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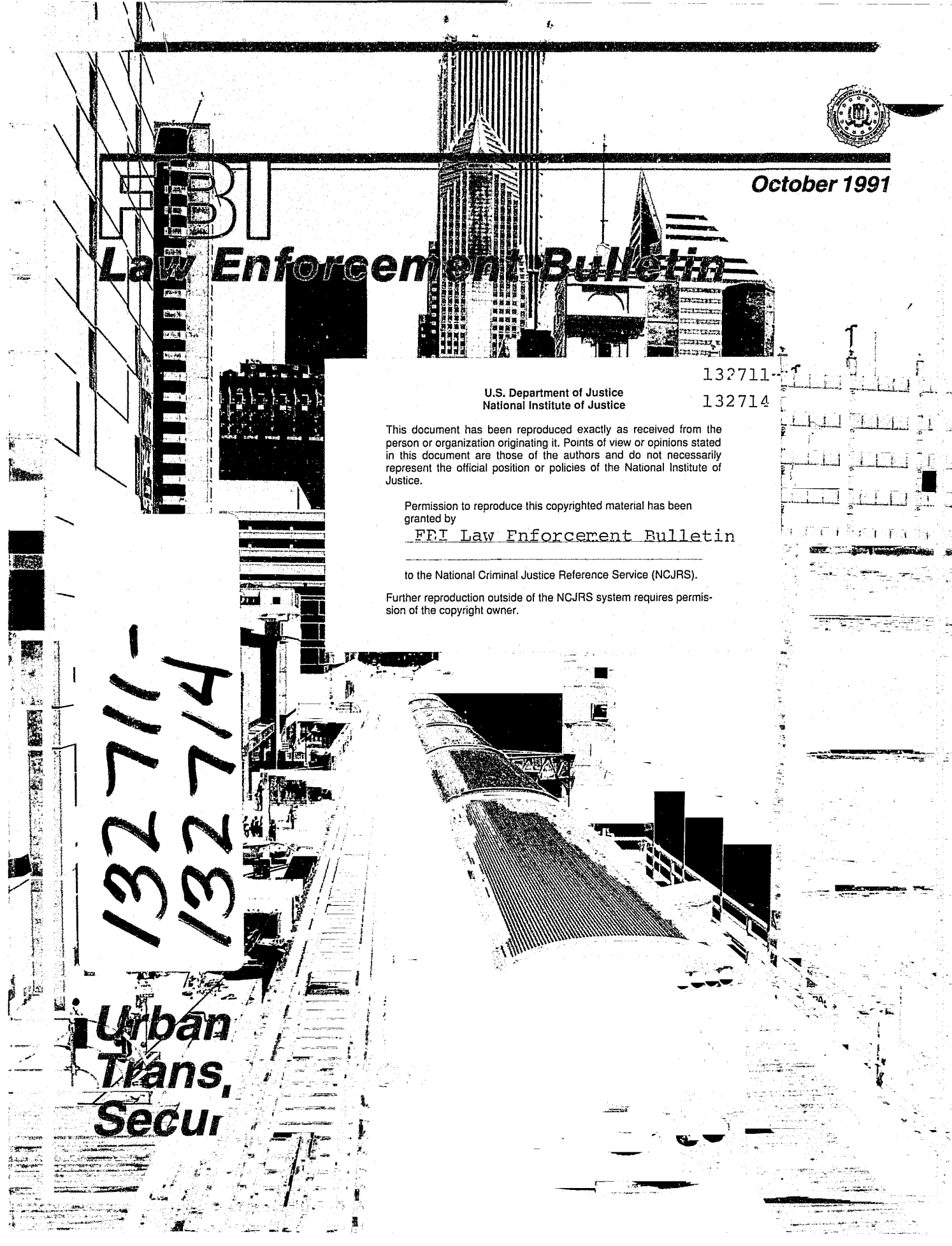
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The Cover: Since mass transit systems are an integral part of metropolitan cities, public officials must look for ways to reduce crime and change citizen perception of this mode of transportation. See article p.1. Cover photo courtesy of Regina Kosicki.

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Taking the Bounce Out of Bad Checks

By
VINSE J. GILLIAM

Today, banking officials estimate that about 1 percent of the 50 billion checks written in the United States each year are returned due to nonsufficient funds (NSF). This figure translates into approximately 500 million NSF checks annually, 1,369,860 daily, 57,075 per hour, or roughly 15 every second.

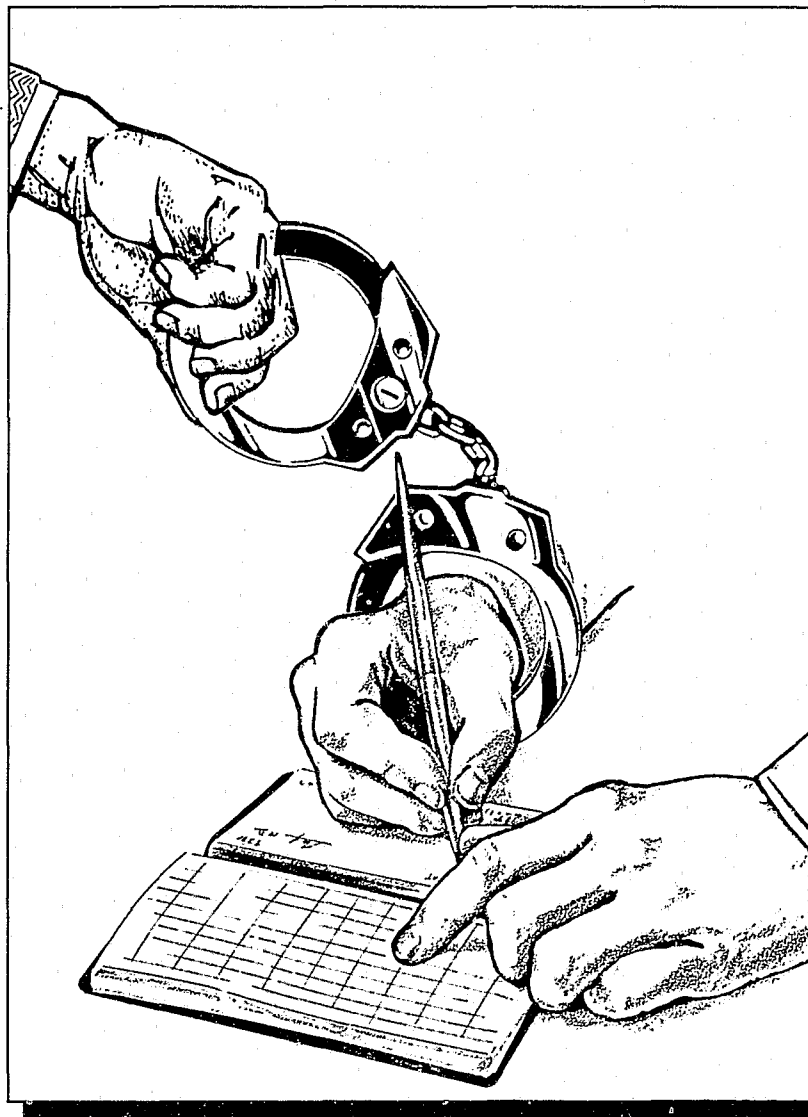
In many jurisdictions, NSF checks are so numerous that the problem overwhelms local law enforcement agencies. The sheer volume also restricts the type of NSF checks that can be investigated and prosecuted effectively.

Traditionally, only those individuals who are prolific or pass NSF checks for large dollar amounts are pursued. And, restitution is available only for those victimized individuals or businesses that are included in the criminal prosecution or are able to pursue a civil remedy successfully. As a result, many victims simply stop submitting NSF checks to local law enforcement agencies.

In Ventura County, California, conservative estimates have placed the business community's losses due to NSF checks at more than \$3 million per year. In a non-

cash-carrying society, accepting checks for goods and services has become a requirement for conducting business. However, when an accepted check marked "NSF" is

returned by the bank, the business incurs a double loss—one for the purchased item and another for the cost of trying to obtain restitution. As a result, businesses are forced to



raise prices in an attempt to cover their losses, thereby passing the cost of NSF checks on to the customer. This article will address how Ventura County, California, attacked the pervasive problem of NSF check writers successfully.

The Restitution/Diversion Program

In order to combat effectively the NSF check problem in Ventura County, the district attorney's office established an NSF Check Restitution and Prosecution Unit, which became operational in February 1986. This unit, staffed with one district attorney investigator, two investigative assistants, and four collections officers, formulated and operated a unique restitution/diversion program.

Ventura County's NSF Check Program begins with processing all NSF and account-closed checks directly into the district attorney's office, using an official complaint form. Then, in each case, a decision

is made as to whether the offense is a felony or misdemeanor.

Cases involving felony conduct are referred directly to the appropriate law enforcement agency for investigation, and if possible, returned to the district attorney's office for prosecution. If the NSF check constitutes a misdemeanor offense, it is earmarked for deferred prosecution and restitution efforts.

At this point, the unit prepares and sends letters to NSF check writers, giving them the opportunity to make full restitution and pay a \$25 administrative fee for each NSF check. If these individuals fail to respond to the first letter, a second letter is sent. This letter, in addition to requesting full restitution and a \$25 administrative fee for each NSF check, states that the addressee must attend a 4-hour diversion class for which there is a \$40 fee.

Check Diversion Class

The NSF check diversion class, similar to existing classes for

traffic and alcohol offenders, emphasizes prioritizing resources, value orientation, and how to balance a checkbook accurately. Its curriculum, reviewed and approved by the county's personnel department, is taught by certified private instructors.

Since the inception of the NSF Check Program, a total of 1,422 individuals have attended the diversion class. The success of this educational segment can be demonstrated best by the fact that fewer than five of the class participants continued to write NSF checks and were criminally prosecuted.

Restitution Funds

All restitution funds received directly from NSF check writers as a result of the letters are deposited through the county auditor's office. The victim merchants then receive restitution via a county warrant issued by this office. Handling restitution in this manner serves as a deterrent and prevents the NSF Check Unit from issuing a warrant for the bad check writer's arrest unnecessarily.

If the NSF Check Unit is unable to obtain restitution, the district attorney investigator evaluates the case and makes a decision regarding criminal prosecution. Where criminal prosecution is supported, the investigator completes the necessary followup and prepares the case for filing. This eliminates the need to refer the case back to the local law enforcement agency. If criminal prosecution is not possible, the NSF check is returned to the victim merchant, and the district attorney's small claims advisor assists the



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“ **The NSF Check Program has largely eliminated the NSF check problem for law enforcement in Ventura County.** ”

merchant with obtaining a civil judgment.

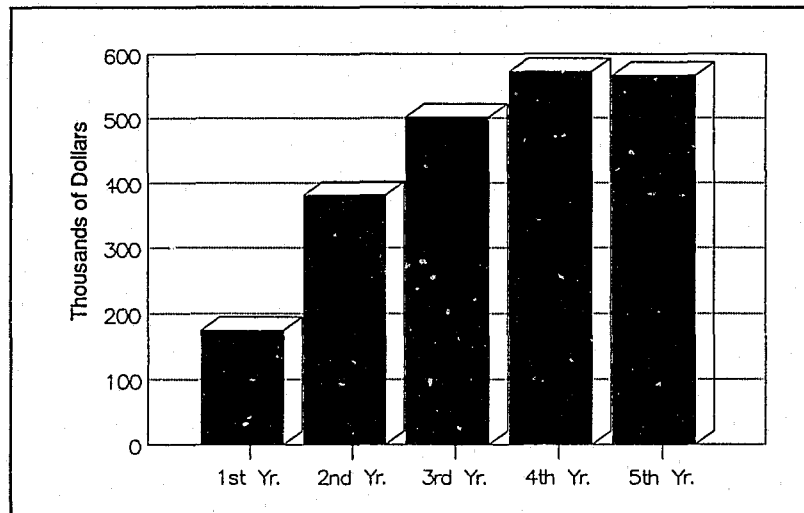
Goals and Objectives

Ventura County's NSF Check Program targeted four primary goals and objectives. The program:

- Provides a central clearing-house for all NSF/account-closed checks
- Establishes a deferred restitution/prosecution program that allows NSF check writers the opportunity to pay restitution in lieu of prosecution
- Ensures timely prosecution of NSF check writers who failed to make full restitution, and
- Is self-sufficient based on administrative and diversion fees collected from the NSF check writers.

At first, enabling legislation authorized the Ventura County District Attorney's Office, along with six other district attorney's offices, to institute this program as a 1-year pilot project.¹ However, at the conclusion of the pilot project, the program's results were so noteworthy that the California Legislature amended the legislation to allow the district attorney in each of California's 58 counties to establish similar deferred prosecution programs. The continued success of the Ventura County NSF Check Program throughout the first 5 years of operation has proved that it provides a viable and cost-effective way to attack the spiraling NSF check problem.

Figure 1
Restitution to Victim Merchants



Program Successes

During the program's first 5 years of operation, 3,811 individuals and merchants submitted 53,748 NSF and account-closed checks to the NSF Check Unit. These NSF and account-closed checks were written by 14,515 different people. During the same period, the NSF Check Unit collected and returned over \$2,195,500 in restitution on over 25,400 checks to local victim merchants. Each year, the amount of restitution to victim merchants has steadily increased. (See fig. 1.) During 1990, restitution averaged \$47,000 monthly.

Of the 53,748 NSF and account-closed checks submitted to the NSF Check Unit, followup investigation has been completed on a total of 48,412 checks. Fifty-two percent (25,174) of the investigated checks were cleared by the check writer making full restitution

through the diversion component of the NSF Check Program. However, 32 percent (15,492) of the investigated checks were not cleared, and the check writers failed to participate in the diversion phase of the program. As a result, felony and misdemeanor arrest warrants were issued against these 1,700 individuals. To date, 738 of these offenders have been apprehended and successfully prosecuted. The sentences imposed in these cases have ranged from probation and restitution on all checks to a 5-year-8-month term in State prison. Court-imposed restitution in these cases represents an additional \$713,300.

The remaining 15 percent (7,262) of the checks submitted to the NSF Check Unit were referred to the appropriate law enforcement agency for investigation or returned to the victim merchants because either: 1) The check did not meet the

criteria for the NSF Check Program, 2) the NSF Check Unit was unable to obtain voluntary restitution from the NSF check writer, or 3) criminal charges could not be initiated because the criminal intent to defraud could not be proven beyond a reasonable doubt.

Costs vs. Revenue

Due to the lack of resources, the Ventura County Board of Supervisors approved the creation of the NSF Check Program on the condition that the program would be self-supporting through fees obtained from those NSF check writers who elected to participate in the diversion program. On the average, the NSF Check Unit collects \$14,300 in fees each month, while its monthly operating expenses have averaged \$12,600. (See fig. 2.)

Like any new business, the operating expenses during the program's first year exceeded the revenue collected. However, the 5-year average indicates that the revenue received from the restitution/diversion fees surpassed the program's operating expenses by 13.2 percent. This surplus allows the district attorney's office to donate over \$100,000 to the Ventura County general fund to help supplement other county programs.

Benefits to Law Enforcement

The NSF Check Program has largely eliminated the NSF check problem for law enforcement in Ventura County. Because the district attorney has county-wide jurisdiction, all NSF and account-closed checks can be collected, combined, investigated, and prosecuted by one

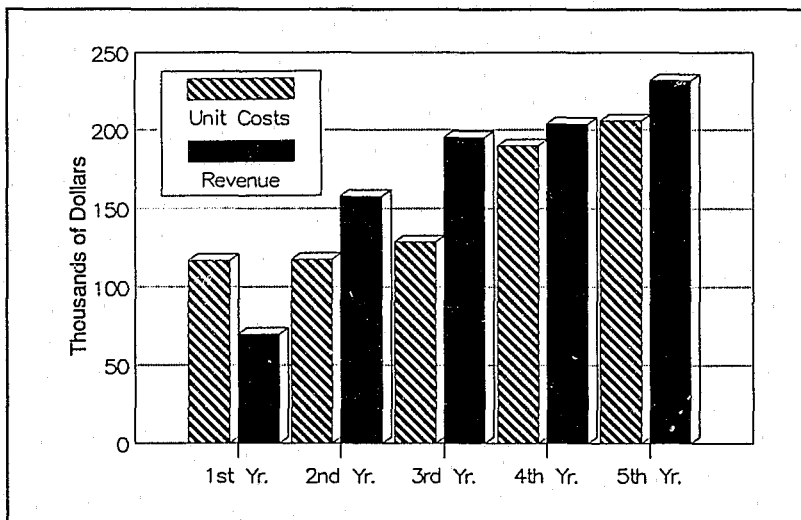
agency. Police and sheriff's personnel no longer have the burden of spending valuable hours deciding which checks are worthy of criminal investigation, determining if other agencies have similar NSF checks from the same person, and deciding which agency should conduct the investigation. Now, local law enforcement can devote additional resources to other white-collar crimes, such as check and credit card forgeries and computer frauds. Only felony NSF check cases are referred to local law enforcement agencies for followup investigation.

The NSF Check Program has also saved deputy district attorneys countless hours of court and case review/preparation time. If restitution had not been obtained, thousands of additional court cases, both criminal and civil, would have been processed through the criminal justice system. The additional expenses associated with the filings of these cases would have amounted to hundreds of thousands of dollars.

Public Information

A continuous public information campaign was initiated for the NSF Check Program with a twofold purpose: 1) To inform the business community of the existence of the NSF Check Program, and 2) to capitalize on the deterrent effect of the NSF Check Program by making potential NSF check writers aware of the consequences of writing a bad check. To help meet these goals, the NSF Check Unit developed a handbook for businesses, which includes information on the following topics:

**Figure 2
Unit Costs vs. Revenue Collected**



- NSF Check Program guidelines
- Safeguards against taking a bad check
- Steps to follow when accepting checks
- How to identify forged/counterfeit checks
- What to do with a bad check
- NSF check report, and
- Suggested Ventura County check policy.

The NSF Check Unit also designed NSF check warning signs and distributed them to local merchants. These warning signs alert customers to the fact that passing a bad check with the intent to defraud is a crime. The customer is also put on notice that the business reports NSF check writers to the district attorney's office. Merchants who have posted these warning signs in their front windows or next to their cash registers have reported a marked decrease in the number of NSF checks received from their clientele.

In addition, district attorney staff members routinely address business and community groups in an effort to inform them about the benefits of participating in the NSF Check Program. Regular press releases and annual reports are also distributed to increase citizen awareness and to deter potential NSF check writers. Copies of the NSF handbook, NSF check warning signs, and NSF check reports are also available at all Chamber of

Commerce offices and local law enforcement stations.

NSF Check Roundup

In a continuing effort to deter potential NSF check writers, the Ventura County District Attorney's Bureau of Investigation conducted a

covery for many victims, as well as educating the public on these crimes. Because local law enforcement has been relieved of the task of investigating NSF checks, detectives have been able to reallocate more of their investigative resources to check and credit card

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...the NSF Check Program...is completely self-supporting and operates at no cost to local taxpayers or participating victim merchants.

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NSF check round-up in March 1990. Over a 2-day period, 15 teams of district attorney investigators made a concerted effort to execute a substantial portion of the outstanding felony and misdemeanor NSF check warrants. At the conclusion of the roundup, 29 suspects had been arrested or had surrendered to the court. The publicity surrounding the NSF check roundup also had a positive impact on the number of checks cleared in subsequent months by NSF check writers submitting voluntary restitution to the NSF Check Unit.

Conclusion

The success achieved by the Ventura County District Attorney's NSF Check Restitution and Prosecution Unit has far exceeded its original goals. The business community has shown overwhelming support, and the proactive stance has allowed a timely financial re-

forgeries and other types of white-collar crimes.

However, the most innovative and impressive part of the NSF Check Program is the fact that it is completely self-supporting and operates at no cost to local taxpayers or participating victim merchants. This factor makes the Ventura County NSF Check Program one of the few criminal justice programs that is cost-effective and revenue offset. The large dollar amount of restitution returned to victim merchants, coupled with the fact that the entire program is financed by the NSF check writers, makes this a truly innovative government program that should be encouraged and supported, especially in this time of shrinking resources.

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Footnote

The creation of this program was made possible by the passage in 1985 of Senate Bill 1108, which created California Penal Code Sections 1001.60 - 1001.67.