|  |
| --- |
| WARNING BELLSBy Gary IngemunsonAttorney at Law*“Never send to know for whom the bell tolls; It tolls for thee.”*  John Donne |

**Field Interview Cards and Thin Ice**

Field Interview Cards (FIs) have been around for decades. FI card abuse has also been around for decades, usually tied into recap pressure, itself around for decades. One story from the distant past tells of an officer who, in response to the Department’s constant pressure for FI recap went to the phone book. Using names and addresses therein he started writing FIs. He turned in a group of them at each end of watch. He was on the road to being an FI recap hero when the watch commander noticed something. It appeared that this officer was stopping suspects in alphabetical order. The officer ended up getting suspension days. Today, he would have been prosecuted.

Six LAPD officers are currently going through criminal trials for charges based on FI cards not matching body-worn video. (see February 2021 *Warning Bells* article). In part, this is because FI cards took on a new importance in 1998 when the CalGang system came into being. FI cards started being used to enter suspect’s names into the gang member data base on information contained in FIs. Where FIs were previously used as notes of field contacts, they now came with legal consequences as the basis for placing a person in a statewide database as a gang member.

Being in a gang database is, of course, not a good thing. Cal Gangs sends out a letter when someone is placed in the data base and a suspect’s mother challenged the grounds, which was the FI. An investigation disclosed that the FI apparently did not match the body-worn video. This caused an audit that resulted in charges against the six officers. They have their defenses, and the trials are in progress.

The audit finalized on July 9, 2020, resulted in the recommendation by the Office of Constitutional Policing and Policy to remove LAPD from Cal Gangs which the Chief adopted on July 10, 2020. Another audit completed by the Inspector General on October 27, 2020, focusing on investigative stops also recommended that the policy for FIs be revised. And so, it was in September of 2021. Since LAPD dropped out of CalGangs, it would seem that FIs are now relegated back to their original purpose of notes on a field contact. Not so. The Department and the District Attorney consider them “reports.” Falsifying a report is a felony in their view. And it is their view that counts when it comes to determining if an officer should be terminated or have criminal charges filed against them. Thus, Special Order 16 was issued on September 21, 2021 governing Field Interviews and creating a new Field Interview Report.

Section 4/202 of the LAPD manual has been heavily revised. That new policy has some requirements that you should pay attention to. You can be sure that there will be future audits and little room for error.

**Reasons for writing an FI Card:** You are restricted on when you can complete an FI Card. You must have one of these 5 reasons.

1. You have reasonable suspicion that the subject is involved with, or has knowledge of, criminal activity.

2. To document criminal activity that may be used in a later investigation.

3. To memorialize a consensual encounter relating to the above two reasons. NOTE: Remember if you do a pat down it must be pursuant to consent captured on BWV with advice that it can be stopped at any time. (See *Warning Bells* article, Dec, 2020)

4. To document contact with a probationer or parolee.

5. To document contact with an arrestee.

**Restrictions on writing an FI Card:**

1. It should not be a routine task completed during all stops.

2. It should not be completed in a random, arbitrary, or biased way.

3. Because the Department has ceased using the CalGang database, you shall not complete an FI Card for every encounter with a suspected gang member unless you have one of the 5 reasons listed above.

4. Completion of an FI Card shall not unnecessarily prolong a stop.

5. An individual is not obligated to answer question for the sole purpose of completing an FI Card unless required to by conditions of parole or probation.

6. Only GED officers may request to view tattoos, scars or other marks that are not otherwise visible. Non-GED officers shall only make such a request of the suspect is arrested or legally detained.

7. Officers shall not ask for a place of birth unless particular circumstances make it necessary in order to investigate a criminal offence.

8. Public intoxication, begging, or misdemeanor traffic warrant arrestees require no FI Card unless additional criminal activity is suspected.

9. Social Security Numbers shall not be requested.

10. Officers shall not document opinions as to a person’s membership of affiliation with a gang, unless they indicate the specific and articulable facts upon which they base that conclusion.

**Things an officer must do:**

1. If you circle “homeless,” you must document the specific and articulable facts upon the reason for that conclusion.

2. You must mark the “multiple source” box if the information on the FI Card comes from additional sources such as prior contacts, roll call briefings, crime flyers, computer database inquires, or social media. If you do check this box, you shall document the persons from which received the information, dates of prior contacts.

3. You must explain the rationale for completion of the FI Card in a professional manner.

4. The completion of an FI Card should be completed as soon as practicable after the contact has concluded in order to maximize accuracy.

5. If “criminal activity” is checked on the FI Card, the observed activity shall be thoroughly documented including suspect statements.

6. You must record the entire contact on Body Worn Video.

**Recap on FI Cards banned:** The only good news in Special Order 16 is the ban on FI recap. It says, *“The number of FIs an officer produces should not be used as the sole measure of the officer’s productivity.” In addition, there shall not be an expectation of a certain number or type of FI Cards to be produced by an officer or a unit.”* Keep that in mind if you are criticized for too few FI Cards.

The above is a summary of the order. You should read the order in its entirety. There will undoubtably be another Inspector General report on compliance with this order. The audit procedure is simple. Match the FI Card with the Body Worn Video. Have all the rules been followed and is the information on the FI Card accurate? If not, expect a negative reaction. It can be as little as counseling or as much as filing criminal charges. Don’t take a chance. Review your video and match it yourself against your FI Card before handing it in.

The IG recommended in its report that pretextual stops should be avoided because of their impact on the community and that racial disparities be eliminated. The IG recommends that stops to address minor equipment and technical violations should be avoided that are not directly related to public safety. The message is clear. Your community and the Department discourage proactive policing relating to stops and officers are getting the message. The annual Use of Force Report comparing stops from 2019 to 2020 found that there were 191,280 fewer stops, down 27%. Compared to an average number of stops in the years 2016 to 2019, 2020 stops were still down 26%, so Covid cannot be blamed. Until the community wakes up to the fact that criminals are out of control and start backing up law enforcement, beware of walking out on a limb. There are a lot of folks out there with saws.

The bottom line is that if you are going to make a stop you need to keep knowledge, articulation, and accuracy in mind. Know the consent/detention/arrest laws, know the Body Worn Video policy, know the requirements for a consensual pat-down, know the FI Card rules. Articulate everything on the FI Card. Accuracy means that you must review your video to make sure every part of your FI is accurate before handing it in.

When you decide to write an FI Card, the multitude of rules put you on thin ice. Proceed carefully and…

Be legally careful out there.