road
Largo, Florida 33540
Agency contact: Sgt. Everett Rice

Governor's Organized Crime Prevention
Commission
P. O. Box 1805
Albuquerque, New Mexico 87103
Agency contact: Marvin "Bud" Young
Investigator

New York City Police Department
One Police Plaza
New York, New York 10038
Agency contact: Capt. Frank Herron
Office of Chief of
Detectives

Sacramento Police Department
813 Sixth Street
Sacramento, CA 95814
Agency contact: Lt. Ed Burt
Detective Division

MEMBERS OF THE REVIEW PANEL

Major William Baum
New Jersey State Police

Sgt. William J. Blake
St. Louis County Department of Police

Sgt. Harry Boggs
Portland Police Department

Gerald M. Caplan
Director, NILECJ

Mr. John Corbin
Bureau of Alcohol, Tobacco and Firearms

Lt. David Crow
San Diego Police Department

William Lynch
U.S. Department of Justice

Lt. Thomas Lyons
Dade County Public Safety Department

Mr. Larry McNeely
California Department of Justice

Ms. Lois Mock
National Institute of Law Enforcement and Administration
of Justice

Mr. Lawrence Mohr
Federal Bureau of Investigation

Mr. Burrill Peterson
Assistant Director-Investigations
U.S. Secret Service

Mr. William Reid
Special Assistant to the Director
Federal Bureau of Investigation

Sgt. Everett Rice
Pinellas County Sheriff's Office

Mr. Thomas Ruxlow
Iowa Department of Public Safety

Mr. Robert Sanders
Office of Law Enforcement
Bureau of Treasury

MEMBERS OF THE REVIEW PANEL (continued)

Lt. John Talley
Memphis Police Department

Sgt. Fred Williams
New Orleans Police Department

APPENDIX B

EXHIBIT B-1

DERIVING STATISTICAL INDICATORS OF FENCING ACTIVITY

As noted in Chapter 1 at p.22 et seq. the development of a general picture of the nature of property theft in a jurisdiction is an important part of planning for and justifying an anti-fencing effort. Most of the tools necessary to provide such a general description are present in the agency -- in particular in the data processing or crime records section. Several general statistical indicators, such as rates of theft combined with rates of property recovery were noted in Chapter I. This exhibit provides a model for the effective presentation of agency statistics in building a case for an anti-fencing effort.

The following tables are derived from the work of G. Robert Blakey and Michael Goldsmith in "Statistical Analysis of the Theft and Recovery of Stolen Property."¹ What the tables demonstrate is how statistical information prepared by the agency for submission to the FBI's Uniform Crime Reports can be utilized in describing the local property theft scene. Blakey and Goldsmith recommend the presentation of theft-related statistics over a long period of time so that trends and changes can be observed.

Table B-1,² for example, depicts categories of property stolen (excluding autos) and the percentage of the total amount stolen each category represents at the national level for the years 1960-1974. Over time, what can be seen

TABLE B-1

PERCENTAGE OF TOTAL PROPERTY STOLEN REPRESENTED BY EACH OF FIVE PROPERTY CATEGORIES NATIONALLY (EXCLUDING AUTOS) FOR THE YEARS 1960-1974					
Year	PROPERTY CATEGORIES				
	Fur	Clothing	Jewels	Currency	Misc.*
1960	6%	9%	16%	24%	44%
1961	5%	9%	18%	23%	44%
1962	5%	9%	18%	23%	44%
1963	4%	8%	18%	21%	48%
1964	4%	8%	15%	20%	51%
1965	5%	8%	14%	21%	49%
1966	4%	7%	15%	23%	53%
1967	3%	7%	14%	21%	54%
1968	2%	7%	14%	20%	56%
1969	2%	6%	14%	18%	59%
1970	2%	6%	13%	17%	62%
1971	1%	5%	13%	18%	64%
1972	1%	5%	12%	18%	64%
1973	.8%	4%	12%	16%	67%
1974	.8%	3.5%	12%	16%	67%

*Category includes firearms, televisions, stereos, radios, household goods, office equipment.

¹Paper prepared with the assistance of Gregory Baldwin, Robert Elmore, William Waller, and Michael Blakey. Copy kindly supplied by the authors.

²Each of these tables can be plotted on a graph for more effective presentation.

is that the relative attractiveness to thieves of various property categories has changed -- with the category "miscellaneous" experiencing the greatest increase as a theft target. Beginning in 1974, items in the miscellaneous category (e.g., office equipment, televisions, stereos, radios, firearms and household goods) will be reported separately to the FBI.

The changing positions of various property categories in the total amount of goods stolen becomes most interesting when compared with Table B-2. In Table B-2, the percentage of total recoveries represented by each category nationally for the years 1960-1974 is presented. Here it can be seen that a decrease in the attractiveness of furs as theft objects, for example, has been accompanied by a decrease in the prominence of this category in the total amount of recoveries. Miscellaneous property on the other hand has become a relatively more prominent part of total recoveries as it has become more attractive to thieves.

TABLE B-2

PERCENTAGE OF TOTAL PROPERTY RECOVERED REPRESENTED BY EACH OF FIVE PROPERTY CATEGORIES NATIONALLY (EXCLUDING AUTOS) FOR THE YEARS 1960-1974					
Year	PROPERTY CATEGORIES				
	Fur	Clothing	Jewels	Currency	Misc.
1960	2%	5%	10%	16%	63%
1961	1%	6%	10%	14%	66%
1962	2%	6%	10%	18%	63%
1963	1%	6%	8%	17%	69%
1964	1%	6%	10%	18%	66%
1965	2%	7%	10%	16%	62%
1966	2%	7%	10%	18%	63%
1967	2%	8%	10%	18%	64%
1968	2%	6%	8%	22%	66%
1969	1%	7%	10%	14%	67%
1970	.6%	7%	8%	16%	68%
1971	.5%	6%	9%	14%	70%
1972	.7%	6%	8%	14%	67%
1973	.5%	5%	8%	15%	72%
1974	.5%	5%	8%	13%	74%

Thus, Blakey and Goldsmith note:

"The overall figures indicate that law enforcement authorities did, in fact, improve their ability to recover stolen property, but their rate of improvement failed to keep pace with the rate of increase in the

total amount of property stolen."³

In fact, Blakey and Goldsmith found that between 1960-1974 the percentage of stolen property (including autos) recovered declined from 52.4% to 31.0%.⁴

The relationship between the increase in property stolen and recovered is depicted in Table B-3 where national figures for miscellaneous property are presented. Table B-3 adjusts national figures to a monetary value which is a rate per 100 people. Thus in 1960, approximately \$112 worth of miscellaneous property was stolen for every 100 people in the United States. By 1974, this figure had risen to \$664. In the same time period, value of recovery per 100 people increased from \$21 to \$86, but the pace of recovery was not as great as the pace of theft of such items.⁵

TABLE B-3

MISCELLANEOUS PROPERTY STOLEN AND RECOVERED NATIONALLY EXPRESSED IN 1974 DOLLARS AS A RATE PER 100 PEOPLE, FOR THE YEARS 1960-1974		
Year	Value of Miscellaneous Property Stolen Per Year Per 100 People	Value of Miscellaneous Property Recovered Per Year Per 100 People
1960	\$ 112	\$ 21
1961	112	23
1962	121	21
1963	160	35
1964	193	31
1965	193	29
1966	195	20
1967	188	34
1968	308	39
1969	375	48
1970	473	52
1971	525	67
1972	490	58
1973	540	74
1974	664	86

³"Statistical Analysis of the Theft and Recovery of Stolen Property," at paragraph 30, point 3.

⁴At paragraph 14.

⁵When adjusted to constant dollars with 1960 as a base, the relationships are as follows: value of thefts per 100 people 1960 - \$112, 1974 - \$393; value of recoveries per 100 people 1960 - \$21, 1974 - \$52.

Blakey and Goldsmith conclude:

"The relatively poor position of law enforcement's efforts today is primarily the result of (a) its inability to stop the increase in the theft of miscellaneous property, and (b) its ineffectiveness in improving its rate of recovery with respect to these items.⁶

One of the factors they suggest be explored as contributing to ineffectiveness in property theft enforcement is "the increased ability of thieves to dispose of their booty."⁷

The use of agency statistics to show the interaction between categories of property stolen and recovered and the rates of change for theft and recovery can startlingly illustrate the nature of property theft in a jurisdiction. They can also build a strong case for focusing upon the market for stolen goods (the fence) rather than the thief alone.

⁶At paragraph 31, point 4.

⁷At paragraph 32, point 5.

EXHIBIT B-2

STATE OF IOWA
BUREAU OF CRIMINAL INVESTIGATION

PROCEDURES FOR CONFIDENTIAL FUNDS

At no time will this Division keep more than \$5,000 from the contingency (undercover) fund in the Bureau Headquarters vault.

All such funds will be kept locked in the BCI vault, together with all receipts and all records necessary for immediate auditing. Only the Director, Deputy Director or Assistant Director in charge of the Intelligence Unit will have direct access to these funds.

The BCI Director will keep accurate and up-to-date records on all undercover funds which have been issued to this Bureau, including funds on hand in the Bureau vault; funds checked out by enforcement personnel; funds expended by enforcement personnel; the type of expenditure (CI payment or purchase of evidence), and all recovered funds.

Official BCI funds may be checked out of the Headquarters by enforcement personnel for investigative purposes only, and only after approval has been obtained from the Director or Deputy Director. This request must be made through usage of Form BI-5, discussed below. (When time is an important consideration, Special Agents may contact the Director or Deputy Director for verbal approval. However, in the latter situation, Form BI-5 must be completed and submitted at once.) Under no circumstances will money be checked out of the BCI Headquarters without prior approval by the Director or Deputy Director.

Special Agents will check out only enough cash to cover their anticipated investigative needs. If the need for official funds ceases or the amount decreases, the unused portion must be returned to the BCI office to be placed in the BCI vault with appropriate changes recorded by the Director, Deputy Director or Assistant Director in charge of the Intelligence Unit.

Special Agents with undercover funds in their possession will, at no time, use these funds for any reason other than that approved by the Director or Deputy Director and will be used for the purpose of purchasing evidence or payment to a confidential informant (C.I.).

All such funds will be kept separate from the personal property of the Special Agents and must be kept locked in a file cabinet or other suitable locked facility when not in actual use.

Transferring official funds from one agent to another will not be permitted unless an emergency arises when there is not sufficient time to procure funds from the BCI Office. When funds are transferred, the agent making the transfer must obtain a receipt from the agent receiving the funds and submit same to BCI Headquarters with a memorandum of explanation. The Director or Deputy Director must be notified immediately of such a transfer.

Special Agents are authorized to make payments to confidential informants of fifty dollars with approval from an Assistant Director only. All other C.I. payments must receive prior approval from either the Director or Deputy Director. In payments of this type, a Special Agent must use his judgement in dictating the amount and appropriateness of payment.

Any time official funds are expended by a Special Agent of this Bureau, the Director, Deputy Director or Assistant Director must be notified at once and appropriate receipts, when completed, submitted to BCI Headquarters immediately.

Official funds will not be given to a C.I. unless there is an immediate exchange of evidence ("front money") unless prior approval has been given by the Director, Deputy Director, or an Assistant Director.

Funds will not be given to a confidential informant unless he has been written up and approved in the following manner:

- (A) A report must be submitted on a regular BCI investigative report form to Headquarters for each proposed confidential informant.
- (B) The report will include the full name and address of the informant; any aliases used by this person; a full description, including his date and place of birth; and a full background investigation concerning him.
- (C) The extent of the proposed use of the informant will be clearly set out in the report. This will include the length of time the Special Agent anticipates using the informant.
- (D) Each prospective informant will be completely debriefed regarding his knowledge of the criminal matter being investigated with such information set forth in the report.
- (E) Fingerprints on a fingerprint card, signed by the informant, and a photograph of the individual will be attached to the report.

- (F) Before any informant formally becomes affiliated with the BCI, the controlling agent is to discuss the informant with his Supervisor. If approval is given, the informant will be issued a C.I. number which will be used as the identifying number for the informant in all reports.
- (G) In addition to the investigative report, an "informant card" will be filled out on Form #CP-B10618 6/72. One card will be filled out in its entirety with the informant's number. A second card will have the informant number only and will be retained by the controlling agent for his record. On the line having the type-written name of the informant, the controlling agent shall have the confidential informant sign his name. This signature will be used to compare with future signatures on receipts signed by the informant. The controlling agent shall sign his initial in the section where his name is typewritten as a witness to the informant's signature. It will also be permissible for those individuals that are used on a "one time" basis to be paid by merely filling out the informant card. However, this should be held to an absolute minimum and on an emergency basis only.

In every case where undercover funds are expended for the purchase of evidence, the following instructions shall be followed:

- (A) A list of the serial numbers of the funds to be used will be prepared by the Special Agent, in the presence of a witness, on a separate investigative report form which will become a permanent part of the investigative report file. A full and detailed investigative report must be written in all cases.
- (B) Following an arrest, any currency found in the defendant's possession, if applicable, will be checked against the serial numbers on the original money list. (Details to be included in the investigative report.)
- (C) All funds used to purchase evidence and are subsequently recovered will be placed in an evidence envelope with a copy of the pertinent list of serial numbers placed on the envelope. Such evidence will be held in the safe until no longer needed as evidence.
- (D) In cases involving confidential funds furnished by a Federal grant, permission must be obtained from the State Planning Agency before the money can be placed back into the active account. If the grant has expired, this money will be returned to the SPA.

- (E) Special Agents of this Bureau will not furnish undercover funds to a confidential informant for the purpose of making unsupervised purchases of evidence. Funds issued to an informant will be closely supervised by the Special Agent who furnished him the funds. If the purchase is consummated, it will be written up as required. If the purchase is not consummated, the informant will immediately return the funds to the agent.

At all times, unless circumstances prevent, another agent or police officer shall sign an informant's signed receipt for undercover funds as a witness. This is to be done only at the time the funds are furnished to the informant.

Any time official funds are provided to an informant, whether for the purchase of evidence or payment to the informant, proper receipt forms will be filled out in their entirety, properly signed and sent to BCI Headquarters at once. At no time will receipts be signed by the informant in advance. In all cases, the receipt will be filled out entirely before signed by the informant.

All Special Agents in possession of official undercover funds are accountable for such funds and subject to an unannounced audit by the Director, Deputy Director, Assistant Directors or by any auditor of the State Auditor's Office.

Misuse of undercover funds, or failure to produce such funds upon demand as set out in this directive, will be cause for disciplinary action depending upon the circumstances.

Information concerning receipt forms are as follows:

- (A) Form BI-1. This receipt form is to be used when official funds are provided to a confidential informant for the purpose of buying evidence. The signed copy shall be forwarded to BCI Headquarters and the original placed in the file. As in all cases of receipts, only the original will be signed. If the purchase is not made and the money is subsequently returned to the Special Agent, he should at that time write "Funds Returned" across the face of the receipt and return it to the Supervisor in charge for filing.
- (B) Form BI-2. "Receipt for Cash." This form is to be used as a receipt when official funds are given to a confidential informant in payment for services. All receipt requirements will apply to this form. On Form BI-2 is a blank space after the word "following" in which space a Special Agent will give the case number, identity of the subject involved, and a short explanation as to what services were performed for the payment of money.

- (C) Form BI-3. This form will be used by BCI Headquarters to show any recoveries of undercover funds and is for Headquarters use only.
- (D) Form BI-4. This form is an accounting sheet for each agent having undercover funds assigned to him and under his direct control. An original copy of this form will be submitted to BCI Headquarters not later than five (5) days after the first of each month. This report will show the disposition of all funds for the preceding month. Any agent having direct control of undercover funds should retain a copy of this form for his personal file.
- (E) Form BI-5. "Request for Undercover Funds." This form has three separate areas as follows:
- I. Request for Undercover Funds. In this section the Special Agent will fill in the necessary blanks, indicating the name of the agent requesting funds, the amount requested and the purpose for which the funds are requested. In this section is a space for signature and date to be filled out by the agent prior to submission to the Director or Deputy Director.
 - II. Action on Request. In this section the Director or Deputy Director will approve or disapprove the request, sign and date the action. Also in this section is a space to be filled out by the individual who actually takes the money from the safe and provides it to the requesting agent.
 - III. Receipt for Undercover Funds. When the request for undercover funds is approved and the funds are sent or given to the requesting agent, this section will be completed and signed by him, showing receipt of the requested funds.

The Director of the BCI, or his designee, shall be responsible for maintaining the file on confidential informants in a secure place at BCI Headquarters. Each informant shall have a file containing all the data required (fingerprint cards, reports, photographs, informant card). In addition, the informant file should have a summary maintained on the activities of the informant.

The Director, or his designee, shall be responsible for comparing the signed signature of an alleged informant for the receipt of money with the known signed signature on the fingerprint card and/or the informant card. This shall be done upon the obtaining of the receipt by BCI Headquarters from the controlling agent. This comparison is for the purpose of verifying the signature of the alleged informant.

It shall be the responsibility of the Director, or his designee, to prepare a quarterly report for the Commissioner of Public Safety giving a summary of each undercover fund transaction. This report will contain the name used by the informant, the control agent, the nature of the case and what information was received. Any valuation of the information should also be reported.

Each Special Agent using undercover funds shall give a detailed account of the entire transaction in his investigative report. This account shall set forth the manner in which the information was received, the reliability of the informant and the value of the information upon the completion of the transaction.

EXHIBIT B-3

PROPOSED "COMMON FACTORS" FORM
FOR FOLLOW-UP BURGLARY INVESTIGATION

PLEASE FILL OUT PROMPTLY AND RETURN TO YOUR POLICE DEPARTMENT
(May either be left with victim or brought to victim by investigator assigned the case, who can interview victim from this form.)

This list is to determine if there is a common factor as to why your home has been burglarized in comparison with the lists furnished by other burglary victims in (name of jurisdiction or surrounding area). Your responses do not infer suspicion or guilt to any of the companies or persons named by you but may provide pertinent information to the investigating officer and may lead to those responsible and/or the recovery of your valuables. Your cooperation is sincerely appreciated in filling out this form.

UNDERLINE THE CORRECT HEADING AND GIVE THE NAME OF PERSON ON FIRM WHO DID THE WORK OR PERFORMED THE SERVICE FOR YOU.

1. HOME IMPROVEMENT OR CONSTRUCTION

Air conditioning, heating, humidifying _____
Fire, burglar alarm _____
Concrete, masonry, tuckpointing _____
Paneling, drywall, siding _____
Excavation, foundation, pool _____
Painting, plastering, wallpapering _____
Paving, driveway work or sealing, garage door devices _____

Roofing, guttering _____
Carpentry, millwork, flooring, carpet laying _____
Electrical, plumbing _____
Other: _____

2. SERVICES

Interior decorating _____
Tree, nursery, landscape, lawn maintenance _____
Moving, storing, hauling _____
Travel: agency, club, airline, bus, train, boat _____

Repair: appliance, TV, implement sharpening _____

Cleaning: carpet, upholstery, drapes _____
Party catering, rental, supply _____
Locksmith, keys made _____
Pest control, exterminating service _____
Delivery: air freight, postal service _____
Local: grocery, milk, drycleaner, diaper service, freezer food _____

Car: repairs, leasing, service _____
Pets: kennel, grooming, boarding, hospital care, boarding stable _____

Other: _____

3. DOMESTIC HELP

Maid, butler, chauffeur _____
 Gardener, nurse, babysitter, cook _____
 Employment service, maid service _____
 Limousine, house cleaning _____

4. SOLICITATION BY PHONE OR AT DOOR

Fire wood, vacuum sales or repair _____
 Real estate development, home repairs, book sales _____
 Religious group, snow removal, school benefits _____

5. PUBLICITY ABOUT YOU OR YOUR FAMILY

Recent articles, publication _____
 Marriage, death _____
 Loss of purse, billfold, papers, keys _____

6. CONTENTS AND PERSONAL PROPERTY

Appraised, evaluated _____
 Reevaluated, photographed _____
 Videotaped _____
 Restored, repaired, refinished, engraved _____

7. What company writes your personal articles insurance floater?

8. Do you go to auctions, flea markets, antique shops? Please name.

9. Have you given your name to any of the above for a door prize, special drawing, register, purchase, admittance?

10. Have you consulted with any auction service, estate liquidators, or shop concerning the disposal or purchase of your property either in whole or part?

11. Have you bought or sold a piece of jewelry to or from any firm or individual dealing in antique jewelry or estate pieces?

12. When you go antiquing, do you ask for pieces which you might be collecting (clocks, bronze, miniatures, silver boxes, etc.)?

13. Do you subscribe to any antique trade journals, newspapers, or publications?

14. Did you use I-dent?

EXHIBIT B-4

SAMPLE ADMINISTRATIVE ORDER

SUBJECT: Electronic Interception of Communications

I. BACKGROUND: The (name of agency) must ensure that all employees are cognizant of and operate within the provisions of applicable state and federal statutes when conducting criminal investigations that involve the interception of wire or oral communications. Extreme care must be taken so that lawfully authorized interceptions which do not require a court order are conducted in accordance with the pre-requisites enumerated in (appropriate state statute citation). This order addresses only those actions that require authorization of a court order.

II. POLICY:

A. The Department has an obligation to safeguard the personal privacy of innocent persons from unwarranted invasion. When none of the parties to a communication have consented to the action, interception of wire or oral communications should be allowed only when authorized by a court of competent jurisdiction and should remain under the control and supervision of the court. The court will be assured that the interception is justified and in accordance with state and federal statutes and that information obtained will not be misused. Requests for authorization must be limited to certain major offenses and specific categories of crimes as outlined in (appropriate state statute) and Title III, Omnibus Crime Control and Safe Streets Act of 1968.

B. Definitions (excepted from state statute):

1. "Wire communication" (definition from statute given)
2. "Oral communication" (definition from statute given)
3. "Intercept" (definition from statute given)
4. "Electronic, mechanical, or other device" (definition given)
5. "Investigative or law enforcement officer" (definition given)
6. "Judge of competent jurisdiction" (definition given)

III. PROCEDURE: Prior to the actual implementation of an intercept operation, departmental employees shall review (appropriate state statutes) and ensure that they understand thoroughly the legality of, procedures for and prohibitions against the interception of wire or oral communications. The following minimum requirements shall apply:

(What should follow is a concise but thorough recitation of the procedures an officer must follow, including who must approve an application at various stages; in the agency when and where legal approval is given; and how and by whom the order is to be executed.)

- IV. GENERAL: (This portion of the administrative order reiterates rules regarding the responsibility of the lead investigator. It also summarizes the required disposition of the tapes issuing pursuant to an order to intercept.)
- V. CROSS REFERENCE: (Appropriate state statute citation), and Title III (Wiretapping and Electronic Surveillance); Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90 - 351).
- VI. REVOCATION: None
- VII. EFFECTIVE DATE: Upon publication

Name and Signature of Agency Head

EXHIBIT B-5

MODEL FOR ADMINISTRATIVE ORDER

SUBJECT: RULES FOR SEARCH WARRANT EXECUTION

The following rules govern the conduct of law enforcement officers in serving warrants and in searching under authority of warrant.

- I. Aim to meet statutory and constitutional standards relating to such matters as time limitation of a warrant, night time execution, no-knock entry, scope of a warrant search, return of warrant, discovery of items not listed in a warrant, searching or restricting persons on the premises, maintaining custody of any items seized (laws of each jurisdiction should be consulted to see what is seizeable).

Definitions:

Evidence Collector: A member of the search team designated by the lead investigator to take possession of, package, seal and mark all items seized at the search site.

Lead Investigator: The search team member most knowledgeable about the case, and most responsible for the investigation. Often he is the affiant who requested the search warrant. He will be in charge of the execution of the warrant unless a higher-ranking officer is present and takes charge himself.

Search Site: The place to be searched, as described in the search warrant.

Search Team: Those persons-officers and supporting civilian personnel taking part in the execution of a particular search warrant. If the warrant is directed to a particular person or police agency, the named person or an officer of the named agency must be a member of the search team.

Seizable Items: Contraband, loot, anything used in committing a crime, or other evidence of crime.

Search team shall include at all times at least one uniformed officer. Execute warrant as soon as is practical. Delay in executing may result in probable cause evaporating and search being invalidated; increases chance of tip off to persons occupying search site.

Circumstances that may, however, necessitate delay in serving warrant. (Summary list of those operable in jurisdiction.)

- II. Conduct immediately prior to entry. Precautions taken before execution of warrant may lessen danger to police officers and alleviate needless

friction and controversy between search team and those persons occupying search site. The following are rules:

A. Assuring that search site is correct

Lead investigator shall take every reasonable precaution to make certain that premises listed in the warrant are in fact, the premises sought to be searched, and that the premises about to be entered are in fact, the premises listed on the warrant.

If lead investigator is not certain that premises are, in fact those listed in the warrant and those sought to be searched, or if he concludes that the reason for the search no longer exists no entry shall be made.

B. Recording

Search team shall record entire execution of search warrant; beginning with statement of the time, dispatcher may be used, approaching the site, and continuing until search team has left the search site.

C. Search team positions

1. Likely exists from premises.
2. Uniformed officer should be most visible.
3. Search team members clad in manner not conventional for law enforcement officers should be least visible and last to enter the search site.

D. Announcement of Authority and Purpose

Lead investigator or uniformed officer shall notify persons inside search site of their presence, and in every case announce, in voice loud enough to be heard inside, that he is a police officer and has a warrant to search the premises and that he demands admission to the premises at once.

Exception to general rule: (insert local rules on no knock).

E. Delay following announcement

1. If the warrant lists readily disposable items: (insert local rules on required delay).
2. Items sought are not readily disposable: (insert local rules on required delay).

F. Entry should be made as courteously and non-destructively as is practical. Firearms should not be exhibited by search team unless lead investigator or other supervisor is reasonably sure the team is endangered.

III. Conducting the search

A. Search progression

After search is secured, search shall take place in an orderly progression. Lead investigator will explain to the occupants, purpose of the search and notify them that the search has been authorized by a judge. Formal interrogation of any occupant suspected of a crime should be preceded by a full admonition of Miranda warnings.

B. Scope of search

Area of search is limited by the description of the premises in the warrant. The scope of the search within the area is limited by the type of item(s) listed in the warrant.

EXAMPLE: (Give specific example.)

C. Discovery of unspecified seizable items (insert local rule).

IV. Termination of search

When all items listed in the warrant have been found or when it reasonably appears that the items are not on the premises, the search shall terminate.

V. Obtaining additional warrants (summarize local rules).

VI. Maintaining a complete record of the important features of a search must be made, including time and place the warrant was obtained, time execution began, all circumstances of entry to search site, and the identities of persons on the search team and those occupying search site.

APPENDIX C

APPENDIX C

AN INVESTIGATOR'S LEGAL GUIDE

This Guide is a brief review of the common legal tools and legal problems likely to be used by and to confront the anti-fencing investigator. In addition, a prospective look is taken at some alternative statutes that may be of value in anti-fencing enforcement. This appendix is only meant to provide a general overview and to serve as a guide to investigators. It does not purport to precisely reflect current holdings in every jurisdiction. On particular issues, then, the investigator is strongly advised to consult with his local prosecutor, or agency legal advisor, for more detailed information and instruction --- which will be more authoritative within his jurisdiction.

I. ELEMENTS, INFERENCES, AND PRESUMPTIONS IN
RECEIVING STOLEN PROPERTY STATUTES

The general statutory pattern of the offense of receiving stolen property requires four elements: (1) the property must be "received"; (2) the property must have been stolen and must retain its character of stolen property at the time it is received; (3) the property must be received with "knowledge" of its stolen character; (4) the property must be received with wrongful intent.

A. THE ELEMENT OF "RECEIVING"

The typical criminal receiver takes stolen property and pays the thief for that property. In this way the fence purports to buy the goods from the thief. This type of receiving, however, is not necessary for conviction of the offense. It is sufficient, insofar as the element of receiving is concerned, if the goods are left with the criminal receiver for a temporary purpose, either with or without consideration. In fact, it is not even necessary for the fence to touch the goods with his own hands. If the stolen goods are delivered into his control, this is enough. Thus, possession may be taken for him by his agent acting under his direction. Alternatively, the fence may direct the thief to deposit the goods at a certain place for him (a "drop") and then lead an innocent third party purchaser to that place, or have the goods sent to the innocent third party, and thus complete a sale without himself ever having touched or seen the stolen goods.

Some statutes make it a separate crime to possess the stolen property. However, there is little if any difference between "receiving" stolen property and "possessing" stolen property since nearly all courts define "receiving" in terms of possession of or control over the stolen property. In this regard, what is especially important is whether a law enforcement officer's particular state has accepted or rejected the doctrine of constructive possession. One is in constructive possession of property when he can exercise control over it even though it is not within his actual manual possession. Nearly all courts

accept the doctrine of constructive possession, but where constructive possession is not recognized, the burden on law enforcement in the area of fencing can be substantially increased.

Some statutes dealing with receiving stolen property provide punishment for one who "buys or receives" stolen property with knowledge of its stolen character. Although one may receive stolen property without buying it, it is hard to think of a situation in which one who buys stolen property does not receive it, by exercising control over it if not by actually taking possession of it. Given this analysis, the word "buys" would appear to add nothing to the receiver's liability.

An occasional statute will include a clause expressly covering the concealment or withholding of stolen property with knowledge of its stolen character. This wording subjects the "innocent" receiver to liability if upon later learning the truth about the property, he conceals or hides it from its owner or otherwise refuses to surrender it.¹

B. THE "STOLEN CHARACTER OF THE PROPERTY"

An essential element in the crime of receiving stolen property is that the property must have been stolen. One simply does not commit the crime of receiving stolen property by receiving what he thinks or believes to be stolen property, if in fact it has not been stolen. This requires that two key questions be asked: (1) What is stolen property? and (2) When does property which has been stolen lose its character as such?

1. What Property Is "Stolen"?

Statutes punishing the receipt of "stolen" property, knowing it to be stolen, clearly cover property obtained through larceny. The word "steal" is usually taken to mean "obtained by larceny." Similarly, since robbery is simply an aggravated form of larceny, the crime of receiving stolen property also encompasses property obtained by robbery. Also, where the purpose of a burglary was larceny, property obtained in a burglary is "stolen" for purposes of criminal receiving statutes. A more difficult question concerns whether property obtained through embezzlement or false pretenses is "stolen" for purposes of criminal receiving statutes. Under the narrowest construction of the word "stolen," property obtained by embezzlement or false pretenses is not considered "stolen" for purposes of the criminal receiving statute. In most states, however, property obtained through any form of theft is covered by the criminal receiving statute. This is done either through judicial construction of the word "stolen" to include the three principle forms of theft --- embezzlement, false pretenses, and larceny; or as is done in nearly all new criminal codes, by consolidating all theft offenses into one statute, thus eliminating the fine technical distinctions between embezzlement, larceny, and false pretenses.

¹In some states, businesspersons like pawnbrokers, who receive goods in good faith and offer a consideration, must be compensated before the goods are surrendered.

2. Property Taken by Minors

One issue raised periodically is the question of whether one can be guilty of criminal receiving by receiving property which has been "stolen" by a juvenile. This is important since many burglaries in large metropolitan jurisdictions are believed to be perpetrated by juveniles. The general approach has been to attach liability to the criminal receiver who, knowing of the child's theft-like conduct in acquiring the property, nevertheless receives it from the child. In this situation, the property taken by the youth for purposes of the criminal receiving statute is held to be "stolen." However, if the child is of such tender years so as not to be legally responsible for his acts, for example, if the property is taken by a person under the age of seven years (an "infant"), then some courts have held that the property is not "stolen" and therefore the criminal receiver has a defense to a charge of criminal receiving.

3. When and How Does Stolen Property Lose Its Stolen Character?

An issue related to what constitutes stolen property is the issue of when property which has clearly been stolen loses its character as such. The fact that property has been stolen does not forever remove it from the channels of legitimate commerce. Once the property has been restored to its rightful owner, it ceases to be "stolen" property. Because of this, all courts hold that if stolen property is once restored to the owner, or recovered on behalf of the owner, (by a police officer, for example) and then is returned to the thief with instructions to make the intended disposition to the fence, no liability for the crime of receiving stolen property will attach, regardless of the receiver's blameworthy intent. Such a fence might think the property he was receiving was stolen, but the fact that it was not bars his conviction for the crime of receiving stolen property.

4. The "Attempt" to Receive Stolen Property

The fact that property received by a fence has lost its stolen character does not necessarily mean that the fence is insulated from prosecution for all time. By receiving what he believes to be stolen property, a fence may be guilty of the crime of attempting to receive stolen property. The crucial issue here is whether or not the loss of the stolen character of the goods he receives bars his conviction for attempt under the doctrine of legal impossibility. Legal impossibility is commonly defined as the case in which the defendant did everything which he intended to do but, in spite of his intent, did not commit the completed crime. Factual impossibility, on the other hand, is a situation in which the defendant is unable to accomplish what he intends because of some fact unknown to him.

All courts agree that factual impossibility is no defense in a prosecution for an attempt to commit a crime. If what the defendant intended to accomplish is proscribed by the criminal law, the fact that he is unable to bring about his desired result because of some circumstances unknown to him when he is engaged in the attempt will not protect him from conviction.

The traditional view in receiving cases was to apply the doctrine of legal impossibility to the crime of attempting to receive stolen property. Generally this is no longer true. The doctrine has been rejected by the Model Penal Code and by nearly all states which have recodified their criminal law in the past decade. Thus, the modern view is that impossibility is not a defense to crime in cases where the defendant's actual intent, not limited by true facts unknown to him, is to do an act or bring about a result proscribed by the criminal law. Jurisdictions accepting the modern view will not bar a conviction for the attempt to receive stolen property under the impossibility doctrine.

C. PROOF OF "KNOWLEDGE" IN RECEIVING CASES

The third element in the general statutory pattern of the crime of receiving stolen property is that the property must be received by the fence with "knowledge" of its stolen character. The typical statute provides that one is guilty of the crime of receiving stolen property only if the property was received with "knowledge" that it has been stolen. Literally, the word "knowing" imports something pretty close to 100% certainty, but such a level of certainty about the stolen character of the property is not required for conviction. Words such as "believing" or "suspecting" have also been used to adjudge the knowledgeability of the receiver's conduct.

Most courts hold that in order for criminal liability to attach, the fence must "believe" that the property he takes possession of is stolen. There are some courts, however, that have subjected fences to criminal liability for something less than belief. Some courts have held that the requirement of "knowledge" is met if the defendant's suspicions were aroused but he refused to investigate the true character of the goods for fear that he would discover their stolen character.

The Illinois Supreme Court, for example, in one case, People v. Rife, stated:

"Knowledge that property was stolen is seldom susceptible of direct proof, but may be inferred from all of the surrounding facts and circumstances . . . circumstances which will induce a belief in the mind of a reasonable person the property has been stolen are sufficient proof of such guilty knowledge . . . the knowledge need not be that actual or positive knowledge which one acquires from personal observation of the fact, but it is sufficient if the circumstances accompanying the transaction be such as to make the accused believe the goods had been stolen." (Emphasis added.)

It should be noted that a showing of negligence which results in a defendant not realizing that the property is stolen will not be sufficient for conviction. Similarly, a mere suspicion, not rising to the dignity of a belief, will not be enough for a conviction. The relevant questions are (1) Did the defendant know the goods were stolen? (2) Did the defendant believe the goods were stolen? (3) Or were his suspicions aroused but he nevertheless refused to investigate for fear his suspicions would be confirmed?

1. Inferences of "Knowledge"

In nearly all fencing cases, there will be no direct testimony of the receiver's actual belief. As a result, proof of knowledge must be inferred from the circumstances surrounding his receipt of the stolen property. A fence's exclusive possession of recently stolen property, if unexplained or if falsely explained, justifies the inference that he received it with the requisite knowledge. Most jurisdictions hold to this view, but because some do not, law enforcement agencies are advised to consult with the local prosecuting attorney to determine whether their jurisdiction is one of the exceptions.

Even if this presumption does not apply in a particular jurisdiction, several other circumstances are available from which a jury can infer guilty knowledge. Again, quoting from the Illinois Supreme Court:

Knowledge that property is stolen is seldom susceptible of direct proof, but may be inferred from all the surrounding facts and circumstances . . . This knowledge of the accused is the central element of the offense and must be found by the jury as a fact. In determining whether the fact existed, the jury will be justified in presuming the accused acted rationally and that whatever would convey knowledge or induce belief in the mind of a reasonable person, would in the absence of countervailing evidence, be sufficient to apprise him of that fact, or induce in his mind the like impression and belief.

Accordingly, the circumstance that the buyer paid an unreasonably low price for the goods, that the seller was irresponsible (e.g., he had a reputation as a thief or burglar), that the transaction between the buyer and seller was secret, all point toward the buyer's guilty knowledge of the property's stolen character. Furthermore, the fact that the fence knowingly received other stolen property from the same thief, or even from another thief, at about the same time as the receipt of the stolen property in question can be introduced as evidence that the fence had guilty knowledge that the property in question was stolen.

C. PROOF OF CRIMINAL INTENT

More than one court has said, "Whatever the law may be in that respect elsewhere, intent is not, by our statute, a necessary fact to be averred or proved in a case involving the crime of receiving stolen property." This statement is true, but it is often misinterpreted. The intent to steal or the intent to deprive the owner permanently of his property is not a requirement generally spelled out in states defining the offense of receiving stolen property. However, the intent to permanently deprive the owner of his property is implicit in the statute. Were this not the case, the police officer, who apprehends a thief in possession of stolen property and who takes the property from him in order to return the property to its rightful owner, technically would be guilty of the crime of receiving stolen property. Similarly, if one receives stolen property with the knowledge of its stolen character but with the good intent of restoring it to its rightful owner, the crime of receiving stolen property is not committed. Some sort of blameworthy intent, in addition to the guilty knowledge, is required for conviction. This is simply to say that the receiver must be culpable.

As in related property offenses, the necessary blameworthy intent in the crime of criminal receiving is an intent to permanently deprive the owner of his property. Usually the fence's purpose will be to deprive the rightful owner of his property for the fence's own benefit. A receiver is equally guilty of the offense if his purpose is to deprive the owner for the benefit of someone else, for example, by hiding the stolen property for the thief. Similarly, one may be guilty of criminal receiving even though the receipt was for no personal benefit of the receiver but simply to destroy and therefore permanently deprive the rightful owner of his property. One who receives stolen property with the intent to restore it unconditionally to its rightful owner does not commit the crime of receiving stolen property. However, as in the case of other theft offenses, where the receiver's intention is to restore it only for a reward, it does constitute a necessary blameworthy intent to deprive the owner of his property.

E. DEFENSES TO CRIMINAL RECEIVING CHARGES

The general principles of defense to crime which are applicable to other offenses apply equally to the crime of receiving stolen property. However, there are three defenses to crime which are particularly relevant to the offense of receiving stolen property. Given the character of most fencing investigations, entrapment is a defense which will often be raised at a trial on the merits. A fairly extensive discussion of the defense of entrapment and related issues is presented in a succeeding section, at p.157. Second, one who receives stolen property under a bonafide claim of right, for example, where the receiver honestly believes the property to have been abandoned, cannot be guilty of the crime because he does not have "knowledge" that the property is stolen. Finally, one who honestly though mistakenly, because of a mistake of fact, believes the property is not stolen cannot be convicted of receiving stolen property because he too lacks the requisite "knowledge."

II. HINDERING APPREHENSION OR PROSECUTION: ANOTHER STATUTORY TOOL FOR THE ANTI-FENCING INVESTIGATOR

Section 242.3 of the Model Penal Code says in part:

If a person commits an offense with the purpose to hinder the apprehension, prosecution, conviction or punishment of another for crime when he *** (C) conceals or destroys evidence of the crime, or tampers with a witness, informant, document, or other source of information, regardless of its admissibility in evidence; or *** (E) volunteers false information to a law enforcement officer.

Comparable provisions have been enacted into law by a number of states. Nearly every state that has undergone a recodification of its criminal law since publication of the Model Penal Code has adopted a provision similar to the one quoted above as part of its new criminal code.² Different jurisdictions

²See, for example, Oregon revised statutes, Section 162.325, New York revised penal law, Sections 205.50, 205.55, and 205.60, Michigan revised criminal code, Section 4635, and the revised code of Washington, Section 9A.76.050.

may title this crime differently, e.g., the State of Oregon titles the crime "Hindering Prosecution," while the State of Washington titles the crime "Rendering Criminal Assistance." However, basically the same behavior is proscribed.

The common law and most of the current legislation building on the common law rest on the notion that the person who helps an offender avoid justice becomes in some sense an accomplice to the original crime. In this sense the theory of criminal liability is similar to that of obstruction of justice, i.e., the person who destroys or hides evidence to aid another (or oneself) is wrongfully interfering with investigative or judicial government processes.

The crime of hindering apprehension and prosecution is relevant to anti-fencing operations for two reasons. To begin with, the hindering statute provides an additional basis of liability for the criminal receiver. Whenever the crime of receiving stolen property is established, the crime of hindering apprehension or prosecution is also proven, that is, the fence can be shown to have hindered the apprehension, prosecution, etc. of the thief(ves) supplying him with stolen goods. The criminal receiver can, therefore, be prosecuted conjunctively under the typical criminal receiving statute and the hindering statute, thereby adding to the potential punishment he receives.

Second, the crime of hindering apprehension or prosecution can serve as an alternative theory of liability for the criminal receiver where there is insufficient evidence to prove the crime of receiving stolen property itself. For example, the residential fencing outlet handling boosted (shoplifted) merchandise is often a familiar part of a local fencing problem. In these situations, however, the crime of criminal receiving is extremely difficult to prove because boosted merchandise cannot ordinarily be traced to a particular theft or act of thefts and there generally are no crime reports recording the loss of such merchandise. The usual response of law enforcement is to avoid cases involving shoplifted goods. Indeed, a cardinal rule of many anti-fencing details is: "Avoid boosted property."

The attractiveness of hindering statutes lies primarily in their potential for dealing successfully with the boosted property marketplace. Proceeding against a fence under the hindering theory does not require that the property in his possession be shown to be stolen, but rather that there be probable cause to believe that it is "evidence of a crime." Thus, so long as the merchandise in a fence's possession can be associated generally with theft activity, probable cause to seize "evidence of a crime" may be established.

Thus, hindering apprehension or prosecution statutes are potentially valuable to the anti-fencing investigator in two areas.

- (1) as an additional basis of liability for the criminal receiver; and
- (2) as an alternative basis of liability where property not easily traced or identified as stolen is involved.

As a general proposition, law enforcement officers having such statutes in their jurisdiction would be well advised to consider proceeding against a fencing operation under both a criminal receiving statute and a hindering statute. Proof of criminal receiving will necessarily constitute proof of hindering, but the converse is not necessarily true. In a few limited situations, hindering may be proven while criminal receiving may not be.

Perhaps the true potential of a hindering statute can be best understood and appreciated by an example of its application in an actual case. Exhibit C-I below presents a search warrant prepared under the hindering theory of criminal receiving. This warrant has actually been used and its use upheld, resulting in a successful felony prosecution of the fence involved.³

EXHIBIT C-I

MODEL SEARCH WARRANT DRAWN UNDER THE HINDERING PROSECUTION AND APPREHENSION THEORY

I, _____, being first duly sworn on oath, depose and say that I am a Police Detective assigned to the Fence Detail of the (name of police agency). It is my duty as a member of the Fence Detail to conduct investigations into the activities of people who obtain stolen property and suppress by any act of concealment, alteration or destruction stolen property which is physical evidence which might aid in the discovery or apprehension of such persons who deprive the rightful owner of such property. Said people committing a felony with the intent to assist the thief by securing or protecting the proceeds of the felony crime involved which the fence has secured by means of buying, selling or trading stolen property. (Emphasis added.)

I am currently investigating a series of larcenies from department stores within the (name of city, county, state). The thefts have occurred by means of people concealing clothing within their outer garments and leaving the department stores with the stolen property. During the past nine months I have recovered in excess of (monetary figure) in stolen clothing which had been boosted from department stores within the Metropolitan Area of (name of city).

During the course of my investigations I have been in contact with (name of individual), who is Director of Security in charge of control with the firm of _____ which is located in (name of city, county, and state). Mr. _____ informed me that (name of firm) lost close to one million dollars worth of merchandise in the past year by means of shoplifting and there are no police reports as they

³Blank spaces represent deletions of names of persons and places so that neither the individual nor jurisdiction involved can be identified.

SECTION A

SECTION B

cannot detect the losses unless the thief is apprehended and due to the nature of the crime, the theft goes undetected until inventory. Mr. _____ further informs me that even though the property is stolen, the property can be identified by label and the fact that most stolen property which is boosted by shoplifters is usually unaltered and even though the tags have been removed the property can still be identified by (name of firm) personnel.

I have been in contact with a confidential, reliable informant who informed me within the past 24 hours that he (the confidential, reliable informant) had been within a house which is located at (street address) within the past 72 hours, at which time the confidential, reliable informant observed large amounts of stolen clothing from (name of firm above). The confidential, reliable informant further states that the clothing is in new condition and has some of the labels and price tags removed and is stored in closets on the upstairs floor. The clothing is of such a nature that it would be uncommon to an ordinary household in the fact the occupants could not afford the merchandise as observed by the confidential, reliable informant, on their monthly earnings.

I have also been informed by the confidential, reliable informant that the occupants in the house are known as: (list occupants).

It has further been determined by a check of the (local criminal records system) that (indicate result of records check on occupants listed above).

I know from my experience as a Police Detective that clothing as observed by the confidential, reliable informant is brought to a location for storage before sale by people involved in narcotics and larceny crimes. I further know that people who deal in stolen property will take a particular liking to certain items and will convert the property to their own use. I also know from my experience as a Police Officer that the property described below is of a nature not common to an ordinary household when it consists of large quantities of men's clothing consisting of: leather coats, slacks, suits, sport coats, shirts, underwear, socks, 3/4 length coats and ladies pantsuits, dresses, shirts, blouses, underwear, stockings, jackets, coats, and sweaters. All clothing as observed by the confidential, reliable informant had either tickets removed or still had the plastic holder on the garments which is usual with professional boosters. I further know that the clothing as described is a normal manner for boosters, prostitutes and addicts to store stolen property. I further know that people who steal property for a living do not steal said property on a one time basis.

SECTION C

SECTION D

I believe the confidential, reliable informant's information to be reliable for the following reasons: (Paragraphs establishing informant's reliability and credibility of his information.)

Due to the fact of so many people occupying one residence I ask the court for Dominion of Control so that during the service of the search warrant for evidence that I be allowed to seize such items as drivers licenses, rent receipts, public utility bills, welfare receipts and other items proving Dominion of Control which are relevant to the identity of the possessor of the evidence or other items criminally possessed and are therefore seized as an item of evidence;

I have probable cause to believe the occupants of (street address) are committing the felony crime of Hindering Prosecution under (cite statute) by intending to suppress by any act of concealment, alteration or destruction, physical evidence and are thereby protecting the proceeds of the crime of larceny. (Emphasis added.)

S
E
C
T
I
O
N
E

Based upon the above information I believe the above described property and evidence is secreted on the premises located at (street, city, county, state address) as above described and I pray the above entitled Court to issue a search warrant authorizing a search of the premises described above for the above described property and evidence and if any of them are found, authorizing seizure of same.

AFFIANT

Subscribed and sworn to before me this ____ day of _____, 1975.

JUDGE

Several points in the exhibit are important to emphasize, since they contribute to the utility and legal validity of the warrant. At section A, for example, the underlined phrases show the manner in which the fence's crime is defined in terms of the hindering theory of culpability. At Section B, the fact that the affiant will not be able to indicate property stolen in specific theft cases is handled as a "plus" rather than as a "minus" to be explained. In effect, it helps to establish the seriousness of the fence's conduct.

At Section C, the reason why the stolen goods (here clothing) -- though not identifiable with specific complaints -- should be considered suspicious

and evidentiary is explained. At Section D, the expertise of the anti-fencing detail investigator is established -- at length. This is important since it adds credence to the reasonableness of the inferences he (as affiant) is drawing. Finally, at Section E, the probable cause to believe that the felony of hindering has been and is occurring is linked to the subject's intent of suppressing and protecting the proceeds of the crime of larceny. The affiant asks to move forward on this probable cause, seizing the property under the fence's control as evidence of hindering.

As noted above, this exhibit is excerpted from an actual warrant approved and upheld on appeal in one jurisdiction. The statutory tool of hindering prosecution and apprehension is available in other jurisdictions, but has not been used to any noticeable extent. Its ultimate effectiveness as a significant legal weapon in anti-fencing investigation and prosecution remains to be tested. Its potential, however, should not be ignored as an anti-fencing effort pursues its operational objectives.

III. OTHER POSSIBLE STATUTORY TOOLS FOR ANTI-FENCING ENFORCEMENT

A. OBSTRUCTING, HINDERING OR INTERFERING WITH A POLICE OFFICER

Many states, and particularly local jurisdictions, have statutes or ordinances which make it a crime, usually a misdemeanor, to obstruct, hinder, or otherwise interfere with a police officer in the performance of his duties. Similarly, it is a crime in many states and local jurisdictions for a person, upon demand of a police officer, to fail reasonably to aid in the apprehension of an individual or in the prevention of the commission of a crime. These statutes are more familiar to the investigator than the hindering prosecution or apprehension laws discussed above. They also are likely to carry lighter penalties than the crime of hindering prosecution.

There is some reason to believe that obstruction, hindering or interference ordinances may be of some use against fencing operations, particularly those which make it a crime for a person to "hinder" a law enforcement officer in the performance of his duties (for example, the investigation of a crime). The difficulty, however, with these statutes is that each of them in the main requires proof of some affirmative act by the defendant before criminal liability will attach. To constitute an obstruction of hinderance of justice, the act or failure to act must be one which is forbidden or commanded by law, and not a mere failure to cooperate with an officer. For example, the failure of one to open his door upon demand by a law enforcement officer is not obstructing or delaying, even though the officer is armed with a search warrant. Similarly, in the fencing area, the failure to cooperate with an investigation by providing serial numbers or other identifying information about property which the investigating officer believes to be stolen will most likely not be construed as obstructing or hindering. Of course, the failure to cooperate can constitute circumstances from which a jury might conclude beyond a reasonable doubt that

the defendant had guilty "knowledge" regarding the stolen character of the property in question.

B. ACCESSORY AFTER THE FACT

There are three basic requirements which must be met in order to prove one an accessory after the fact. First, there must have been a completed felony; since receiving stolen property is a felony, this requirement can usually be met. However, one is not guilty as an accessory after the fact if he believed that the person he was assisting committed a felony, but the belief was in error. The felony must have been committed, though it is not necessary that the felon had already been charged with that crime. The second requirement is that the person giving aid have knowledge of the perpetration of the felony by the one to whom he gives assistance. "Knowledge" in this context means no more than guilty knowledge under the typical receiving stolen property statute. Finally, the aid must be given to the felon personally for the purpose of assisting that individual in escaping apprehension, conviction or punishment. One does not become an accessory after the fact, then, simply by receiving and concealing what are known to be stolen goods. The actual application of this statute to particular situations will often be quite difficult, but it is one prosecutive option which can be considered in obtaining cooperation from witnesses, etc. The prosecutor or police legal adviser will be able to advise further.

IV. LEGAL CONSIDERATIONS IN THE USE OF INFORMANTS

The informant is an important element in any anti-fencing strategy. Because of the covert nature of many fencing operations, investigators must have access to the information and observations of those who are "insiders" to the operation whether they be criminal informants or undercover officers. In some situations, the informant may be a business associate, employee or client of the fence. The successful anti-fencing unit is distinguished from other units by its ability to develop and maintain a wide range of reliable information sources.

The use of informants carries with it, however, some important legal issues, affecting the investigative process. The following discussion is a brief overview of general legal principles regarding the use of the informant in establishing probable cause for arrest and search. Because this is an area continuously litigated in federal and state appellate courts, no hard and fast rules can be laid down. Indeed, what appears to be minor fact or situational variations can make extraordinarily significant differences in court rulings. This should be kept in mind; and this section should only be considered to give general guidelines.

A. INFORMANTS AND THE "AGUILAR" TEST

In 1964, the U.S. Supreme Court in the case of Aguilar v. Texas set forth a two-pronged test which an informant's testimony must pass in order for probable cause to be established. The first part of the test requires the law enforcement officer to describe the underlying circumstances from which a judge could determine that the informant is reliable. The second part of the test requires that the officer describe the underlying circumstances from which the judge can determine that the informant's information is reliable and not the result of mere suspicion. Both prongs of this test must be satisfied before probable cause can be established. The following discussion will identify the factors that law enforcement agencies should be alert to in meeting this two-pronged test.

1. The Reliability of the Informant

In establishing the informant's reliability, the amount and type of information which an officer must provide will depend in part upon whether the informant's identity is disclosed or undisclosed. If an officer identifies his informant by name, the judge is more likely to credit the reliability of the informant because the court can always have the disclosed informant appear before it if the facts warrant it. Therefore, as a general principle, if the informant is named by the officer, either in his affidavit in support of a warrant or at a suppression hearing testing the legality of the search or arrest without a warrant, the officer will not have to say anything further to establish his informant's reliability.

When the informant's identity is undisclosed, the magistrate has no way of determining for himself whether the informant is reliable. The judge must therefore rely entirely upon the information supplied him by the officer. As a result, courts have required specificity with respect to the factual information which the officer provides on the informant's reliability.

a. Law Enforcement Officers as "Informants"

Law enforcement officers are generally considered to be reliable informants without having their reliability established. However, information from law enforcement officers which is based upon multiple hearsay, for example, where the information has passed through many police officers' mouths, will lose its presumptively reliable character. An example of this is where an officer recites in the affidavit that he had been told certain facts by a fellow officer, who in turn had been told by another officer, who in turn had been told by yet another law enforcement official in another state. In a similar fact situation, the Supreme Court of Indiana refused to find probable cause where there was no other information presented in the affidavit except this multi-level communication.

b. The Ordinary Citizen-Informant

All courts distinguish between the ordinary citizen informant and the criminal informant. The amount and type of information needed to establish the reliability of the undisclosed informant depends on this distinction. Some

courts have gone so far as to hold that an undisclosed ordinary citizen informant is presumed reliable and that no further evidence of his reliability is needed, especially if he is a victim or eye-witness to a crime.

A few courts have suggested that there is no presumption of reliability for an undisclosed ordinary citizen informant. These courts require additional information about the undisclosed ordinary citizen informant before finding probable cause. The kind of additional information that these courts have accepted as evidence of the ordinary citizen informant's reliability have been such things as whether the citizen was steadily employed, a registered voter in the community, whether he enjoyed a good reputation in the neighborhood and whether he was involved in community affairs.

Since there is some disagreement among courts about whether the ordinary citizen-informant's reliability needs to be established, law enforcement officers must make every possible effort to provide additional information relevant to the reliability of the undisclosed ordinary citizen-informant whenever such an informant is the basis for either probable cause to arrest or probable cause to search.

c. Criminal Informants

Unlike the ordinary citizen informant, whose reliability may often times be presumed, the criminal informant's reliability must always be established by a statement of underlying fact and circumstances which would tend to lead a magistrate to believe that the criminal informant is reliable. Usually, the criminal informant will not want his identity disclosed, but even if it is disclosed, the warrant should list the reasons why the particular criminal informant is a reliable, credible person. There are three types of evidence which are considered relevant in establishing the reliability of a criminal informant:

1. Whether the informant has given accurate information in the past;
2. Whether the informant has made admissions or turned over evidence against his own penal interests; and
3. Whether the informant has served in that capacity over a period of time.

The usual method of establishing a criminal informant's reliability is by demonstrating that the informant has given accurate information in the past which has led to arrests, convictions, recovery of stolen property, or has otherwise been helpful to law enforcement. It is never sufficient for the law enforcement officer to simply offer a conclusory statement that the informant is reliable or credible because he has been reliable in the past. The police officer should cite actual factual bases to support the informant's reliability.

Examples of statements sufficient to establish the criminal informant's reliability are that he has "furnished reliable and accurate information on approximately 20 occasions over the past four years" and that the informant's

information "has recently resulted in narcotics arrests and convictions." These examples indicate the courts are not looking for technical details before passing on the reliability of informants but that something more than simply the police officer's conclusion is required. Wherever possible, however, police officers are best advised to give as much detail about the informant's reliability as possible to the point of including case numbers where feasible. There is no excuse for losing an arrest or a search because the police officer had additional information which would not have placed the informant in jeopardy, but which was not included in the affidavit. It should be noted that the important factor in the court's inquiry is whether the informant has given accurate information in the past, not whether that information has resulted in arrests or convictions.

The U.S. Supreme Court in 1971 held that an admission made by a criminal informant against his own penal interest is alone sufficient information to establish the reliability of that informant. In that case, United States v. Harris, the informant admitted that over a long period of time he had been buying illicit liquor at a certain outlet. There is little authority to support the view that the reliability of an informant can be established without a recitation of the informant's past reliability or a showing that he has made admissions against his own penal interest. One court, however, has held that the fact that a criminal informant has served in that capacity over a period of time is sufficient to infer his reliability. Police officers should be strongly cautioned against using this method to establish reliability. It should only be used in emergencies or where it is inconvenient or impossible to establish reliability through more conventional methods, and then only where there is some prior court experience to justify the belief that it will be upheld. Once again, the watchword should be --- consult the prosecutor or department or agency legal adviser.

2. Reliability of Informant's Information

In addition to demonstrating that the informant is reliable, the police must also demonstrate that the informant's information is reliable. In order to establish the reliability of the informant's information, the officer must recite in his affidavit, or testify, that either: (1) the informant observed the facts or fact asserted first-hand; or (2) the informant's information is hearsay, but there is good reason to believe it is accurate (for example, because the informant is reliable and has perceived some of the facts first-hand).

If information provided by the criminal informant is based upon the informant's own personal observation, the police officer should have no difficulty establishing the information's reliability once he has established the informant's reliability. All that will be required of the officer is that he state how, when, and where the informant observed the information which served as the basis of probable cause. One word of caution: the officer should always state the time when the informant obtained the information. This is especially important when the information is used to establish probable cause to search. Probable cause to search, unlike probable cause to arrest, may become stale with the passage of time. A few courts have struck down search warrants in cases where the affidavit in support of probable cause did not state the time when the informant made his observations.

Establishing the reliability of informant's information is much more difficult when the criminal informant could not personally observe his information, but received it from yet another person. In these cases, not only must the police officer establish the reliability of his own informant, but the officer must also establish the reliability of his informant's informant in order to prove the reliability of the information. Establishing the reliability of the criminal informant's informant can be accomplished through any of the methods described above to establish the primary informant's reliability. For example, if the informant's hearsay comes from a participant in the crime, or from someone who has given demonstrably reliable evidence in the past, this should be sufficient to establish the reliability of both the second informant and accordingly the first informant's information. The only thing that remains is for the police officer to state with some particularity the facts and circumstances from which the magistrate can infer that the informant's informant obtained his information in a reliable manner. For example, if the informant's informant saw the crime being committed, this should more surely establish that the informant's informant obtained his information in a reliable manner.

3. The Effect of Corroboration

If the law enforcement official lacks sufficient information about the informant and/or the reasons for the informant's conclusions to establish probable cause, the officer may cure this deficiency by corroborating some of the informant's information through his own independent investigation or the observation of other law enforcement officers. Corroboration simply means verifying the information supplied by the informant by providing supporting information obtained by law enforcement officials.

The principle of corroboration is very useful to law enforcement. In many cases, there is not sufficient information from any single source to establish probable cause. By corroborating bits of information from several informant sources, however, the officer may be able to establish probable cause to a magistrate's satisfaction. Two cases decided by the U.S. Supreme Court illustrate the parameters of corroboration.

In the first case, Draper v. the United States (1954), an informant who had given reliable information in the past indicated that defendant Draper was peddling narcotics and that he would return from the city of Chicago by train on one of two days with a supply of narcotics. The informant also described Draper and his clothing in some detail, and further said that he would be carrying a tan zipper bag and that he habitually walked fast. The police knew from their past experience that the informant was reliable, but they did not know whether he had a basis for believing that Draper would be in possession of narcotics, and this is what required corroboration. Agents waiting for Draper to arrive from Chicago were able to corroborate the many details that their informant had supplied about Draper (for example, the description of his clothing, that he habitually walked fast, and that he was carrying a tan zipper bag). On appeal, the Supreme Court held that because the agents could corroborate all of the many details stated by the informant except that defendant Draper was actually in possession of narcotics, they could "reasonably infer that the informant had gained his information in a reliable way."

In the second case, Spinelli v. the United States (1969), a search warrant for gambling equipment was obtained on an affidavit which indicated that: (1) the defendant had been observed on several different occasions going to a certain apartment; (2) a FBI check with the telephone company revealed that this apartment contained two telephone numbers listed under the name of Grace Hagan; (3) that the defendant was known to the affiant and to federal law enforcement agents and local law enforcement agents as a "bookmaker and associate of bookmakers, a gambler and an associate of gamblers;" (4) the FBI had been informed by a confidential, reliable informant that the defendant was operating a handbook and accepting wagers and disseminating wager information by means of the telephones located in the apartment.

The U.S. Supreme Court first noted the last allegation was insufficient by itself, in that no underlying circumstances about either the informant's credibility or his source of information were revealed, and thus inquired whether the corroborating evidence was accurate. The court disregarded the third item because it was only a "bald and unilluminating assertion of suspicion that is entitled to no weight."⁴ Disregarding the third and fourth items in the affidavit, the court concluded that the FBI had only established that the informant was correct in placing defendant and two telephones at the apartment, which did not warrant the inference that the informant had come by his information in a reliable way instead of "from an offhand remark heard in a neighborhood bar." Draper and Spinelli are not easily reconciled. However, it is at least clear that when the source of the informant's information is not directly disclosed, the informant must give enough details to justify the conclusion, when the details are corroborated, that his source was reliable.⁵

V. THE DEFENSE OF ENTRAPMENT

The defense of entrapment has been recognized by courts as a response to the danger of practices by some law enforcement officers of inducing persons to commit crimes in order to prosecute such persons for those crimes, crimes which would not have occurred but for police instigation. The defense of entrapment is almost always raised when law enforcement agencies employ undercover agents to detect and investigate criminal activity and hence is likely to be a frequently raised issue in anti-fencing cases. Courts distinguish between inducing a person to commit an unlawful act and giving a person the opportunity

⁴It is important to note that since the decision in Spinelli, the Supreme Court has decided that the alleged criminal reputation of a suspect may be considered by a magistrate in evaluating an affidavit for a search warrant. See U.S. v. Harris, 403 U.S. 573 (1971).

⁵If a law enforcement officer wishes to use a suspect's criminal reputation in an affidavit in support of a warrant, he must provide the specific underlying facts indicating prior criminal conduct. Simple allegations of prior criminal conduct will not be sufficient.

to commit the crime, then the defense of entrapment will fail. The issue can be drawn in these simple terms, but will usually be more complex in specific cases. Those engaged in law enforcement efforts against fencing should be alert to anticipate this issue when they plan their operations.

U. S. GOVERNMENT PRINTING OFFICE : 1970 O - 210-031 (1-02)

END