

Organized Retail Crime



**Shoplifting has evolved into a
big-time business and the crooks
are making out like bandits**

CALIFORNIA SENATE OFFICE OF RESEARCH

by Sarah Huchel
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A new crime trend involves trademark fraud, conspiracy, international money laundering, hundreds of millions of dollars in lost tax revenue, and even baby formula.

Shoplifting, once considered the province of kids with backpacks and the occasional wayward starlet, has evolved. Organized teams of shoplifters, called “boosters,” troll entire regions for popular items with high resale value. Among the products most frequently stolen are razors, Oil of Olay moisturizers, and infant formula. Once stolen, the items enter the black market, often resurfacing repackaged and relabeled, unbeknownst to the ultimate buyer.

Organized Retail Crime (ORC) made its debut in the 1980s and grew exponentially in size and scope in the last decade. The FBI estimates that ORC costs retailers \$34 billion a year.¹ But this crime has a wider impact than lost profits. For example, proceeds from illegal sales were tenuously traced to suspected terrorist funding,² infants risked ingesting tainted formula from product mishandling, and California suffered from an estimated \$230 million loss in uncollected sales tax in 2005 alone.³

ORC is costly and pervasive. Law enforcement discovered that ORC teams travel 200 to 300 miles per week, using major highways as trade routes. Prosecutors investigated one ring operating out of Budapest that was especially advanced: investigators found professionally printed counterfeit gift certificates and receipts along with airline, car rental, and motel reservations made for ORC business trips to the United States.⁴

¹ Retail Industry Leaders Association, “Retail’s Future...Educate, Innovate, Advocate,” presentation quoting 2005 FBI statistics, March 22, 2006.

² Mark Clayton, “Baby Formula Heist \$\$ For Terror?” *Christian Science Monitor*, June 29, 2005. A state trooper in Texas identified a driver of a rental van filled with baby formula as a member of a terrorist group and linked him to a nationwide theft ring that specialized in reselling stolen infant formula.

³ Jonathan Mayes, vice president, State Government Affairs, Safeway Inc., interview with author, April 25, 2006.

⁴ Limitedbrands, “Loss Prevention, Organized Retail Crime Task Force, Counterfeit Case,” National Retail Federation Conference, June 27-29, 2005.

In May 2005 the National Retail Federation polled senior loss-prevention executives at major retailers nationwide to survey the impact of ORC; more than three-fourths (78 percent) of executives polled said their company has been a victim of organized retail theft in the past 12 months and nearly one-half (46 percent) had witnessed an increase in organized criminal activity over the past year. Furthermore, 98 percent of the executives polled believe there is a need for a national database designed specifically to track organized retail crime.⁵

Deconstructing Organized Retail Crime

ORC is another form of organized crime; just like the mafia, the hierarchy extends from street thugs to major crime bosses. For ORC, the thug equivalents are the boosters, who shoplift merchandise for the “fences” (the bosses who buy and resell the stolen products). For standardization purposes, law enforcement has designated three levels of boosters and fences.⁶

Boosters

- Level-one boosters are the most junior; they may steal for personal use or resale purposes. They also may be in possession of multiple receipts or UPC labels (bar codes) to facilitate the crime.
- Level-two boosters are more sophisticated and steal solely to resell the goods. They may even travel to expand their territory, typically using such tools of the trade as foil-lined bags (the foil prevents garment tags from triggering alarms) and specialized clothing that helps them thwart store security.
- Level-three boosters are the savviest. They generally work in teams and shoplift amounts in excess of a garden-variety shoplifter. Level-three boosters may maintain a storage facility to hoard stolen goods and coordinate with another team member for pickups.

Fences

- Level-one fences may oversee a group of level-three boosters. This so-called fence assures the boosters’ security, covers their legal fees, and manages team recruitment efforts.

⁵ National Retail Federation’s magazine, *LP Information*, “About Organized Retail Crime,” April 24, 2006.

⁶ Charles Miller, “Organized Retail Theft: Raising Awareness, Offering Solutions,” NRF Foundation, 2005, p. 17-18.

- Level-two fences may purchase property from level-one fences and sell the stolen property to a level-three fencing operation.
- Level-three fences are the most sophisticated and often portray themselves as legitimate wholesalers or distributors. These fences may own and operate several local businesses, such as convenience stores, online stores, flea-market booths, and supermarkets, for distributing their illegal wares.

When left unchecked, an organized retail crime ring can grow to substantial proportions. What follows is an excerpt from a U.S. Senate testimony detailing the downfall of the Ghali family, which had managed a highly organized ring that started its operations by stealing infant formula. It took the coordinated efforts of federal, state, and local law enforcement to bring the family to justice.

In February 2005, Mohammed Khalil Ghali was sentenced to 14 years imprisonment, following his conviction in April 2004 on 15 counts of a superseding indictment charging him and seven other individuals with various federal felony violations linked to organized retail theft in North Texas.

According to the indictment, Ghali was the organizer and leader of a Palestinian gang known as the "Ghali" organization, which ran one of the nation's most notorious retail theft rings from Fort Worth, Texas. At the direction of Mohammed Ghali, members of his organization purchased stolen property that was being held at various metroplex convenience stores by store owners/operators who served as "fences" for the Ghali organization. Stolen property, including infant formula, pharmaceuticals, cigarettes, health and beauty aids, medicinal products, glucose test strips, nicotine gum and transdermal patches, razors and razor blades, were then delivered to warehouses where price tags and anti-theft devices were removed and the merchandise repackaged and shipped to customers throughout the United States.⁷

During its heyday the Ghali organization earned \$1 million per month in illegal sales. Because the stakes are so high, individuals are willing to go to great lengths to preserve their criminal livelihood. Steven Emerson of the Investigative Project on Terrorism stated the following before a U.S. Senate committee:⁸

⁷ Testimony of Steven Emerson, U.S. Senate Committee of Banking, Housing, and Urban Affairs, "Money Laundering and Terror Financing Issues in the Middle East," July 13, 2005, http://banking.senate.gov/_files/emerson.pdf.

⁸ Testimony of Steven Emerson.

Testimony at the sentencing hearing accused Ghali of making inquiries as to how much it would cost to have the Texas prosecutor and federal agent killed by gang members. According to court transcripts, jailed family leader Mohamed Ghali attempted to hire Crip gang members to arrange the hits for \$500. Members of the Ghali family also made attempts to bribe U.S. Immigration and Customs Enforcement (ICE) supervisors to get the charges against Ghali dismissed. More recently, federal authorities unraveled a plot targeting Fort Worth Police Detective Scott Campbell, his family, and ICE agent Scott Springer.

While ORC is generally a nonviolent crime, word of its profit potential has attracted attention from aggressive street gangs.⁹ The group called Mara Salvatrucha, also known as MS-13, is usually known for home robberies involving paramilitary tactics and AK-47s, drug dealing, and machete attacks on its enemies. Fear of the MS-13 is valid; one former member who became a police informant was decapitated by her former gang members. Lately the MS-13 has taken an interest in retail crime. Last year, for example, local Madison, Wisconsin, police and the FBI arrested three MS-13 members on suspicion of stealing thousands of dollars in over-the-counter medicine from drugstores throughout the Midwest. “The suspects researched Walgreens throughout the Midwest and on a routine basis averaged \$45,000 to \$55,000 worth of stolen merchandise per day,” reports Madison Police Department spokesperson Mike Hanson.¹⁰

Why Is This Happening Now?

Some individuals suspect that organized retail crime is on the rise because criminals realize its high-return potential and the low risk of prosecution.¹¹ Most state laws do not aggressively sentence property thieves, and federal laws do not specifically address the issue. Due to limited resources and a lack of awareness among retailers and law enforcement, boosters working in ORC are not considered serious criminals and rarely spend time in jail. Sergeant Scott Guginski of the New York City Police Department’s Organized Theft Task

⁹ Rich Connell and Robert J. Lopez, “Ties Between Gangs, Fences Probed,” *Los Angeles Times*, December 23, 2005. An attorney for a former MS-13 member who became a police informant commented on the gang’s involvement in ORC: “It was organized crime; it’s certainly a higher pay grade than the street-level drug dealing that MS is known for.”

¹⁰ Kevin Johnson, “MS-13 Gang Growing Extremely Dangerous, FBI Says,” *USA Today*, January 6, 2006; Rich Connell and Robert J. Lopez, “Ties Between Gangs, Fences Probed,” *Los Angeles Times*, December 23, 2005.

¹¹ John Castellanos, officer, Ventura County Police Department, interview with author, April 25, 2006; Scott Springer, agent, Immigration and Customs Enforcement, interview with author, May 3, 2006.

Force comments: "These groups predetermine [their actions] and have plans if somebody's arrested. If a team of eight goes out and two of those people are arrested, it's the responsibility of the other six to get the money together to bail 'em out and get 'em back out on the street."¹²

Boosters are often aware of what dollar amount triggers a felony charge and steal accordingly.¹³ Thresholds range from \$0 in Indiana (which considers a theft of any amount a felony) to \$2,500 in Wisconsin. If a shoplifter wants to guard against prosecution, he or she only needs to steal below that amount from each store to virtually guarantee nothing more than a slap on the wrist. Jerry Biggs, organized retail crime section coordinator for Walgreen Co., says he has arrested the same shoplifter 57 times.¹⁴

Federal ORC cases are often prosecuted under the Interstate Transportation of Stolen Property Act. To succeed in proving a violation of the act, the government must show that stolen goods worth at least \$5,000 have crossed state lines. Often, U.S. Attorneys' offices are unwilling to look into a crime until the value of the goods reaches \$50,000.¹⁵ At the state level, most boosters are charged merely with misdemeanors.

Some states are starting to close this gap, however. Although not enacted to directly combat ORC, Los Angeles is targeting repeat offenders. Los Angeles police and prosecutors have agreed to seek stiffer penalties for repeat offenders, even for minor crimes, which would include shoplifting.¹⁶ This is a result of research indicating that 10 percent of criminals commit up to half of all crimes.¹⁷ Los Angeles' prosecutorial approach to this is decidedly non-traditional, since a statutory scheme providing for its solution does not yet exist. As reported in the *Los Angeles Times*:

In some cases, repeat offenders will be spotted through court records, which list convictions. But in others, those targeted for longer sentences will be identified based on police reports, intelligence data, and arrests or other accusations that did not result in convictions. That material is not admissible against a defendant during a trial but can be considered by

¹² "Boosting for Billions," *CBS News*, July 11, 2004, <http://www.cbsnews.com/stories/2004/02/20/60minutes/main601396.shtml>.

¹³ Charles Miller, "Organized Retail Theft: Raising Awareness, Offering Solutions," NRF Foundation, 2005, p. 6.

¹⁴ Margaret Webb Pressler, "Retail Gangs: A New Breed of Thieves," *Washington Post*, July 31, 2005.

¹⁵ Michael Barbaro, "Gangs Raise Shoplifting to a New Level," *New York Times News Service*, November 8, 2005.

¹⁶ Patrick McGreevy, "L.A.'s Busiest Crooks to Do More Time," *Los Angeles Times*, May 8, 2006.

¹⁷ This idea is not universally accepted. For a discussion of this statistic, see Richard Garside, "Crime, Persistent Offenders, and the Justice Gap," Crime and Society Foundation, 2004, p. 16-18, <http://www.crimeandsociety.org.uk/pdfs/DP1Oct04.pdf>.

*a prosecutor in deciding what penalty to seek and by a judge at sentencing.*¹⁸

As applied to ORC, this could very much dampen the efforts of serial boosters. However, boosters constitute the bottom of the ORC hierarchy and, according to the police, there seems to be a near-limitless supply of willing boosters. Additional concerns remain about the process Los Angeles is using; the American Civil Liberties Union expressed concerns that the program could lead to illegal profiling.

Washington state enacted HB 2704,¹⁹ a bill that identifies the particularities of ORC and allows for more aggressive prosecution. The bill establishes three new theft-related crimes: Theft With the Intent to Resell, Organized Retail Theft, and Retail Theft With Extenuating Circumstances. This bill goes into effect in June 2006.

Because Washington only recently enacted the penalty enhancements for ORC, it is not known whether this represents a valid solution. The Legislature may draft stiffer penalties, but unless law enforcement acts, the statutes are ineffective. Jason Moulton is Safeway's loss-prevention director in Western Washington and a former FBI assistant special agent-in-charge. He is frustrated because "we can't get anybody to look at this. There's no law-enforcement organization that is following up."²⁰ The FBI in Washington probably echoed most other districts' concerns when it stated that it has not pursued ORC because of limited resources. Special Agent Robbie Burroughs explained: "... [W]e have fewer and fewer resources to devote these days to other criminal activity like retail theft."

Alabama passed similar legislation this year, which expands first-degree property theft to include conspiracy shoplifting and fencing. Nine other states have similar legislation pending as well. Some involve creating new crimes,²¹ while others increase civil liabilities.²² The majority expands the definition of existing crimes and enhances penalties for shoplifting.²³

¹⁸ Patrick McGreevy, "L.A.'s Busiest Crooks to Do More Time," *Los Angeles Times*, May 8, 2006.

¹⁹ Washington Food Industry, "Organized Retail Theft Must Be Discouraged in This State," *State Compass*, Spring 2006.

²⁰ Paul Shukovsky, "Theft Rings Hit Grocers," *Seattle Post-Intelligencer*, May 10, 2006.

²¹ For example, Massachusetts HB 998 (Coughlin), Statutes of 2005, makes it a felony for a person with an intent to steal to possess security-disabling devices; Illinois HB 880 (Gordon), Statutes of 2005, creates the felony offense of organized retail theft.

²² New Hampshire HB 1361 (Winchell), Statutes of 2005; New Hampshire HB 2432 (Winchell), Statutes of 2005.

²³ For example, see Alabama SB 295 (Biddle), Statutes of 2006; New Jersey AB 1675 (Barnes), Statutes of 2006.

Passing penalty enhancements may not be the best route for California. Not only has the Legislature declared that “an effective means of punishing and deterring criminal activities of organized crime is through the forfeiture of profits,”²⁴ but California has penal code sections that seem to address ORC strategies. “Criminal profiteering activity” and “organized crime” have broad enough definitions to include the scope of ORC activity from recruiting boosters (solicitation of crimes) and grand theft (\$400 or more) to receiving stolen property.²⁵ Shoplifting may be prosecuted as a felony upon a second conviction, and criminal conspiracy, an added offense, is defined as a crime between two or more persons.²⁶

These penalties have been in force at least as long as ORC has been recognized, and yet the problem persists. Criminals have been working around the existing system long enough to develop sophisticated logistics. Jason Moulton notes of the Washington-based ORCs: “They’ve got production schedules, crew chiefs, and ship the stuff back to California.”²⁷ Encouraging law enforcement awareness could help identify ORC patterns and stop repeated offenses.

The Texas Experience

Texas directed its ORC enforcement efforts toward the federally funded Women, Infants, and Children (WIC) program, a special supplemental-nutrition program. Texas retailers were able to stem their losses of infant formula by 85 percent in a six-month period using a system of existing civil remedies and innovative law enforcement.

The Texas Department of Health (TDH) facilitates the WIC program by offering vouchers for formula to more than 200,000 low-income families. Families redeem the vouchers at participating WIC retailers who are then reimbursed by the state. Participating retailers may be major grocery chains, such as Safeway, or mom-and-pop corner stores that sell only WIC products. TDH was alerted that some stores get their goods from unlicensed wholesalers to save significantly on costs. These savings are often realized because the distributors got the product steeply discounted from an ORC network. At the time, the state would reimburse WIC formula providers based on the wholesale price—regardless of how stores obtained their supplies—so the state of Texas was unwittingly facilitating in the sale of stolen goods. The state had existing

²⁴ CAL. PENAL CODE § 186.1 (2006).

²⁵ CAL. PENAL CODE § 186.2 (2006).

²⁶ CAL. PENAL CODE § 182 (2006).

²⁷ Paul Shukovsky, “Theft Rings Hit Grocers,” *Seattle Post-Intelligencer*, May 10, 2006.

administrative infrastructure that allowed them to get their illicit infant-formula problem under control.

While TDH required infant-formula wholesalers and distributors to register with the state, the laws did not have sufficient enforcement mechanisms to make them effective. After some legislative action, the regulations were given teeth. Now TDH can investigate suspected illegal wholesalers and seize both illegal and suspected illegal property. Stores are therefore highly incentivized to be vigilant with their purchase records. This is not a mere administrative effort, however. Once the plan to combat the stolen formula was determined, it still had to be executed. TDH and law enforcement engaged a broad array of resources, including the media and Crime Stoppers, to investigate unlicensed formula distributors. Karl Langhorst, a committee member for Crime Stoppers in Houston and a loss-prevention professional, reports on the success of the effort:

As suspected during law enforcement surveillance, [many of] the distributors were found to be noncompliant with TDH regulations.... It was evident from reviewing the records kept by some of the wholesalers that they were making millions of dollars in sales annually. However, some of the individuals who owned the wholesale operations were enrolled in state welfare programs such as Medicaid and were declaring income to the Internal Revenue Service of less than \$10,000 a year.²⁸

To date, the Texas Attorney General's office has filed 45 health-department violations, 19 lawsuits, and collected more than \$900,000 in civil penalties. The retailers involved in the project noted that infant-formula theft was down 85 percent in the six months following TDH's initiative.

As a result of the Texas experience, U.S. Representative John Carter introduced an amendment to the Child Nutrition and WIC Reauthorization Act of 2004,²⁹ which requires states to maintain a database of approved manufacturers, wholesalers, distributors, and retailers participating in the federally funded WIC program.

However, Texas had a distinct advantage because a database for infant-formula manufacturers and suppliers already existed and only a few statutes needed amendments. California, like most other states, does not have such

²⁸ Karl F. Langhorst, "A Formula for Fighting Organized Retail Theft," *Loss Prevention Magazine*, January 1, 2005.

²⁹ S.2507 (Cochran), Statutes of 2004, "An original bill to amend the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to provide children with increased access to food and nutrition assistance, to simplify program operations and improve program management, to reauthorize child nutrition programs, and for other purposes."

a system in place, and the resources available for the California-based WIC program are not sufficient to create a separate licensing system. California responded to the legislation by working with an existing licensing structure and, as of October 2005, requires all WIC-participating vendors and suppliers to have a Board of Equalization tax-identification number.³⁰ This helps ensure that the business pays taxes, but the Board of Equalization does not investigate the nature or practices of a business before issuing a number. The Department of Health Services, in conjunction with the state controller's office, has begun an audit of participating vendors. The audits include verifying Board of Equalization numbers and receipts for goods received. The staff capability for full audits stands at only 50 stores per year (of approximately 3,900 stores), but the Department of Health Services believes the threat of removal from the WIC program is sufficient to merit compliance.

While Texas' exact remedy may be specific to infant formula, its success in coordinating various departments and enforcement agencies may be translated to combat theft of other retail items.

Coordination and Cooperation Is Needed for Success

National/Regional Efforts

Federal law enforcement needs local participation to disable ORC. Discussions with Scott Springer, U.S. Immigration and Customs Enforcement and a key player in prosecuting the Ghali crime ring, revealed that local buy-in was essential. In that case, Immigration and Customs Enforcement partnered with local district attorneys, retailers, and police departments to investigate the case. By cooperating and sharing resources, all were able to share in the success; Immigration and Customs Enforcement took responsibility for prosecuting the senior ORC leaders, local district attorneys handled the lesser offenders, and stores were able to stem losses.

The federal government is actively involved in combating ORC through networking efforts. The Violence Against Women and Department of Justice Reauthorization Act of 2005 (H.R. 3402) was signed into law by President Bush on January 5, 2006.³¹ This legislation directs the FBI to develop an ORC task force and a national database that will help law enforcement locate organized

³⁰ Linnea Sallack, Department of Health Services, WIC division, interview with author, April 28, 2006.

³¹ "President Signs HR 3402, the 'Violence Against Women and Department of Justice Reauthorization Act of 2005,'" press release, January 1, 2006, <http://www.whitehouse.gov/news/releases/2006/01/20060105-3.html>.

retail crimes. The National Retail Federation (NRF) plans to work in close partnership with the FBI to develop the database, which will be modeled on NRF's existing data platform. The bill funds the program with \$5 million annually.

The Department of Homeland Security also is partnering with retailers. The Homeland Security Information Network asked retailers to share unclassified information to help guard against terrorist attacks. The NRF also is involved in this effort and as of June 2005 nearly 100 major retailers joined more than 40,000 program participants. In addition to relaying suspicious activities, the network provides a forum for individuals to discuss daily security issues and trade ideas and suggestions.

At the local level, regional Web sites have been established to share information between retailers and law enforcement. The Shelby County, Tennessee, sheriff's office, with the cooperation of major retailers, developed the A.L.E.R.T. (Area Law Enforcement and Retailers Team) program, a Web site for "relaying and exchanging information between retailers and law enforcement agencies in an effort to curb economic crime in our communities.... Since its inception, this program has expanded its membership to include banking institutions; postal inspectors; state and federal law agencies, such as the F.B.I., Secret Service, and U.S. Customs; private security agencies; investigators; and others."³²

State Efforts

A coordinated statewide effort also may have an impact on ORC. While efforts of individual police departments do not go unnoticed, the potential for ORC's success falls exponentially when the network of participants is comprehensive; mere pockets of enforcement will not work effectively. Grocery and retail advocates are now organizing retail crime seminars to train local retailers and law enforcement on ORC methods and solutions. Early indications show the trainings are successful. In Rocklin, California, officers arrested a "booster crew" the day after police received ORC training.³³ They were on the lookout for nontraditional shoplifting when they were alerted by local retail security that an ORC team might be on-site. Police detectives arrived and arrested four individuals, seizing stolen merchandise and the cell phones the boosters were using to coordinate their actions in the store.

The Sacramento Regional Public Safety Training Center is leading the charge for establishing trainings in Northern California. The center offers 24 hours of

³² A.L.E.R.T. (Area Law Enforcement and Retailers Team), <http://www.usalert.org>.

³³ "Booster Crew' arrested in Rocklin," KOVR, CBS affiliate, March 10, 2006, http://cbs13.com/topstories/local_story_069143636.html.

instruction on ORC.³⁴ Unfortunately, the class is not as popular as hoped. A conversation with training-program coordinator Jerry Manduca revealed that the first ORC course offering had to be cancelled due to lack of interest; however, the next round, scheduled for late August 2006, is already full. Manduca says the participants primarily will be private security guards, and not police.³⁵

Granted, law enforcement's resources are limited, and ORC currently competes for attention with such high-profile crimes as rape, assault, burglary, and drug trafficking. However, part of the task at hand is to raise both the public's and the legal system's awareness that ORC is not just about mere shoplifting. This is a rapidly expanding organized crime that has the potential to spiral out of control if measures are not implemented to prevent it.

³⁴ Jerry Manduca, training program coordinator, Sacramento Regional Public Safety Training Center, interview with author, May 5, 2006.

³⁵ Ibid.

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