

CALIFORNIA DEPARTMENT OF JUSTICE  
INFORMATION PAMPHLET NO. 4

**ON THE  
ALERT!**

**HOW TO PROTECT  
YOUR  
BUSINESS AND PROPERTY**

84168

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ATTORNEY GENERAL



This pamphlet is one in a series of publications prepared for distribution to the public by the California Department of Justice, Evelle J. Younger, Attorney General.

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# ON THE ALERT!

## HOW TO PROTECT YOUR BUSINESS AND PROPERTY

U.S. Department of Justice  
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A MESSAGE  
TO THE CITIZENS  
OF  
CALIFORNIA  
FROM  
EVELLE J. YOUNGER  
*Attorney General*

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"The mounting crime problem in our state requires that we make a greater effort to alert and inform the public. Businessmen need to know how best to guard against shoplifting, employee theft, bad checks, robbery and burglary, and to know what steps can be taken to minimize the multi-million-dollar losses which occur each year as a result of these crimes.

"Businessmen also should be familiar with the law and the problems involved in prosecution for these crimes.

"We hope this booklet will be useful in spreading needed information throughout our state. We ask members of the public to help combat crime by assuming individual responsibility and by helping to educate others. Law enforcement needs your cooperation."

EVELLE J. YOUNGER

A handwritten signature in cursive script that reads "Evelle J. Younger".

*Attorney General*

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## CHAPTER I SHOPLIFTING

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The shoplifter falls into two general categories:

1. The amateur shoplifter.
2. The professional shoplifter.

### THE AMATEUR SHOPLIFTER

Shoplifting is practiced by a variety of people in our society. The methods utilized, however, are basically the same.

#### a. *Palming*

Perhaps the most common type of shoplifting is performed by the palmer. The offender in this type of theft merely places his hands over an item, removes it from the counter or rack, and drops it into his pocket or purse. Often, the only camouflage used is either a handkerchief or a glove which is utilized to cover the article.

The successful shoplifter is living proof that the hand, in many instances, is quicker than the eye.

Shoplifters commonly use shopping bags bearing the name of another store to hide the items they remove from the counter. School books, sample cases, overnight bags, and even lunch boxes have been used.

A simple procedure practiced by some teen-agers is to slip a popular record between the pages of a notebook, previously picked from the store's counters.

#### b. *The "Clothing" Gimmick*

Loose, flowing coats are used in many shoplifting ventures. Shirts, slips, ties, sweaters can be placed under the arm or inside the lining of the coat and conveniently carried from the store. Full skirts can camouflage a dozen articles stashed in elastic bags tied to a woman's belt. Shoplifters often wear the articles they have stolen. Hats, purses, shoes, and sweaters are easy targets for the experienced shoplifter. Sometimes these articles are used to carry other stolen items; for instance, a small bracelet can be placed inside the purse and both items removed from the store. An old pair of shoes can be exchanged for a new pair, with the new pair worn out of the store. Jewelry can be tried on and conveniently taken. An expensive swimsuit is easily covered by a blouse and capri set which in turn may be covered by an old shabby coat that was originally worn into the store.

#### c. *The "Marking" Switch*

A favorite gimmick of the clever shoplifter is switching tags on merchandise, taking the tag from "on sale" merchandise, and attaching it to a much more expensive, non-sale piece of merchandise. If no clothing is on sale, the shoplifter may forge his own ticket, provided the tickets are handwritten. Unless sales personnel know the merchandise, the store is at the mercy of the shoplifter.

### THE PROFESSIONAL SHOPLIFTER

The professional shoplifter, because of his expertise, may use several devices not readily available to an amateur. In addition, he may work as a member of a team. His "take" is, therefore, greater and the chance of apprehension less.

#### a. *The Booster Box*

The booster box is a large parcel with a collapsible side. The box may be from all outward appearances a solid, gift-wrapped package, but closer examination would reveal that one side is collapsible and easily opened or closed. The booster box has been used to steal everything from small radios to portable television sets. A dozen shirts or slacks can be taken by a booster working with an accomplice, who in the meantime has perhaps purchased a single tie.

#### b. *The "Hooker"*

A popular gimmick for shoplifters is to wear a belt or a coat equipped with many hooks. Each hook is a potential carrying site for stolen merchandise. A team of two to five shoplifters, each equipped with their "hook coats," can walk through a store and literally empty it within a few minutes. In one popular plan, a member of the team creates a disturbance while the others pilfer. The disturbance may take the form of arguing with a sales person or a customer, or disrupting a display.

#### c. *Booster Pants and Booster Bloomers*

A common device used by the professional shoplifter is that of booster pants or booster bloomers. This is basically a large pair of underclothing worn under the outside pants or dress. The legs of the booster pants or bloomers are drawn tightly around the leg of the shoplifter by the use of a drawstring. Then all he has to do is to walk through the store dumping merchandise down into his booster pants. A professional shoplifter can steal hundreds of dollars worth of goods in a matter of a few seconds by the use of this method. In fact, some women have been observed stealing items as large as radios, hams, and even small portable television sets.

### EFFECTIVE COUNTER MEASURES AGAINST SHOPLIFTING

1. The most effective counter measure against shoplifting is courteous, interested personnel. A salesgirl who exhibits concern will prevent the shoplifter from operating unnoticed. If the clerk is waiting on one customer, she should tell others that she will join them shortly. Once a thief knows that he is being watched, he is less likely to practice his trade.

2. The manner in which merchandise is displayed and the arrangement of aisles and counters may help dissuade shoplifters. Use of patterns of three and of circle patterns are effective deterrents to theft. If each item displayed on the counter is displayed in the pattern of three,

it can readily be seen by a glance of a well-trained sales person whether or not the display has been tampered with.

3. Adequate lighting and use of low displays do much to discourage the shoplifter.

4. Maintaining a minimum amount of goods and merchandise on the counter allows the store personnel to keep track of articles and hinders the professional shoplifter. Small expensive items are the thief's primary target.

5. Merchandise should be placed close to sales personnel. A counter near the exit is an easy target for an experienced thief.

6. Elevated areas for cashiers and security officers give a vantage point from which to survey the store. They also inhibit the shoplifter.

7. Displaying signs announcing that "shoplifters will be prosecuted" and that the displays are guarded by a security firm will help reduce theft.

8. Use of dummy cameras with a sign that closed-circuit television is being used to survey the area will even slow down a dedicated professional thief.

### PROSECUTION PROBLEMS

To successfully prosecute a shoplifter, the evidence must show that a theft or an attempt to commit a theft has occurred. The following constitute the elements which must be proved:

1. A taking;
2. Of the property of another;
3. Without consent; and
4. With intent to permanently deprive the owners of their property, without claim, right, or justification.
5. Value
  - a. Over \$200 in money or personal property is Grand Theft, a felony;
  - b. \$200 or less in money or personal property is Petty Theft, a misdemeanor;
6. Identity of the person or persons committing the theft.

One of the major problems in prosecuting a shoplifting case is in showing that there was the taking of the property of another. Even though a suspect is apprehended in the parking lot of a store with merchandise for which he has no sales slip, it must be shown that this merchandise did, in fact, come from the store and was not paid for. That is, there must be some method of positively identifying the merchandise as the merchandise of the store in question. The most effective way of achieving this identity of property is to keep an active inventory control system. In the inventory records of a store, each item should be listed by its serial number. For items which do not carry any serial number or which are not particularly significant in themselves, there

must be a method of marking this merchandise through a code or other descriptive, identifying mark which will enable an employee of the store or the manager of the store to say positively that this merchandise was in his inventory at one time. Another effective method is to double-tag the merchandise. That is, to put one price tag in a readily observable position and also to secretly mark the merchandise in another place. The basic objective to keep in mind is that when a person is called as a witness, he should be able to positively identify the stolen goods. That is, he should be able to say, "Yes, I recognize this merchandise as coming from our store because of the particular coded mark we place on all our merchandise," or "The serial number that this particular piece of merchandise bears corresponds to a number in our inventory control records, and there is no record of such article being sold."

Possession of stolen property alone is not sufficient evidence in itself to predicate a prosecution for either theft or receiving stolen property. However, possession of the merchandise, with circumstantial evidence supporting theft or guilty knowledge, or a provably false story as to how the property was obtained, may be sufficient to support a conviction. It, therefore, becomes obvious that the statements of a suspect made at the time of his apprehension as to how and where he obtained the property are material and should be carefully recorded and preserved.

Another problem area is the "intent" requirement. By this is meant the necessity of showing that the suspected shoplifter took the merchandise with the intent to permanently deprive the owner of the merchandise *without* paying the required purchase price. This can best be proven by letting the suspect leave the store, and then apprehending him. This also, in effect, cuts off the possible defense of the suspect saying, "I was going to pay for it before I left." The intent to steal can also be proved by use of circumstantial evidence. Evidence of wearing booster pants or use of a hooker garment has been received by the courts as circumstantial evidence of an intent to steal.

Identity of the thief is always an issue in a shoplifting trial. A typical thief will not take an item if any other person is observing his activities. Frequently, a shoplifter has an accomplice along for the purpose of creating a disturbance to distract attention from the shoplifter, who can then carry on his activities without fear of detection. When a shoplifter suspect is spotted, careful attention should be given to determine whether or not he has an accomplice, and to identify positively such accomplice also.

To secure the conviction of an accomplice, the observations of the witnesses must show that the accomplice aided and abetted the shoplifter. "Aid" and "abet" as used in a theft case means to knowingly, and with criminal intent, aid, promote, encourage or instigate, by act or counsel or by both act and counsel, the commission of the crime. To assure a successful prosecution, we suggest that you have two employees watch the suspects and observe their actions and appearance. Two witnesses, like two heads, are better than one.

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## CHAPTER II THEFT BY EMPLOYEES

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Theft by employees accounts for about two-thirds of the losses resulting from theft of merchandise. Theft of this nature breaks down basically into five categories:

1. Sales persons cooperating with customers;
2. Back-door thefts;
3. Cash handling;
4. Refunds;
5. Returned and damaged merchandise.

### *Sales Persons Cooperating With Customers*

The popular sales person is a great asset provided he is popular for the right reasons. Many sales people win "fans" because they grant favors and arrange "good deals".

In one case, customers stood in line to wait for one particular veteran saleswoman. They refused to be served by anyone else. The reason—she was switching tickets for many special customers, giving them special mark-downs. Store losses amounted to about \$300 a week, not including a \$25 a week increased bonus commission for the sales person.

### *Back-door Thefts*

Large-scale theft is carried on more often through the back-door than through the front. Hundreds, even thousands, of dollars worth of merchandise can be stolen in a few seconds.

In one case, a stock boy had parked his car at the receiving dock. He kept the car trunk closed but unlocked. At 12:30 p.m., when the shipping and receiving man was at lunch, the stock boy threw full cartons of clothes in his trunk and slammed it locked. The entire time this operation took was only eighteen seconds.

### *Cash Handling*

The cashier's post is particularly vulnerable to theft. A dishonest but experienced cash handler can steal from his employer in many ways. In one case, a store owner's sales were very high, but his profits were dragging. The cause was traced to a sales person who rang up only some of the items purchased by his customers. In most cases he did not ring up "put downs" at all. (A "put-down" is the right amount of cash which a customer leaves on the counter when he rushes out without waiting for his receipt.)

### *Refunds*

Refunds provide the dishonest employee with an easy means to ply his trade. There are more ways to lose money on returns and refunds than the average person believes possible. One way in which a clerk

can take refund cash is to write up a credit card sale, then later indicate the merchandise has been returned and make out a cash refund. The cash refund, of course, goes into his own pocket. The customer whose card was supposedly used suffers no loss. The merchant still has his merchandise, but is out the money.

#### *Returned and Damaged Merchandise*

In one store, many returned items were marked down to a fraction of the cost because of damage. It was easy for clerks to get authorization to buy "as is" merchandise. When they were armed with an O.K., they substituted first-grade items for "as is" stock.

#### **EFFECTIVE COUNTER MEASURES AGAINST THEFT BY EMPLOYEES**

Although it is obvious that theft by employees cannot be eliminated entirely, positive steps can be taken to keep it at a minimum. The most serious mistake that merchants make is in their hiring practice. The merchants take honesty and integrity for granted and never bother to check the references given by the prospective employee. Some merchants have learned the hard way that a job applicant cannot be judged by his outward appearance alone. *Run a conscientious reference check on every new employee.* Such a check can be accomplished at the cost of a few phone calls. First, check his past employers. Find out if the applicant worked there, for how long, and the reason he left. If it is found that this correlates with what the applicant has stated, do not stop there, but check his credit reference with a responsible credit association. A credit rating is a very good indication of the type of person seeking employment and will give a good indication as to his future conduct.

Even after the hiring stage, theft by employees can be lessened if the proper atmosphere is created. The owner or manager should avoid setting a double standard of moral and ethical conduct. If an employee sees a supervisor in even a minor dishonest act, he is encouraged in the same direction. Insist on the return of overshipments or overpayments promptly. When the rules are set, apply them to everyone.

It is important to adopt a "zero shortage" attitude. Keep a proper inventory, and even if it is felt that a reasonable "write-off" due to pilferage is all right, keep it a secret.

It is essential that the employer treat the employees with dignity and respect. Show an interest in them as individuals. It may not reform the hard-core thief, but it will help keep many others from straying.

The popular sales person may be your biggest asset. But, do not take that for granted. Find out for yourself why he is so well-liked. He may be well-liked because he is giving special favors to customers or arranging deals with his friends and splitting the difference. Pay special attention to the sales person who is visited by too many personal friends. To discourage this socializing, some retailers hire people who live outside the immediate store vicinity.

To reduce loss by theft at the cashier's window, keep a sharp eye open for signals, such as nods, winks, or other interplay between customers and cashiers. Pay special attention to cashiers when they are surrounded by clusters of people. Be alert to the use of over-ring slips to cover up shortages. Watch for items bypassed when ringing up sales. Examine personal checks to make sure they are not being used to cover up shortages. Use a professional shopper to check for violations of cash register procedures.

To prevent employees from stealing merchandise through the back door or receiving door of the business establishment, have a check by a clerk or a sales person made on all incoming shipments. Insist on flattening of all trash cartons and make spot checks of trash after hours. Prohibit employees from parking near receiving doors or docks. Keep receiving doors locked when not in use. Make sure locked doors cannot be raised even a few inches. A receiving door should be opened only by a supervisor who remains in the area until it is relocked. An alarm on the receiving doors should ring until turned off with the key held by the store manager or security personnel. Distribute door keys carefully and change lock cylinders periodically.

Theft by employees can be discouraged by keeping an active inventory control. If the retailer knows exactly the merchandise he has on hand at any given time, shortages and discrepancies are readily noticed. Also, at the prosecution stage, the retailer must be able to identify positively the merchandise which is the subject of the theft. If proper inventory records are kept with serial numbers or other methods of identification, identity can be easily established because the records will reflect the missing items.

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## CHAPTER III TILL TAPPING

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One of the common forms of theft from a merchant is the "till tap." The only art the thief must master in this form of theft is getting his hand in and out of the cash drawer without being observed. Till tappers usually operate in teams of two or three individuals. One member of the team is the driver. His function is to wait outside in the automobile and give the tappers a fast means of flight. The second member of the team is the "Honest John." While the "Honest John" is diverting the cashier's attention from the cash register, the real tapper scoops the bills and available change from the cash register and flees. Since the "Honest John" and the tapper usually do not enter the store together, never converse within the store, and rarely leave at the same time, the successful prosecution of the "Honest John" customer is difficult.

### **WAYS TO PREVENT TILL TAPPING**

1. Never leave the cash register unattended without locking the register drawer;
2. Do not allow the attention of the cashier to be distracted from the cash register at any time while a customer is present;
3. Wait on only one customer at a time at the cash register;
4. Keep the drawer of the register closed at all times except when ringing a sale and making change;
5. Have the cash register firmly attached to the counter (thieves have been known on occasion to take the whole register because it was faster than scooping the money out);
6. Alert all employees to the possibility and methods of a till tap;
7. Work out a plan to follow and to identify the till tapper.

### **PROSECUTION PROBLEMS**

The prosecution must prove the following in a theft (Till Tapping) case:

1. A taking;
2. Of property of another (money);
3. Without consent;
4. With intent to permanently deprive the owners of their property;
5. Value
  - a. Over \$200 in money or personal property is Grand Theft, a felony;
  - b. \$200 or less in money or personal property is Petty Theft, a misdemeanor;
6. Identity of the thief.

A problem in prosecution of a till tap case is establishing the identity of the thief or thieves. The names and addresses of all the witnesses to

the offense should be obtained immediately and a statement taken as to what they observed. Cashiers should be trained to observe their customers. Not only will this pay off in public relations, but it will make identity and apprehension of the thief easier.

An element of the offense that the prosecution must prove is the value of the property taken. Store procedure should be established that will enable a cashier to determine within minutes how much money (currency and checks) is actually missing. An original erroneous report as to the amount of money taken can damage the prosecution's case. Be accurate as to the amount of loss.

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## CHAPTER IV STOLEN CREDIT CARDS

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Credit cards and charge-a-plates are given by merchants as a convenience for the customer in the hope it will result in a greater business volume. It is convenient because only the card or plate is required, usually without any further identification. Many times credit cards are mailed to a selective list of people who have solicited them. Sometimes cards are mailed to persons who have not solicited them. If the fact that the envelope contains a credit card is prominently announced on the front of the envelope, it is a notice to potential thieves. It is easy to see, therefore, why so many stolen credit cards are circulating. The merchant who gives credit through this device assumes the risk that the card might be stolen.

### **POSITIVE STEPS FOR PROTECTION IN CREDIT CARD USE**

The first method of protection is to require corroborating identification if there are any unusual circumstances surrounding the card itself or its use. There have been instances where credit cards have been altered. If the space provided for a signature has been erased, marked out, or shows signs of alteration, the card bearer should be questioned. Beware of customers carrying numerous "charge-take" purchases. If a doubt arises, call again for identification. The type of identification required should be the same as that listed under "checks."

If the card has a space for a signature, *always compare the signature*. If a doubt arises, then require identification. Never be afraid to do this on the theory that it will result in a lost sale, because the honest person will not mind. Another method of protection is to check the "wanted list." This is a list prepared by various merchants' associations which lists stolen credit cards and charge-a-plates. This, of course, is somewhat time-consuming, but a few minutes a day might result in a substantial savings.

### **PROSECUTION PROBLEMS**

To secure a conviction of a person who obtains merchandise through the use of a stolen credit card, the prosecution must show:

1. The defendant used a stolen, forged, or fictitious credit card to obtain goods, merchandise, or anything of value;
2. With the intent to defraud;
3. And the merchandise so obtained has a value.

One of the major problems in securing a felony conviction under Penal Code Sections 484g & 484h (which cover the use of a stolen credit card) is showing that the total value of goods or services taken through the use of the stolen credit card exceeds two hundred dollars (\$200.00). The professional thief who uses a stolen credit card usually

will not make any one purchase over ten or fifteen dollars. It thus becomes important that each witness appear in court to testify as to the use of the credit card. If one of the witnesses fails to appear, and the testimony of the other witnesses shows a taking of goods with a value of less than two hundred dollars (\$200.00), the felony complaint must be dismissed since the evidence only discloses the commission of a misdemeanor.

The use of a lost or stolen credit card may also violate the Forgery Section (470 P. C.) and Theft Sections of the Penal Code (484, 487 P. C.).

One of the important factors in prosecuting this type of crime is the ability to identify the suspect as the one who used the stolen credit card to obtain the goods or merchandise. In a large store where there are a number of transactions carried on each day, positive eyewitness identification of the individual who used the credit card may be virtually impossible. For this reason, the store should require any user of a credit card, where there is any reason for suspicion, to do more than simply write his signature on the card or on the receipt. The more writing the suspect puts on the receipt, the easier it becomes to compare the handwriting with an exemplar obtained from the defendant. This can be accomplished by having the customer write his address, phone number, and other pertinent information, in addition to his signature.

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## CHAPTER V BAD CHECKS

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Perhaps the largest loss incurred by merchants in California results from the acceptance of bad checks. The Los Angeles Police Department reports that in excess of two million dollars worth of bad check cases are reported each year, and this figure represents only about one-half of the actual amount of bad checks that are passed. Only a very small amount of the funds lost through bad checks is ever recovered. Therefore, the suggestions given here will be aimed at preventing the acceptance of questionable checks, or at least to reduce the frequency of loss occasioned by accepting such checks.

The most basic rule to follow in accepting checks is to know your endorser or maker. Require positive identification of anyone attempting to cash a check.

### TYPES OF BAD CHECKS

Basically, losses from bad checks break down into three categories; stolen and forged checks, fictitious checks, and insufficient funds checks.

#### 1. *Stolen and Forged Checks:*

The person attempting to cash the check is neither the owner thereof, nor authorized to sign such checks.

#### 2. *Fictitious Checks:*

These are checks prepared to resemble the valid checks of some company or person. Usually they purport to be the payroll checks of some corporation.

#### 3. *Insufficient Funds Checks:*

This category represents the most frequent type of bad check loss. The signature is genuine, but there are insufficient funds in this account to cover the amount of such checks, or the account has been closed for some reason.

### POSITIVE PREVENTIVE MEASURES AGAINST BAD CHECKS:

#### 1. *Identification:*

Always require positive identification of persons seeking to cash checks. *Do not accept* for purposes of identification:

- a. Temporary driver's licenses;
- b. Social Security cards;
- c. Selective Service cards, except for purposes of date of birth or to determine where they were issued;
- d. Receipts (such as utility bills);
- e. Voter registration stubs;

- f. Unsigned or illegible cards;
- g. Club or membership cards.

*Be sure* the person cashing the check matches the identification given, such as the picture and physical description on a driver's license.

**2. Other Measures:**

- a. Do not accept or provide counter checks, except to persons known to you by name.
- b. Do not accept a check merely because you are familiar with the company whose name appears on its face.
- c. Use a rubber stamp form on the back of each check and fill in the name of the person cashing the check, his address and phone number, his driver's license number, age, birth date, physical description, and other identification.

Also indicate the name of the person accepting the check. Such stamps can be made to order and are very nominal in cost. They serve the purpose of requiring a positive check of the person and his identification.

**EXAMPLE:**

NAME:	
ADDRESS:	
PHONE:	
DR. LIC. NO.	
AGE:	BIRTH DATE:
HT:	WT:
EYES:	HAIR:
EMPLOYEE:	
OTHER I.D.	
1.	
2.	
3.	

Since it must be shown in a prosecution that the NSF check was presented for payment, it is extremely important that the person who cashed the check be called as a witness. Thus, in a store with many employees, each should place his or her initial on any check they cashed, *even though the check has been previously cleared and initialed by another employee.*

**3. Points to Remember When Cashing Checks for Strangers:**

**a. Use extreme caution when presented with:**

- (1) Illegible checks;
- (2) Large company drafts on counter check forms;
- (3) Checks with rubber-stamped company or firm names;
- (4) Checks with misspelled words or signatures;
- (5) Counter checks "doctored up" with check protectors and rubber stamps. A large company usually has its own payroll and business checks properly printed, using a regular bank cut.

**b. Always:**

- (1) Be sure it is really a check, not a voucher or merchandise order;
- (2) Ask for good identification and compare both the description and the signature with that of the person presenting the check;
- (3) Have your employees initial the checks which they accept at the time of the transaction;
- (4) Examine every check to see that it is properly and completely made out;
- (5) Call the bank if in doubt;
- (6) Have the passer sign or endorse the check in your presence. If in doubt, reverse the check and have the endorser sign it on the other end;
- (7) If you call the police, delay the subject without arousing suspicions;
- (8) Attempt to secure the subject's automobile license number or means and route of departure if he leaves before the police arrive;
- (9) Use care when dealing with "fast talkers" attempting to cash checks.

**c. Never:**

- (1) Return a check to the passer after approving it;
- (2) Be afraid to ask for good identification. The honest person does not mind;
- (3) Be afraid to call the police;
- (4) Take a post-dated check, or agree to hold a check for any reason.
- (5) Accept a check if the passer states he must make a deposit to cover it, unless you want to simply extend credit;
- (6) Take a check from a person who is drunk, or who is obviously under the influence of liquor;
- (7) Let the passer hurry you in your examination of the check or identification.

**d. Keep in mind:**

- (1) That the police or the prosecutor cannot collect money;
- (2) That bad checks are most frequently passed on weekends and holidays;

(3) That persons passing checks drawn on out-of-state banks are difficult to prosecute in California courts;

(4) That checking a telephone number on a check is no real protection against a forger who may have an accomplice answer the phone number given;

(5) That a bankbook is no proof of funds in the bank;

(6) That the police rely on the merchants to report persons who are passing bad checks;

(7) That an operator's license, or temporary license, alone is not sufficient identification when cashing checks for strangers.

There are also a number of services available to merchants which will help to reduce the frequency of accepting bad checks. These services are provided at nominal costs and usually more than pay for themselves by reducing losses.

#### **Post-dated Checks**

If a post-dated check is accepted with knowledge that the maker has neither funds nor credit in the bank at the time to cover the amount of the check and in reliance on the promise of the maker to deposit funds to cover the check, there can be no successful prosecution for the crime of passing an NSF check, even though the defendant fails to carry out his promise. Recent court decision has held that a prosecution under the general theft statute is possible under certain circumstances.

#### **PROSECUTION PROBLEMS**

Bad check cases basically fall into the following categories; insufficient funds checks, stolen, forged, or fictitious checks.

To successfully prosecute an insufficient funds check case, the evidence must show:

1. The defendant passed a check;
2. With intent to defraud;
3. Knowing at the time of passing or drawing such check that he did not have sufficient funds in the drawee bank to cover the amount of the check.

Of these elements, the identification of the defendant as the person who, in fact, passed or uttered the check in question generally is the most difficult to prove. Usually this problem arises when the employee who okayed or accepted the check has left the employment of the victim company or is otherwise unable to testify. In this instance, identifying the maker or passer will depend on being able to identify the fingerprints or handwriting of the suspect on the written instrument. If the employee who accepted the check is not available to testify in court, a second problem is presented to the prosecution. It must then be shown by someone who is familiar with the records of the company that the check in question was, in fact, presented for payment and payment was made in the normal course of business. This is a good reason why all

checks which are cashed should be marked with a rubber stamp indicating the person who cashed the check, the date, the time—any identification of the maker or the person who is attempting to pass the check and the address of such person. From this, an accountant or bookkeeper of the company can testify that this check was, in fact, accepted in the normal course of business because the records indicate that so much money was paid out; that this check was stamped with the company stamp; that the books balance on that certain date and, thus, it can be inferentially stated that this check was, in fact, accepted in the normal course of business.

In a forgery prosecution, the People must show the defendant made or passed a stolen, forged, or fictitious check. Basically, the problem here is the same, that is, to show that the defendant is, in fact, the person who passed the check in question. There are several ways of showing this. One way is to require the person who passes a check to make additional writing on the check, such as address, telephone number, etc. By doing this, handwriting experts will be able to testify from exemplar cards obtained from the defendant and the handwriting on the check that this was, in fact, the person who passed the check at the time in question.

Fingerprints can sometimes be obtained from a check and then compared with the fingerprints of the defendant. Every suspicious check should be protected carefully after it has been passed. The store employee should put the check in an envelope to protect it from having other fingerprints placed on it or having fingerprints of the suspect smeared. It is also necessary, in a case such as this, to have someone testify as to the steps which were taken in handling the particular check. An employee must be able to testify that the check was presented; that it was subject to suspicion; that he placed the check in an envelope; called the police and turned the envelope with the check over to the police.

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## CHAPTER VI STORE PERSONNEL AS WITNESSES

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Often a merchant is reluctant to notify the police of shoplifting committed in his store because he fears that he will have to close his store or let his employee off for an entire day to testify in court.

If proper steps are taken, there will be a minimum of time lost to the person filing a complaint or subpoenaed as a witness in a case. When subpoenaed, the person should call the prosecutor who is presenting the case, ask the time at which he will be needed to testify, and ask to be placed "on call." The prosecutor will then place the witness "on call" for a specific time on the date the case is to be heard in court. This will prevent waiting in court, closing the business, or missing work for an entire day.

A witness, when he does appear, should be prepared to testify. He should have the relevant dates and times clearly in mind. He should refresh his memory as to the facts about which he is to testify. The witness must be the person who observed the theft or who had the merchandise under his control and, therefore, can identify it as being part of the store's inventory. If he is to testify to some information contained in store records, he should bring those business records to court. The witness must have knowledge as to their mode of preparation. A manager generally cannot substitute for all of his employees as a necessary witness.

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## CHAPTER VII RULES REGARDING ARREST OF SUSPECTS

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A store's security agent or other private person may arrest another:

1. For a public offense committed or attempted in his presence;
2. When the person arrested has, in fact, committed a felony although not in his presence;
3. When a felony has been, in fact, committed, and he has reasonable cause for believing the person arrested to have committed it.

The arrest for a misdemeanor can only be justified if the offense is committed or attempted in the presence of the person making the arrest. A misdemeanor is defined as "a crime punishable by imprisonment in the County Jail or by fine." Felonies are those crimes punishable by death or imprisonment in the State Prison. When a crime is made punishable by imprisonment in the State Prison or by fine or imprisonment in the County Jail in the discretion of the court, it is deemed a felony for purposes of arrest.

The theft of merchandise, money, or personal property of a value of less than \$200, or the uttering of insufficient funds checks for a total value of less than \$100 is a misdemeanor. Grand Theft is theft committed when the money, labor, or real or personal property taken is of a value exceeding Two Hundred dollars (\$200.00), or where the money, labor or real or personal property is taken by a servant, agent, or employee from his principal or employer and aggregates Two Hundred Dollars (\$200.00) or more in any twelve consecutive months period. Both Grand Theft and Uttering Insufficient Funds Checks of a total value of \$100 or more are felonies.

In all cases where there is sufficient time, the police should be called and the arrest made in their presence by the witnesses to the theft. In those instances where the police are not present at the time of the arrest, *a cardinal rule is to call them as soon as possible*. Police assistance in an arrest, search, and interrogation is a tremendous asset to both the merchant and the prosecutor.

### *Confessions and Admissions*

A confession or admission of a suspect, to be admissible in evidence, must be freely and voluntarily made. No promise of immunity, offer of reward, or use of force or coercion, either expressed or implied, may be used to induce the suspect to incriminate himself. The courts have held that a promise not to prosecute

1. "If you tell us how you did it;"
2. "If you confess it will go easier on you;"
3. "If you pay back the money you stole;"

is such an inducement as to make a statement that follows it inadmissible in evidence. Also, other evidence obtained as a result of an inadmissible confession may not be used to secure a conviction.

Many times during the period of detention and before the police arrive, the person arrested will confess to a crime or make statements which implicate him in the commission of an offense. Complete notes should be made of the arrestee's statement as well as of all other facts pertinent to the case.

The purpose of recording statements and facts surrounding the theft is to insure a successful prosecution; therefore, those notes must include the following:

1. The names and addresses of all witnesses to the theft and to the defendant's subsequent statements.
2. Exactly what the defendant said. Use the suspect's words as far as possible. Don't clean up the language used and don't make grammatical corrections.
3. The names of the individuals who search the defendant and the description of what property was recovered.
4. The fact that the recovered property was marked for identification at the time it was recovered, how it was marked, and by whom.
5. The chain of events in handling the recovered property, including who first received the merchandise and the name of each individual who handled the property thereafter.
6. A diagram of the area where the theft occurred, showing the position of the suspect and observers at the time of the offense.
7. A statement as to the value of the merchandise.
8. How and by whom the property is identified as being part of the store's inventory.

This information should be turned over to the police for inclusion in their report. It is also essential that the witness preserve his own notes. A judge or jury will be more prone to accept a witness' testimony if they are satisfied that the witness is sure of all his facts and is not "guessing" as to what was said or done by the suspect at the time of his arrest.

Remember, when in doubt or uncertain as to a particular fact or statement, a witness in court may ask and will be granted permission to read his own notes.

The best way to stop crime is to *let the thief know that if caught, he will be arrested, prosecuted, and convicted.* As easily as a store's good reputation may be spread by word of mouth throughout the community, so will the store's reputation for arresting and prosecuting thieves spread. In both events the merchant will be money ahead.

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## CHAPTER VIII ROBBERY

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Many people say they've been robbed, when they've actually been burglarized. They say, "That's just semantic nit-picking. What's the difference?"

If you're robbed, you'll know the difference. Robbery is a crime "against the person," and always frightening. When someone takes something from your store or home, it's a *burglary*, but if he uses a knife, or gun, or his strength or a threat and takes something from you personally, that's a robbery. It varies markedly with parts of town and type of place—banks and gas stations have seen the biggest rise in recent years, while the ever-popular liquor store robberies continue. Street robberies and muggings of individuals are still rare, but they're increasing. Very few robberies result in injury to the victim if he cooperates.

Various persons are susceptible to different kinds of robberies. Obviously, if you are a merchant, the specter of someone entering your store with a gun or a knife and taking the contents of the cash register is a very real one. Perhaps the most important thing for a businessman to remember in protecting himself from robbery is to not only take preventive measures, but to make it *obvious* that such measures have been taken. There are a lot of good examples, some of which are as simple as signs indicating that safes require secondary keys not in the possession of employees. Other things are important too: Place your cash register (and any other cash handling facilities) in areas that are *easily visible from the street* and *well lighted* so that a potential robber (or burglar) may be discouraged by passersby.

Make certain that you do not have a supply of cash on hand larger than is necessary for the effective operation of your business. Study how much you need to cash reasonable checks for your regular customers—and to make change—and *don't* keep more than that amount on hand. Let this fact be known (such as by signs announcing a conservative policy on check cashing).

Make your security arrangements obvious through signs which your alarm company will provide (although the activator for your silent robbery alarm should not itself be visible).

Another good idea is to record the serial number of the bottom bill in each bin of the cash drawer, and tell employee *not* to use these bills in making change; if a robber gets them, give the numbers on the bills to the police.

In summary, to the extent that your business permits, protect yourself, make it obvious that you are protected, and keep only moderate amounts of cash on hand. None of these methods provides a guarantee, but you can, at least, make yourself a less desirable target than other merchants.

Another vulnerable time for the merchant is when he leaves the store. He is no more or no less apt to be robbed on the street than any other citizen *except* that he may be *believed* by a robber to be carrying large amounts of cash, and this is true whether he in fact carries cash or not. Do not be misled into thinking that a handgun is much protection, even if you live in one of the few remaining communities which issue permits for their concealment on your person. When a robbery with a gun occurs, everything happens so quickly that you will have little time to size up the situation, and your efforts to get at a weapon may very well get you injured or killed, or may cause you to kill a scared teenager with a water pistol. Leave the heroics to the police, and if you are robbed away from your place of business (and that alarm button), do exactly as you are told and give the robber everything of value he asks for. Remember that robbers are, by definition, scared, and that they are frequently under the influence of drugs or alcohol. Their main motive is almost always to escape, and a robber is not likely to harm you, *if* you do as he says and do not do anything which appears to him to be threatening.

What you should do, of course, is to pay as much attention to his appearance as possible: Force yourself to calmly remember his approximate height (is he taller than your brother or about the same?), weight (he was the same size as Fred at the dry cleaners), his color of hair, eyes and as much as you can about his clothing, weapon and manner. Remember his *exact* words. Call the police, then write a complete *description* and *his words* down the second you get a chance—you might well be saving someone's life.

One last thing: Robberies are still relatively rare in California, but if you are robbed, do what you're told. Forget about the amount of money you may have on you, because however much it is, it isn't worth the price you might pay for being a hero.

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## CHAPTER IX BURGLARY

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It is important to keep in mind that security measures are risk reducing factors designed to either delay unauthorized entry, or to present a "deterrent" quality and cause your facility to become a less attractive target to a potential intruder. This section will deal with some basic, but proven, techniques of both types to reduce the likelihood that you will become a burglary victim.

### *New Facilities*

Ideally, security should play a role in the planning of a new facility. Site selection, building placement, parking, perimeter controls, lighting and traffic flow are all important considerations during this process. However, do not assume that your architect will automatically incorporate the necessary security controls into his design. His knowledge of security is usually limited and, in any event, he is not being hired for this talent.

Depending upon the nature of your business and size of your investment, it may be desirable to hire a security consultant to develop a plan for security and carry on a constant dialogue with the architects and contractors to insure that the controls are included. Attempt to retain the services of an established firm or individual not connected in some way to marketing or manufacturing interests. Also, shop around or obtain recommendations as you would before retaining the services of any professional.

### *Existing Facilities*

Security planning for existing facilities is equally important and should not be neglected. While site layout and building design are important basic factors, emphasis on physical barriers and deterrent factors can, in many cases, overcome shortcomings in these areas.

### *Deterrent Factors*

Any obvious precautionary measures employed cause your facility to become a less desirable target because the potential intruder recognizes that his chances for success have been diminished.

A simple perimeter barrier will define private areas from public areas, and create a physical as well as psychological deterrent to those who might enter. If landscaping is present, it should not shield the barrier or view of your property from passing patrols, or create a cover for an intruder.

Good lighting will, by itself, act as a deterrent to those desiring to penetrate your security. All entrances, exits, loading docks, and other potential points of entry should be well lighted and visible to patrol. Interior lighting should be used to illuminate areas visible from the outside.

### *Physical Factors*

Any opening 96 square inches or larger (approximately 8" x 12") is considered large enough for a child or small adult to gain entry. The roof, walls and floor of every building should be examined for potential points of access.

### *Doors*

Vulnerable points at the door are the frame, hinges, door panels, and lock and surrounding area. If the door frame is not constructed of heavy material or properly reinforced, a crowbar or common jack may be used to spread the frame and allow the bolt to pass by the strike. Hinges should be located on the inside, or installed so they cannot be removed or dismantled while the door is closed. Pins should be welded, pinned, flanged or otherwise secured to prevent removal. Doors should be of solid construction or covered with sheet metal or other protective material to provide additional penetration protection. Glass panel doors can be broken and unlocked to gain entry. Glazing materials should be of burglary resistant design or eliminated from doors or adjacent areas entirely. Wire screen or bars can also be used to protect glass panel doors. Rounded head or flush bolts are recommended for securing these protective coverings. Whenever possible, bars and screens should be interior mounted. Heavy duty padlocks, with hardened shackles, should be used to secure overhead or accordion type garage doors.

### *Windows*

These are common entry points and should be given careful consideration. Frames must be securely fastened to resist prying or removal. As in glass panel doors, glazing material should be burglary resistant or adequately protected with grills or bars. Outside hinges should have nonremovable pins or otherwise secured as in door installations.

### *Other Points of Entry*

Potential entrances such as skylights, ventilators, roofs and hatchways are often overlooked because businessmen regard them as unlikely targets or too inconvenient to reach. The fact is these points are preferred to conventional means of entry because they all allow the trespasser to work for long periods of time without being detected.

Evaluate the need for these types of openings and permanently seal those that have little or no value. Those that are needed should be protected with padlocks, screening, or bars, and checked periodically to insure they are secure after use. Examine the roof of your building for potential weak points, and add the protection of plywood, sheetmetal or electronic systems where necessary. Roofs are usually of a light, thin material which will allow easy entry by cutting, sawing, or chopping means.

### *Locks*

Lock installation will not automatically insure adequate protection. The correct design of device must be selected to provide the level of security needed and to work in conjunction with other components in the system; then proper installation is required. Selection of a competent locksmith is a worthwhile investment toward achieving both objectives.

Any lock is a deterrent to the casual intruder. However, even the unsophisticated burglar knows most locks can be defeated rather easily. "Jimmieing" is a common method used to force back the latchbolt by prying the area between the lock and the frame. A similar threat is created when a jack is used to force a door and its frame far enough apart to permit the bolt to be disengaged. To prevent this jimmying or spreading, locks should be selected which include deadbolt designs and sufficient bolt throw and penetration into the strike (1" throw or interlocking bolt design is recommended). Narrow stile aluminum glass doors house a space so small it is impossible to project a long bolt in the conventional manner. This deficiency can be overcome by installation of a pivoting bolt lock. All bolts should be saw resistant through the use of hardened inserts or laminations. Forcible removal of cylinders can be prevented by installation of beveled, hardened steel outer rings so there is no chance of prying, twisting or gripping.

In addition to the items already discussed, door and lock installation should be given careful consideration. Regardless of the type of lock or the attention given to its selection, improper installation of the door or lock can make the system completely vulnerable. Areas requiring the most reinforcement are the strike and supporting structures, and the wood or metal around the lock. Select screws of adequate length to secure the strike to the 2" x 4" rough frame. The door should be of solid core design and 2" thick to support a bored auxiliary lock. Mortise locks should be installed in metal or metal reinforced wood doors. Rim locks should be secured with rounded head or flush bolts through the door, or in a metal or metal reinforced door. Rim strikes should also be fastened with long screws into the rough frame.

### *Lock Cylinders and Key Control*

The pin tumbler cylinder is the most common key operated type in use and, in the absence of expert advice to the contrary, should be used exclusively on entrance doors. It is easily master keyed, and will provide many years of trouble free service if properly maintained. Picking a pin tumbler cylinder generally requires more skill than other types, the degree depending upon the construction of the cylinder, the number of pins, and the wear of the mechanism. A competent locksmith can advise you on the relative quality of available cylinders in this regard.

Keys present the possibility of better large scale security than with any other device, but they also create the most serious threat to access

control because many are issued and they are easy to duplicate. The most important question that must be answered is who should have a key in the first place. The people chosen to have access should be screened very carefully. When taking possession of a building, always have the lock combination changed. Do not stamp keys with important information such as addresses, and never identify master keys. Discourage duplication. Above all stress the importance of a sense of responsibility on the part of key holding employees.

#### *Interior Controls*

Consider the possibility of constructing a security room or closet within your facility. Such an area can be highly secured with a minimum of expense, and also be accessible by limited personnel. It can be lined with expanded metal or similar material and fitted with a metal door and very high security locking device. It can also be alarmed at a minimum expense.

When acquiring a safe, analyze its classification to determine whether it is a burglar resistant or fire resistant device. It is suggested that you consult an expert before making such a purchase so your needs can be determined. Again, recognize that safes, as any physical security system, can be defeated given time and proper environmental circumstances.

#### *Alarm Systems*

Regardless of the type of system selected, it will only be effective if there is a timely response to the signal initiated. Therefore, the termination point of the signal must be planned so that personnel are alerted and a proper response made.

Local audible alarms are usually relatively inexpensive, and offer a valuable deterrent quality. However, this arrangement may not be considered desirable because the system is usually simple and therefore easily defeated, and intruders may not be disturbed by audible alarms if they know they have time to operate. Also consider the fact that on-site alarms rarely catch an intruder. We have all heard a bell on the side of a building ringing for extended periods of time without any apparent response.

A number of local commercial organizations have central stations in which detectors can be terminated. Such agencies usually design, install, maintain, and operate systems to safeguard against fire and theft intrusion. Many central stations notify local police and also often have their own private police or dispatch to the scene upon receipt of an alarm.

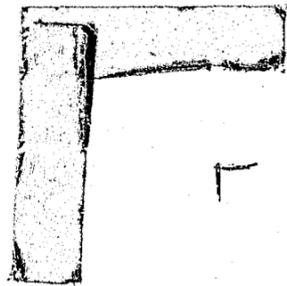
If you are considering installing an alarm system, get several bids from established alarm firms. Again, if possible, get recommendations from a security consultant who is not associated with an alarm manufacturer or retailer.

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