

GANGS

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Letter from the Deputy Attorney General	
Understanding Gangs and Gang Mentality: Acquiring Evidence of the Gang Conspiracy	1
By Donald Lyddane	
The National Gang Intelligence Center—Up and Running for 2006	15
Investigating and Prosecuting Gangs Using the Enterprise Theory	15
By Marc Agnifilo, Kathleen Bliss, and Bruce Riordan	
Specialized Tools for Use in Gang Cases	23
ATF's Unique Technology, Investigative Experience, and Statutory Authority in Gang Prosecutions	23
By Mark Kraft, Debby Scott, and David Chipman	
The Special Operations Division's National and International Expertise .	27
By Joseph S. Gerbasi and Meredith A. Mills	
Cyber-Technology in Gang Cases	29
By Stephen K. Brannon	
Victim and Witness Challenges in Gang Prosecutions	35
By Heather Cartwright and Ronald L. Walutes, Jr.	
Immigration Authorities and Gang Enforcement	42
By Claude Arnold	
The Criminal Division Offers Expert Advice and Assistance for Gang-Related Cases	47
By Robert J. Raymond	
Gang Prevention: How to Make the "Front End" of Your Anti-Gang Effort Work	52
By Phelan Wyrick, Ph.D.	

Understanding Gangs and Gang Mentality: Acquiring Evidence of the Gang Conspiracy

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I. Introduction

The following lyrical excerpts, taken from a CD entitled "Claiming My City," represent true-life proclamations of two prominent Washington, D.C. gang members. The lyrics, as recorded by them, verbalize their attitudes, motivations, and lifestyles.

*I got dope and coke and all and I'm selling it... I'm killin' motherf**ers for the hell of it... I'm the little one, but my gun's a lot bigger... I can't wait to read about another dead n**ga in the g**damn obituary.*

CLAIMING MY CITY (Montana Records) (1992).

One of those gang members, an executive producer for the record company, was reputed to be a significant drug dealer at a local public housing development. The other gang member was a primary enforcer for the gang that controlled the public housing development. His reputation as a killer was well-known to local law enforcement officers and other gang members. That gang member was later convicted of murder and is serving a life sentence.

In today's society, many gang members compose and put their true-life experiences into lyrical form. Many are able to record their lyrics at local recording studios, produce CDs, DVDs, and videos, and distribute these items to local music stores by using the proceeds of illegal criminal activities. Law enforcement officials must remain mindful of such money laundering schemes and the opportunities to obtain inculpatory evidence in gang-related investigations and cases. It is equally important to recognize that the lyrics demonstrate that the gangster lifestyle has become mainstream. It is

now popular to be a "gangsta," the contemporary idiom for gangster.

A song like "Claiming My City" gives the reader a glimpse into the "gangsta" mentality. This article will explore gang mentality and the subsequent, anticipated behaviors of gang members that investigators and prosecutors may exploit to collect information and evidence in gang investigations.

II. Background

A vast number of urban, suburban, and rural communities are plagued by street gangs who control drug markets in many of their neighborhoods, engage in violent crime, and create an atmosphere of fear within those communities. Crimes committed by gang members are not restricted to gang-sanctioned offenses. The lifestyle of drug trafficking, violence, and greed has created individuals whose value system is counter to that of society at large. Gang members will engage in criminal activities with little regard for the lives or safety of others. This lifestyle has contributed to increased drug trafficking, violent crime, and other criminal activity, which negatively impacts the quality of life in many communities. Neighborhood-based gangs often control all, or at least a portion of, the retail drug distribution in those areas. Their "retail labor force," those who sell drugs hand-to-hand at the street level, often are the neighborhood teenagers who join gangs for several reasons.

For many teens, the primary motive to become a gang member is money. However, gang membership and lifestyle go beyond economic motivation. Identity and recognition are powerful motivational factors to many teenagers. Many gang trends such as "colors," hand signs, graffiti,

"gang writings," and tattoos, among other things are directly related to the desire of the gang member to be identified with, and recognized as, a member of a particular gang. To many, a gang constitutes a type of extended family. Gang identification symbols are merely visible signs of a powerful group identity and unity, which are built on the simplest of bases—loyalty to fellow members and to gang territory.

The news media and entertainment industry have sensationalized gang crimes and the gang lifestyle to the point that it has become part of mainstream America. This has contributed to the emergence, migration, and growth of a popular "gangsta" subculture. Music, magazines, movies, and the Internet serve as training vehicles on how to be a "gangsta." Increasingly, young teens are at great risk of being seduced by, and recruited into, this way of life. The promises of respect, money, expensive clothes, cars, and other inducements, put youths from all backgrounds, neighborhoods, and income levels at risk.

This subculture has spread beyond the borders of the United States. For example, several years ago authorities in Cape Town, South Africa, who were struggling with a gang problem, invited gang expert, Sergeant Wes McBride of the Los Angeles County Sheriff's Department (now retired) to visit their city and examine the problem. After carefully evaluating the situation, which included interviews with Cape Town gang members, Sergeant McBride concluded, "they are just like our gangs." *See* Sergeant Wesley D. McBride, Remarks at the Columbus Ohio, Effective Strategies for a Limited English Proficient (LEP) Community Conference (Aug. 31, 2005). He reported that the gangs were influenced by American music and films and emulated the American gang subculture. One gang even called itself the "Americans." *Id.*

It is no accident that gang styles of music, language, and clothing have made a considerable impact on popular youth culture. As previously mentioned, gangs represent a powerful group identity, and the members are surrounded with the appealing aura of outlaw danger. The wearisome and cruel reality of gang life rarely matches the fantasy, yet the power of the myth remains undiminished.

The vast majority of gangs in the United States are community or neighborhood-based and adversely impact small geographical

areas. Local gangs can be just as violent and dangerous, if not more so, than nationally-recognized gangs. Some gangs, however, rapidly grow in size and sophistication, becoming multijurisdictional, even international in nature, and can adversely impact countless communities across this and other nations. Some prominent outlaw motorcycle gangs have evolved into international organized crime enterprises. Many prison gangs, such as the California Mexican Mafia, continue to evolve into sophisticated criminal enterprises, which control the criminal activities of street gangs. Nationally recognized gangs, such as the Bloods, Crips, Mara Salvatrucha 13, 18th Street, Gangster Disciples, Almighty Latin Kings and Queens Nation, and Vice Lords Nation continue to demonstrate a propensity for violence and the ability to migrate and establish criminal networks in multiple communities.

III. Gang definition

What is a gang? What is the difference between a crew and a mob? What is the difference between a mob and a gang? Are gangs criminal enterprises? Can a "loose-knit" local crew be a criminal enterprise? If a group of individuals *is involved in criminal activity*, but has no initiation rituals or outward signs of self-identification, such as tattoos, hand signs, or graffiti, is it a gang? If a group *is not engaged in criminal activity*, but has initiation rituals and powerful self-identification symbols, is it a gang? Because of the diversity in gangs, gang definitions have been debated for decades, yet no clear national consensus has ever been reached. There is no standard national definition of a gang. Therefore, definitions can change from one law enforcement jurisdiction to another. One common criterion used in virtually every gang definition, however, is that gang members are involved in continuing criminal activity.

Many police departments have no formal mechanism in place to identify and document the gangs operating within their jurisdiction. Therefore, statistics on the numbers of gangs, gang members, and gang crime are often underreported and, thus, not accurate. The absence of a universal definition for gangs and the lack of accurate statistics impact intelligence collection and sharing, target selection, prosecution, and overall program management.

Gangs vary greatly in size, geography, criminal sophistication, modus operandi, and their impact on the community or communities. There is great diversity in gang membership—all races and ethnic backgrounds are included.

- There are white, black, Asian, Hispanic, and Native American gangs.
- There are outlaw motorcycle gangs.
- Immigrant gangs, youth gangs, drug gangs, intercity drug trafficking organizations, prison gangs, and suburban and rural gangs also exist.

Please note that the word "gang" may be used interchangeably with a variety of similar names, including chapter, clique, club, crew, faction, mob, posse, and set.

The term "street gang" is the term preferred by many local law enforcement agencies. This term includes both juveniles and adults, and designates the location of gangs, as well as their criminal behavior. A street gang may be defined as a group that forms an allegiance based on various social needs and engages in acts injurious to public health and safety. Members of street gangs engage in, and have a history of engaging in, gang-focused criminal activity, either individually or collectively. They create an atmosphere of fear and intimidation within the community. Violence, random or directed, that benefits the members, the enterprise, the criminal activity, and the security of a gang's territory, are key aspects to violent street gangs.

Interestingly, another definition of a gang is provided in a federal sentencing enhancement statute.

"Criminal street gang" means an ongoing group, club, organization, or association of 5 or more persons--

(A) that has as 1 of its primary purposes the commission of 1 or more of the criminal offenses described in subsection (c) (particular narcotic and violence-related crimes);

(B) the members of which engage, or have engaged within the past 5 years, in a continuing series of offenses described in subsection (c); and

(C) the activities of which affect interstate or foreign commerce.

18 U.S.C. § 521(a).

The National Alliance of Gang Investigators Associations (NAGIA) recommended the following gang definition in its 2005 Gang Threat Assessment:

A group or association of three or more persons who may have a common identifying sign, symbol, or name and who individually or collectively engage in, or have engaged in, criminal activity which creates an atmosphere of fear and intimidation. Criminal activity includes juvenile acts that if committed by an adult would be a crime.

See *2005 Gang Threat Assessment* (NAGIA 2005), 54, available at http://www.nagia.org/PDFs/2005_national_gang_threat_assessment.pdf.

In a publication by the Federal Bureau of Investigation (FBI), the FBI defines violent gang criminal enterprise as "a criminal enterprise having an organizational structure, acting as a continuing criminal conspiracy, which employs violence and any other criminal activity to sustain the enterprise." Violent Crimes and Major Offenders Section, *An Introduction to Violent Street Gangs in the United States*, (2d ed. 1999). (This publication is available only for distribution within the law enforcement community; See http://www.iir.com/nygc/youthGangDoc/7_justice3.htm).



Figure 1 Cash

A criminal enterprise can be described as any union or group of individuals associated in fact, although not a legal entity. The fact that the individuals are engaged in a pattern of criminal activity together constitutes a criminal enterprise.

Being "loose knit" does not preclude the group from being a criminal enterprise. The use of gang identifiers, such as initiations, hand signs, "colors," tattoos, gang rituals, signs, and symbols are not prerequisites for being considered a gang by the FBI.



Figure 2 Gangster with Cash

IV. Criminal sophistication

Gangs vary by levels of criminal sophistication, and, without intervention, every gang and every gang member will likely evolve in criminal sophistication. The rate of evolution is based on several factors, including: 1) the strategic vision of one or more of the prominent gang members, 2) criminal opportunities, 3) development of criminal associations, and 4) the frequency in which the gang networks with other criminal contacts and gang associates.

Many gangs (no matter the name of the gang) are criminally unsophisticated. These gangs may be involved in petty offenses and nuisance crimes. The members of such gangs may seek self-identification through style of dress or other incorporated gang symbols. They may even assume the name of a nationally recognized gang such as "Crips." (They take such a name because they think, literally, "Crips are bad, we're bad, [therefore,] we're Crips.") Yet such a gang has no

criminal associations outside its small organization and its members often lack vision. Such gangs may be effectively addressed through local intervention techniques or by local street-level law enforcement action. However, if left unchecked, this group will likely grow in criminal sophistication as its members become more savvy and engage in more serious crimes.

V. Gang mentality

Gangs are tremendously diverse in make-up and criminal sophistication. What commonalities can possibly exist among an inner-city African-American neighborhood-based gang, a Caucasian outlaw motorcycle gang, and a Hispanic prison gang? The answer is gang mentality. This mentality is simply a philosophy toward life. This philosophy is sometimes described as the "thug life," "mi vida loca" (my crazy life), "smile now, cry later," "outlaw," or "1% er" (as in, only 1% of all motorcycle riders are outlaw motorcycle gang members). Clarence Lusane wrote in a 1999 internet commentary entitled, "Jailhouse Knocks: A Review of HBO's 'Thug Life in D.C.'":

[T]hug life refer[s] to a lifestyle of professed and celebrated criminality. Echoing real and cinematic gangster's styles, a small, but significant segment of inner-city young black males have embraced a fatalism that envisions a heroic, shoot-em-out death with either their "enemies" on the street, or with cops.

Clarence Lusane, *Jailhouse Knocks: A review of HBO's "Thug Life in D.C."* (May 22, 1999), http://www.zmag.org/sustainers/content/1999-05/may_22lusane.htm.

"Thug Life in D.C." featured an interview of an inmate while he was incarcerated. This inmate, a crew member in Washington, D.C. who was arrested and convicted for shooting a police officer and later charged and convicted for an unrelated murder, proclaimed, "I'm the definition of thug." He stated that it was "in my blood" and if released from jail he would kill again and "do what I have to do to survive." *See id.*

This inmate's outlook toward life, however, is omnipresent, with no racial or ethnic boundaries. It is "outlaw glamour" where the gangsters make their own rules; where they take and do what they want and worry about the consequences later; and where respect is demanded and power rules. This lifestyle is the antithesis of prevailing societal

values. It is a subculture where bad is good and good is bad. The ability to commit unthinkable acts of violence against one's enemies, or to demonstrate proficiency in criminal ventures, is envied and rewarded with respect and financial gain. It is a measure of one's success in life, as epitomized in the aforementioned lyrics: "I got dope and coke and all and I'm selling it ... I'm killin ... for the hell of it."

This author has reviewed numerous transcripts of interviews, as well as audio and video recordings, involving gang members who have adopted the thug mentality. For instance, a gang member in the Chicago area when asked to describe gang life, stated that "it was like heaven to me." He added that "it comes natural to us ... we go to war with other gangs every day ... we just know how to do it." This young man was convicted of attempting to kill a police officer. He also stated that if he had not been arrested for the shooting of a police officer, he would have received a "high rank" or obtained other rewards from the gang. Another gang member from the Los Angeles area described how his crack cocaine distribution business made him feel "like God." He recounted how people did whatever he wanted in exchange for a "piece of crack." Just as a career police officer or prosecutor may embody a sense of self-identification and self-worth from his or her professional calling and successes, self-esteem for many who choose a gangster way of life becomes dependant on their "thug" exploits. The "gangsta" mentality affects everything they do and who they are.

It is not unheard of for a prosecutor to remark, "I don't see the conspiracy," to investigators during the course of a gang investigation. Demonstrating that an array of criminal incidents committed by a group of suspects are actually connected and are predicate acts of an ongoing gang conspiracy can often be difficult. Thus, it is important for investigators and prosecutors to understand the gang mentality in order to recognize the legal significance of actions by gang members, as well as to predict future actions.

Moreover, by understanding past and anticipating future behavioral manifestations, investigators and prosecutors may question witnesses and informants in a way that can reveal gang motivations for individual actions and lead to acquiring evidence of the gang conspiracy. For example, a prosecutor or investigator might ask a witness, "Did gang members flash hand signs

prior to committing an assault?" Detecting and identifying gang behaviors relative to criminal acts will aid the prosecutor, the judge, and ultimately the jury to "see the conspiracy."

VI. Manifestation of the gangster mentality: anticipated gang behaviors

A. Continuing criminal activity

One of the obvious anticipated behaviors of gang members is criminal activity. Numerous gang members are repeat offenders who have specific modus operandi and geographical areas of operation. As an illustration, during a gang and drug conspiracy investigation several years ago, a cooperating witness who had been involved with a gang at a high level was debriefed by this author. The witness stated that he could not understand why there were drug treatment programs, but no treatment programs for weaning "high rollers off of the money," adding that "once you taste it, you've got to have it." Just as a narcotics investigator might be able to accurately predict the recurring behaviors of drug addicts, an investigator can anticipate that high-level gang members will repeat certain criminal activities. In addition, there may be times in investigations when it appears that certain principal suspects are no longer criminally active. Knowledgeable investigators, however, can anticipate that such suspects may change geographical locations or proceed in a more clandestine manner, but they will likely remain criminally active.

B. Conspicuous gang violence

Violent behavior by gang members is easily anticipated. The gangs frequently will arm themselves for protection against thugs and other gangs that attempt to infringe on their territory or steal their drugs. This creates a market for firearms and other weapons, and, not surprisingly, the number of illegal gun runners has grown proportionately to that market. Many homicides and nonfatal shootings are directly related to disputes between gangs, internal gang disputes, and/or gang members acting individually, or with others because of personal "nongang" motives. Tragically, many "innocent" people become victims of gang violence.

C. Frequent disputes between gangs

Events that spark disputes between gangs could be based on business (protection of drug turf, rip-offs, and outstanding debts owed to a member of another gang) or personal events (perceived disrespect in any form). Some gang disputes rapidly escalate and lead to a series of violent acts occurring in a relatively short period of time. These types of disputes may be high-profile in nature and quickly noticeable to law enforcement and the public. Many gang disputes, however, take place over a longer period of time, last for years, and are marked by multiple violent acts spread over the life of the dispute. These disputes are not as readily noticeable to law enforcement and to the community-at-large.

D. Internal gang disputes

These disputes can also lead to multiple violent acts among the members of a single gang. Business and personal events become the motives that spark deadly warfare between individuals who were "family" yesterday and "enemies" today.

E. Rivalries

Gangs go to war with other gangs every day. Investigators and prosecutors should anticipate and attempt to determine all past and present gang rivalries. Extensive historical research can lead to identification of numerous past crimes that may be reinvestigated and used to support a conspiracy charge. Investigators can also anticipate that some gang members will commit violent acts during the course of the investigation simply due to recognized rivalries between gangs.

VII. Gang communications

Do all gang members write graffiti, get gang tattoos, or compose true life proclamations in the form of hip-hop lyrics? No. A significant number of gang members do, however, to the point where investigators and prosecutors must take advantage of such behaviors. Documentation of anticipated gang behaviors, such as the following, can serve as the cement needed to prove beyond a reasonable doubt the conspiratorial links between defendants and predicate acts in gang prosecutions.

A. Graffiti

It has become common for gangs to use graffiti as a form of communication. Graffiti marks gang territory, and often lists the names or nicknames of gang members, projects gangster attitudes, and addresses current events. Graffiti can be found on walls, in jail cells, and in vacant buildings where gang members hang out. Intelligence and investigative leads can be obtained by monitoring and correctly interpreting graffiti. For example, following the death of a fellow gang member, surviving members may memorialize the fallen gang member by painting and writing his name in the form of graffiti. At times, the name of the gang that is suspected of causing the death is also written in the form of graffiti.



Figure 3 Wall Graffiti

B. Tattoos

Gang tattoos are obvious symbols of an individual's membership in a gang. Many tattoos such as "outlaw," "thug life," "1%er," among others, are expressions of gang mentality and do not specify any particular gang. The meaning of a tattoo is in the eye of the beholder. It is important to question cooperating witnesses and informants

regarding which tattoos, if any, are identification symbols of the gang.



Figure 4 MS-13 NLS (Northside Locos)



Figure 5 Fresno Bulldogs

C. Hand signs–Nonverbal communication

Several years ago, a young lady attended a dance-concert in Milwaukee, Wisconsin. She enjoyed the band so much that she leaped onto the stage to dance with the band. While dancing she gestured in sign language, "I love you," over and over. She did not realize that her gestures were almost identical to the Latin King hand sign. Several Latin King members who were on the dance floor observed her "I love you" gesture and perceived it as a blatant disrespect to the Latin King and Queen Nation. She surely did not realize that they planned to kill her. Her innocent gestures cost this woman her life. Her murder was subsequently solved as part of a gang conspiracy investigation of the Latin Kings by the FBI Safe Streets Task Force in Milwaukee, Wisconsin.

Gang members often devise and use nonverbal communications to disrespect rival gangs and to alert fellow gang members of imminent combat. Investigators should always try

to identify the gang signs and gestures—their nonverbal communication—and learn what they symbolize. They should also attempt to identify any criminal incidents where hand signs or other nonverbal gestures were used in furtherance of, or were a motive in, the offense.



Figure 6 Hand Sign and Logo Drawing



Figure 7 Group Photo

D. Written gang communications

Gang members view themselves as, and think like gangsters. This is reflected in their writings. Simple doodling on school

notebooks, envelopes, address books, and communicating in internet chat rooms and postings on message boards will often reflect gang mentality. Like graffiti, writings will often identify other gang members. Some gang members chronicle their gang exploits in the form of diaries and drawings. The use of numbers and initials is prevalent to represent the gang's name and other gang slogans. These numbers and initials will often be written as graffiti, as well. Certain gangs have devised alphabets, ciphers, codes, bylaws, constitutions, and bibles. Prison gangs communicate extensively through the use of codes and ciphers. It is not possible to explore written gang communications in greater depth in this article. However, investigators can anticipate that gang members under investigation will use written communication that may be exploited and used as evidence of the conspiracy. The FBI can provide expert testimony and other forensic assistance in investigations involving written gang communications.

The first example of written gang communication is a letter using Blood symbols. Notice the use of initials and numbers, as well as the drawing of a pitchfork. The pitchfork represents a rival gang of the Bloods and appears to be out of place within this document. The second example is an example of doodling. Notice how the author identifies himself with his gang, "Wayne Wayne of SE Capers 501 Lynch Mob." *See* figures 8 and 9 on pages 9 and 10.

E. Lyrics

Many gang members compose hip-hop lyrics that reflect true-life experiences. Search warrants of homes and jail cells often net such writings. The contents of these writings frequently reflect the author's gang mentality and, in some cases, result in solid investigative leads. Occasionally, the writings can be used as evidence. Many gang members frequent clubs where they can perform their songs, and a number of clubs record the

performances for later sale. Composing lyrics and committing them to print is not limited to any particular gang. The example is entitled "Mr. Man in Blue." The lyrics were recovered during the execution of a search warrant. *See* figure 10 on page 11.

F. Productions

Some gang members will produce and distribute audio and video recordings for sale in local music stores. This media and the associated packaging may also contain information of investigative value in a gang case. In addition, the gang investigator should be aware that gangs may launder money through the sale of these items.

G. Home videos

Individuals and families capture special moments and document their lives through photographs and home videos. Gang members do the same. Investigators should take the time to locate and review every photograph, video, and home DVD and CD when executing search warrants. Gang members sometimes record their own criminal offenses and various gang events. This author participated in a case in which a home video, recovered as part of a gang investigation, revealed a gang member displaying guns, drugs, and cash in front of his young children, while "gangsta" rap recordings played in the background. That song's lyrics, "I got money and the power, money and the power," could be heard in the background as the gang member flashed cash toward the video camera and, with the help of his four-year-old son, bagged what appeared to be a large amount of crack cocaine.

H. Entertainment

Know where the local gang members seek entertainment. Ask where, and in which clubs, do they hangout? Are there cable television shows that feature local gangs and/or local gang members who are also budding entertainers? Are there radio stations that host "shout-out" hours where gang members can call in and "shout-out" their names and the names of their gangs? If so, do gang members use that air-time to pass messages? An FBI case in El Paso, Texas revealed that incarcerated gang members called into such radio shows to deliver coded messages in their

Have a Bloody day Chris!

Say what trap set us up here?? Say my Blood
Brotha Mr. Hood is from around your way Sx P, F, G.
Brius is what he relates he's at EXIT prison we
stay in touch he's a true "B". His name is Brooks Peterson
#229218 Eastern Corp, Instl. 30420 Revells with RD
Westover, Maryland 21871 he's been down for a while
he's kind of home bKK!! I'm gonna Bait, watch out
for them SK's & Keep Throwing "The B's". Take care Blood
Younds!

B&V PIRU, LOVE, & HOOKIES
B&A 3x - I x DASH - PRU
0.2 TRU BLOOD?
18-20-7 B 19-22 V
15 GANGSIB 18Z
MURDER
CRABS
GANGSIB
WVA
J.R.F.G.
REEDIN "TO THE HEARTS"
REEDIN "INSANE WITH NO"
"BRAIN"

Figure 8 Gang Writing "Blood Symbols"

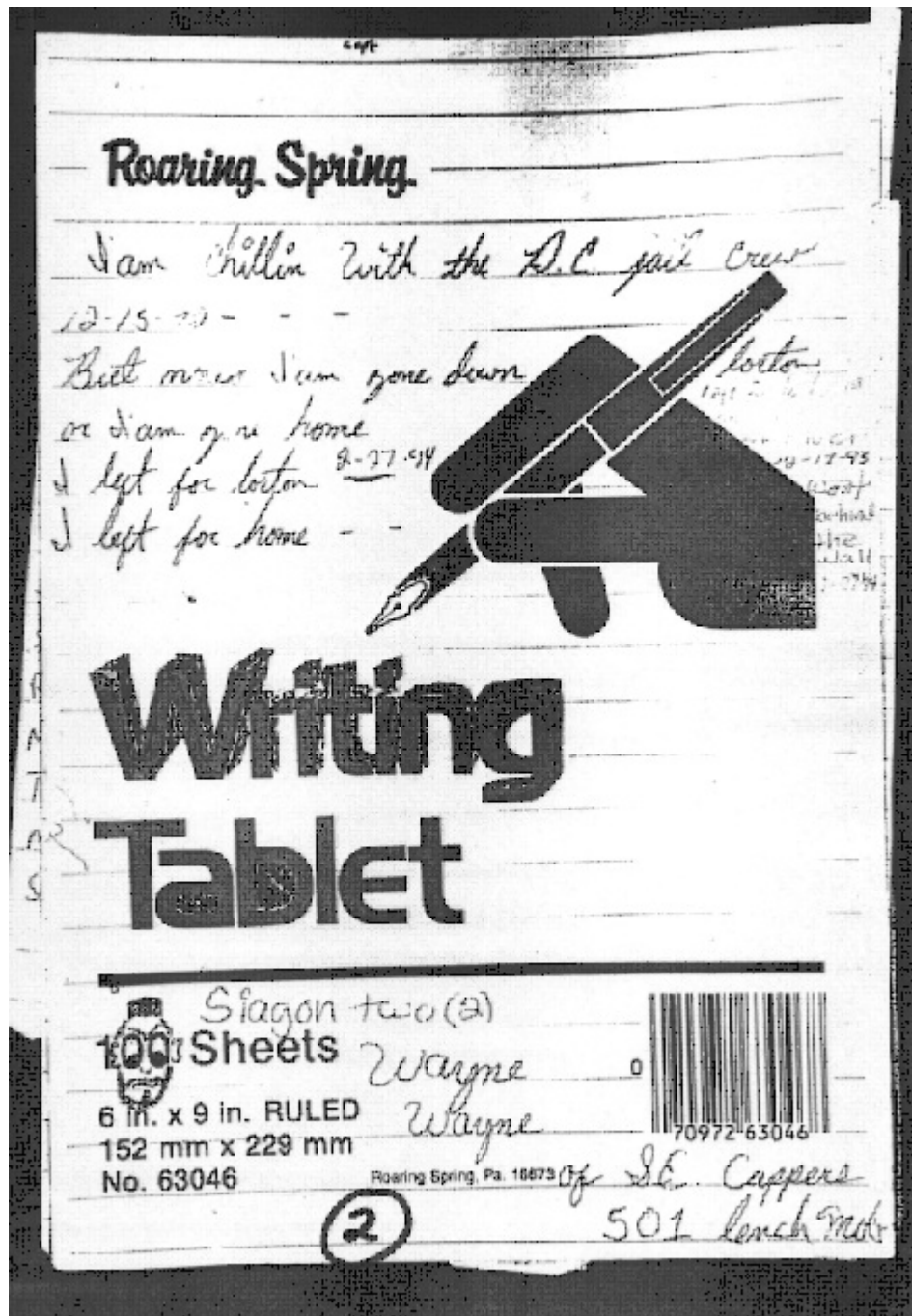


Figure 9 Writing on "Writing Tablet"

Lyrics by Taz
8-12-41

"Mr. Man in Blue" Age 17

Mr. Man in blue, all I wanna really say is
 Fuck you, and kiss my ASS coming from a
 Southeast nigga named Taz, cause you ain't
 shit when your gun don't sit, your blue-ass
 uniform and that's why they had the L.A. riot
 storm, taking your authority too far hooking
 niggas up for a scar, or two but try that shit in
 Southeast & act like you know, oh yeah I
 know you talk bad & try and ^{make} my ass mad, so I
 can fuck your ass with a gauge then your homies
 throwing my ass in a cage, but never once did
 I trip cause you can never make me slip, ain't
 doing time for fucking with a pussy-ass bama
 & get tossed in the slam, doing mother fucking
 time cause the punk police pushed me to
 commit a crime, but I'm saying fuck all of
 you Mr. Man in Blue

→ "From a gunshot or stab wound cover them damn
 suits red unt. they're all dead."
 { ^{repet} Man in blue, Man in blue.
 } NOFUS: ³ Gunshots, here's a shot for you

Yeah, it's the neighbor hood jacker, but ~~it's not~~
 except time ~~hesitates out~~ ^{it's} a eracher, cause
 all these uncle Tom's can get the fuck outta

Figure 10 Lyrics "Mr. Man in Blue"

"shout-outs." In Washington, D.C., a cable television station aired a show that featured local hip-hop artists and gang members, which was filmed in their gang neighborhoods. Gang violence is prevalent in night clubs, bars, and similar gang hangouts and such violence can precipitate more intense confrontations in the community. It is recommended that investigators monitor police reporting of complaints, recovered firearms, and arrests at and around the specific establishments frequented by gang members.

I. Social events and festivals

Gang members enjoy large social events, such as festivals and outdoor concerts. With that in mind, an investigator should, for example, anticipate that Hispanic gangs may attend festivals in celebration of Hispanic heritage. Such festivals can provide excellent opportunities to gather gang-related intelligence through photographic surveillance and field interrogations. These events can also be the origin of subsequent episodes of gang violence and gang wars. Likewise, motorcycle "runs" and similar events often draw outlaw motorcycle gang members. For example, at motorcycle swap meets, outlaw motorcycle clubs will set up booths in an effort to recruit new members and sell items (sometimes stolen) in support of their club. The larger "biker" events and "runs" offer gang members an opportunity to network with members of other chapters and clubs.

J. Gang meetings

Many gangs hold weekly or monthly meetings and meeting places can be varied depending on the ingenuity of the gang. Many gangs meet in motel rooms or public parks and often attempt to disguise their meetings as benign social gatherings. Gang investigators, however, should make every attempt to determine if, when, and where meetings are to be held, and conduct surveillance and intelligence operations when appropriate. Infiltrating gang meetings can provide significant information for investigators. Several years ago, the FBI was able to monitor and record a large multistate gang meeting. In this meeting, representatives from various chapters discussed methods and techniques for countering law enforcement.

K. Funerals

Funerals, and events leading up to funerals, are excellent opportunities to gather intelligence on gangs and generate new investigative leads. When a gang member is killed, investigators can anticipate a series of events and activities that will precede the funeral. Rituals are often held in the fallen gang member's home territory. Gang members, associates, and friends will build makeshift memorials consisting of photographs, bottles of the decedent's favorite liquor, and other personal items. Surviving gang members may write "R.I.P."-type graffiti that may also reveal the gang they believe is responsible. Some gang members will hold a "smoke-out," blowing marijuana toward the heavens, so the fallen gang member may get one last hit of marijuana, and/or a "pour out," actually pouring some of the fallen gang member's favorite liquor on the ground, so he may have one last drink.

It is common for incarcerated gang members and gang members in the community to discuss the murder during phone conversations and in letters. Also, gang members will occasionally send flowers (in gang colors) to the funeral home and they may have hats and T-shirts made as a memorial to the decedent. They often will wear gang colors or the newly made hats and T-shirts to the funeral services.

L. Explosives

Gang members have been responsible for several firebombing incidents where rival gangs and cooperating witnesses have been targeted. A number of high-profile incidents of outlaw motorcycle gangs bombing rival clubhouses have been documented. This author, while a police officer in Washington, D.C., recovered a homemade fragmentary explosive device from a "Born to Kill" gang member after he attempted to detonate it at the residence of rival gang members. Investigators must ask cooperating witnesses and informants if the gang has access to explosives. During the execution of search warrants, investigators should look for any bomb-making material and instructions. *See* figure 11 on page 13.

QUARTERLY NEWS
INTERNATIONAL ASSOCIATION OF ASIAN CRIME INVESTIGATORS

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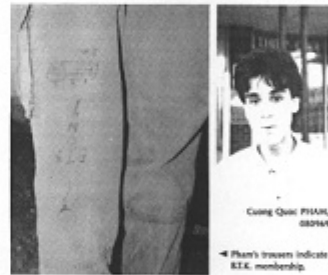
*Buy Am
interview in
NJ*

**DC Metro PD Detective Sergeant Observes/Arrests
Vietnamese Suspect in Possession of Bomb**

On June 18, 1989, Det./Sgt. Don LYDDANE, DC MPD assigned to the Repeat Offender (RO) Unit, was conducting a surveillance of an outdoor drug market in the unit block of K Street, NW, several blocks from Washington's Chinatown. Lyddane's target was a high-rise residential building and its outdoor population which is comprised mainly of Blacks. Lyddane's attention was drawn to a scuffle which was occurring across the street from his target area, in the front of 32 K Street, NW, a residential townhouse. He watched as two Asian males exited the house to confront and assault a third subject who appeared to be holding an object close to his body. When the Sergeant observed a pistol in the hands of one of the respondents from the townhouse, he took action and the three subjects fled.

This incident has been reported for several reasons: the significance of rival gangs seeking to bomb a home represents a new level of escalation; the seizure of five pistols which are available for comparison; and the sharing of collected intelligence between four jurisdictions and IACI members make this case a special one. Readers seeking more details should contact Det. Sgt. Donald G. Lyddane, Jr. at 680-727-7698.

After seeing the victim drop his "object", Lyddane was able to catch Cuong PHAM and return him to inspect the dropped "object". Upon finding the "object" to be a bomb, Pham was placed under arrest. The DC MPD Bomb Unit and the FBI responded and removed a device which consisted of a fuse component, explosive accelerant, and was rigged with approximately 30 live bullets which were taped to the perimeter. Lyddane's subsequent investigation revealed the following: 32 K Street, NW was an operating brothel which catered to an Asian clientele, was staffed by Korean and Vietnamese prostitutes, was protected by two different groups of Vietnamese/Chinese "gang" members and was opened in February, 1989. Its existence was known to IACI members of DC, New Jersey and Virginia police agencies and several incidents and arrests had been made at that address prior to the date of Lyddane's arrest. Pham's group (loose members of New York Flying Dragons/Canal Street Boys (CSB), or Burn To Kill gangs) initially provided protection and lived at 32 K Street, NW. In March or April they were displaced by a rival group which is led by a former Black Eagle Gang member from Chicago via Kansas who had assembled a group of emerging Virginia Vietnamese. IACI members were able to provide Lyddane with photographs of all members of both groups and he was able to identify the associates who exited the townhouse to confront Pham. Within the following week Lyddane visited the townhouse, received consent to search, and recovered four handguns from within.



FOLLOW-UP

QUARTERLY NEWS RESULTS IN ARREST OF HOUSTON MURDER SUSPECT

Suspect featured in July, 1989 issue, page 5.
On Friday, August 18, 1989, IACI President, Phil HANNUM, observed Saoudee MAO, 050064, sipping coffee in the Nirvana Coffee Shop in the Eden Center area of Falls Church, Virginia. Hannum and officer Dan ELLIS effected Mao's arrest without incident on August 23, 1989. Mao waived extradition.

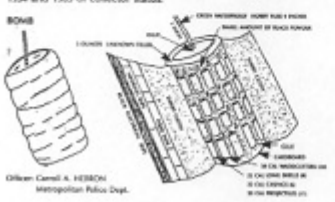


Figure 11 "Quarterly News"

VIII. Killing of the conscience

A firearm, a bulletproof vest, an illegal drug supply, or a fancy communication device may be an important "tool of the trade" for a veteran gang member. The most important element of a gangster's success, however, is the ability to "kill his conscience." Gang members must do things that the average person would think morally reprehensible. A person must "kill his conscience" in order to murder someone at close range, or injure and cause despair without remorse or guilt. A person with no conscience is capable of almost anything, including betraying or "turning on" those closest to them. During a recent gang in-service training, an Assistant United States Attorney in Los Angeles stated that he can always count on gang members succumbing to greed, treachery, and jealousy. As a gang investigator or prosecutor, always anticipate that certain gang members and associates will have shifting loyalties within the gang, scores to settle, lasting grudges, and scorned friends or lovers. These gang members may become your best witnesses.

IX. Conclusion

It is critical to know your adversary. Understanding the gang mentality and anticipating gang behaviors will aid investigators and prosecutors in acquiring physical evidence and securing testimony that will "connect the dots" in gang conspiracy investigations. Presenting evidence of the defendant's gang affiliation through exhibits of graffiti, written gang communications, videos and photographs, and video surveillance footage of the defendants at gang events is the adhesive that joins seemingly unrelated criminal offenses into the predicate acts of a gang conspiracy. ❖

ABOUT THE AUTHOR

❑ **Donald Lyddane** is an Intelligence Analyst, assigned to the Safe Streets and Gang Unit, at FBI Headquarters. As the program manager for the FBI's National Gang Strategy, he develops strategies, guidelines, and recommends policies for gang investigative initiatives. Prior to joining the FBI, Mr. Lyddane served twenty-two years with the Metropolitan Police Department in Washington, D.C. (MPDC); nineteen years in investigations with thirteen of those years as an investigative supervisor. He investigated and supervised joint MPDC/FBI task force investigations, including the first Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, and Continuing Criminal Enterprise, 21 U.S.C. § 848(c)(2) (RICO/CCE), gang prosecution in the District of Columbia. Mr. Lyddane organized and began the first gang intelligence unit in the MPDC and initiated a joint gang intelligence initiative with the FBI. Mr. Lyddane is a cofounder and past-president of the Mid-Atlantic Regional Gang Investigator's Association and cofounder and past-vice president of the National Alliance of Gang Investigators' Associations. ❖

The National Gang Intelligence Center—Up and Running for 2006

In 2005, the FBI spearheaded the creation of the National Gang Intelligence Center (NGIC) to integrate gang intelligence from federal, state, local, and tribal law enforcement. The mission of the NGIC is to support law enforcement agencies through timely and accurate information-sharing and strategic/tactical analysis focusing on the growth, migration, criminal activities, and associations of gangs that pose a significant threat to communities throughout the United States. By leveraging the assets of multiple agencies, the NGIC will be a centralized intelligence resource for gang information and support.

As of June 2005, the NGIC is up and running. The NGIC is designed to be a "one-stop-shop" for law enforcement (LE) entities to request information regarding gangs. LE entities can contact the NGIC via Law Enforcement Online

(LEO) or by fax/phone to inquire about a particular person, gang, tattoo, or to request case support. The LEO site can be found at <http://www.leo.gov/lesig/ngic.htm>. It hosts gang-related products from federal, state, and local LE entities, and provides information regarding upcoming events and conferences, alerts or bulletins, and links to news articles from across the country.

The NGIC will be an essential part of the overall LE effort to combat and dismantle gangs and will enhance the existing liaison and coordination efforts of federal, state, and local agencies. For more information, please contact NGIC Chief Michael Brunton, (202) 324-6959.

Investigating and Prosecuting Gangs Using the Enterprise Theory

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I. Introduction

The primary goal of a gang investigation is to dismantle the gang and

appropriately punish its core members. Unless the gang, or the targeted set of the gang, is dismantled, the investigation cannot be a complete success. However, this goal can be reached in different ways. Smaller, less-established gangs may be dismantled by eliminating the leadership structure. Gangs reliant on the sale of narcotics can be destroyed by targeting those members most involved in the distribution chain, or by eliminating the supplier. The best way to dismantle well-established gangs with a hierarchical structure and multiple gun and drug connections is to incarcerate as many of its key members as the evidence allows.

This last approach, by which the gang's entire structure is brought within an investigation's cross-hairs, is known as the "enterprise theory" of

gang investigation. This approach is not without precedent. For example, the federal government used this model to cripple La Cosa Nostra in the United States over the last three decades. As the nation's new organized crime and the perpetrators of an ever-increasing percentage of the country's violent offenses, gangs have evolved to the point that federal law enforcement must pursue them with the most powerful criminal statutes.

II. Charging options

Different federal statutes allow prosecutors to focus on gang members individually and in combination. There are two broad charging schemes that are particularly relevant to the enterprise theory of gang prosecutions. The first, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 and the Violent Crimes in Aid of Racketeering Act, 18 U.S.C. § 1959 (collectively, RICO/VICAR) charging scheme, is particularly well-suited to broad based, violent, and entrenched enterprises. The second, the drug conspiracy/continuing criminal enterprise (CCE) charging scheme, is appropriate where the gravamen of the gang's activity involves a coherent drug distribution conspiracy.

The two schemes are tailored to different types of criminal entities. If a target group is essentially a narcotics distribution organization, the members of which may carry guns and engage in a few provable violent acts, then the drug conspiracy/CCE scheme is probably the appropriate charging option. On the other hand, if the target group is structured and highly violent, then the RICO/VICAR scheme is the appropriate vehicle. These charging schemes will be analyzed below.

A. RICO and VICAR

In 1970, Congress passed RICO under 18 U.S.C. §§ 1961-68. Properly used, RICO allows a prosecutor to tell the entire story of a gang's existence in an indictment and later to a jury. Every aspect of the gang and its history—including how it acquired its territory; how it makes and disposes of its money; how it uses coded language, hand signals, and graffiti; and who it has killed and why—can be offered in one coherent story.

In order to prosecute gang members under either RICO, 18, U.S.C. §§ 1961-68, or its sister statute, VICAR, 18 U.S.C. § 1959, the target gang must first be defined as an "enterprise" under the racketeering statutes. The theory of enterprise in virtually every gang case is that the gang is a "group of individuals associated in fact." In order to be so defined, the criminal group must have some structure for the making of decisions and a core of persons who function as a continuing unit. The seminal case in this area is *United States v. Turkette*, 452 U.S. 576 (1981). So long as the group being prosecuted exhibits the characteristics of an enterprise, it does not matter whether the charged entity is the gang as a whole (the United Bloods Nation (UBN)) or a set of the gang (the Gangster Killer Bloods (GKB) set of the UBN) or some other discrete, structured unit of the gang (the Newark, New Jersey faction of GKB).

The first question to be answered when commencing a gang investigation is whether the target group has the necessary structure and continuity to be legally defined as a criminal enterprise. If it does, the AUSA can proceed with confidence that the criminal activities committed by the gang, as part of its affairs, can be prosecuted in federal court under the RICO or VICAR statutes. On the other hand, if the target group lacks these attributes, the RICO/VICAR option is not available. Remember, smaller, neighborhood gangs can possess a rudimentary leadership structure and some continuity of membership, which is all *Turkette* requires. *Id.* at 587. Even a fluctuating membership is not fatal to a finding of enterprise.

Some federal prosecutors have run into difficulty with violent gangs that do not engage in activities that affect interstate commerce, which is also a requirement under *Turkette*. *Id.* at 579. However, if it can be proven that the gang is involved in selling cocaine or heroin, or deals in guns manufactured out of state, the interstate commerce element is generally satisfied. Other "economic" crimes, such as extortion or interstate transportation of stolen cars, can also satisfy the requirement.

The most obvious difference between RICO and VICAR is the number of predicate acts required. RICO requires two predicate acts that are related to each other and show a continuity of criminal activity. 18 U.S.C. § 1962. VICAR requires the defendant to commit only one crime of violence as specified in 18 U.S.C. § 1959, and

to have done so in order to get or maintain a position in the charged enterprise. VICAR murder is also a death-eligible offense. *Id.* at § 1959(a)(1).

It is Department of Justice (Department) policy that any AUSA who is considering charging a defendant with a violation of either RICO or VICAR should contact the Criminal Division's Organized Crime and Racketeering Section (OCRS) at Main Justice for experienced legal advice at an early stage in the investigation. OCRS has mandatory approval over the charging of any RICO or VICAR counts in an indictment. *See* USAM §§ 9-110.101, 9-110.802.

B. Narcotics conspiracy and Continuing Criminal Enterprise (21 U.S.C. §§ 846, 848)

The vast majority of gangs derive some income from the sale of narcotics or, for some (typically larger) gangs, from the "taxing" of drug dealers operating in its territory. If the members of the target gang are selling drugs in a coordinated fashion, then a drug conspiracy is a viable charging option. Conspiracy law is flexible enough to encompass a broad range of criminal conduct. For instance, a prosecutor can charge one master conspiracy with subsidiary schemes, or a single conspiracy involving different subgroups committing acts in furtherance of the conspiracy. Also, with a drug conspiracy, the conspirators may be sentenced based on the reasonably foreseeable drug quantity sold by the whole group, and not merely on what each member sold individually. Therefore, if the AUSA targets a group that solely, or primarily, distributes narcotics, he or she does not need to use the RICO statutes. In such a case, RICO will not lead to a higher sentence and will serve to unnecessarily complicate the prosecution.

In appropriate cases, traditional conspiracy law can be used in conjunction with the CCE statute, 21 U.S.C. § 848(c). The CCE statute is somewhat misunderstood. Many experienced agents and some prosecutors believe it is a statute designed to prosecute groups of people, much like RICO or conspiracy law. However, CCE addresses individuals, specifically those who organize, manage, or supervise a large drug enterprise. The CCE statute requires a Title 21 felony violation that is part of a series of such violations undertaken by the defendant, in concert with five or more other persons who are led,

supervised, or managed by the defendant, and from which the defendant derives substantial income or resources.

What CCE offers that conspiracy law does not is a twenty-year mandatory sentence for what is known as the "basic offense," or a violation of 21 U.S.C. § 848(c). For a violation of § 848(b)—which has additional requirements of leadership, drug quantity, and derived income because it is aimed at the principal administrators, organizers, or leaders of a narcotics trafficking enterprise—the mandatory sentence is life in prison. In addition, the CCE statute has a death-eligible murder provision, found at § 848(e). This provides that if the defendant is engaged in or working in furtherance of a CCE, or is engaged in some other drug offense carrying a potential life sentence, and in the furtherance of the offense he commits an intentional killing, the defendant may be sentenced to death or life in prison. This is a viable charging option in cases where the AUSA has a provable murder committed during a large-scale drug conspiracy, but cannot, or does not wish to, establish an enterprise under the RICO statutes.

III. Developing investigatory strategies

The prosecutor should be involved in gang investigations at the earliest possible stage. This may mean spending time on a case which ultimately is not prosecuted, or not prosecuted on the federal level. However, by getting involved early, the AUSA has the best opportunity to assemble a substantial gang prosecution. In developing the charging strategies and investigatory goals, the AUSA should consider the following options.

A. Identify targets

Unless the targets are identified at the outset, the AUSA's investigation will drift without focus. Review arrest reports, interview confidential sources and witnesses who are available, and consult with local law enforcement. Local law enforcement can help assess which gang is committing the most crime in the area. Local gang units can also be a great source of intelligence. Local gang officers often use field interviews to identify gangs and their members. These interviews can elicit important admissions about membership and photographs of the subject's tattoos and clothing (which may indicate gang

alliance). Often, a gang officer generates a field interview as a result of an incident, such as a stabbing or drive-by shooting. Even though the incident may not result in local prosecution, the report nonetheless identifies the suspect as a gang member, puts the suspect in a certain territory, and may contain other valuable information.

When the background work is complete, an AUSA should identify primary and secondary targets and run criminal histories. This will help determine what sentence a target may face in the event of conviction.

B. Create a "set book" and a "gang book"

A "set book" contains photographs of all individuals arrested for drug offenses in a certain area. This is particularly useful if the gang concentrates its narcotics dealings in a discrete location. A well-maintained set book allows the AUSA to identify targets and subjects, as well as incarcerated defendants who may be willing to provide background information on the group. The set book is also an orderly way to display photographs to witnesses. Number the photographs and, as additional photographs are included, note the date of inclusion. The set book should be treated as though it will one day be a trial exhibit.

A "gang book" is often a subset of the set book. It identifies gang members in terms of history, biographical information of active members, geographical range of the gang's activities, and criminal records of members.

C. Analyze the scope of the organization

After reviewing arrest reports, prior search warrants, and interviews with confidential sources, witnesses, and local experts the AUSA can make a preliminary determination of the scope of the organization. This analysis will help focus the investigation and outline the potential charging options.

D. Organize the data in a usable format

If all is going well in the investigation, information will be coming in quickly. In order to give appropriate advice, the AUSA must know, and have access to, as much data as possible. Fortunately, technology has developed such that all United States Attorneys' offices, and most law

enforcement agencies, possess an array of computer software to assist in this endeavor. Incident reports, addresses, license plates, cars, telephone numbers, funeral attendants, girlfriends—the list is only limited by imagination and the data entered—can be linked to targets of the enterprise by using computer software such as Analysts Notebook, Casemap, and Redundant Array of Independent Disks (RAID). Here are a few other ideas for organizing the data.

- **Time Line**—A comprehensive time line for the investigation will allow the AUSA to make connections between events, which otherwise may have been missed.
- **Card Files**—Reduce each target, subject, or potential witness to an index card or file, including drug buys, arrests, or other information relevant to the investigation. Consider using "Case Management" software.
- **Block, Building, or Apartment Files**—As information comes in about different locations, start files on those locations. If the case goes well, search warrants can be drafted for these locations in short order. Also, organizing the information in this manner will allow the AUSA to see patterns of activity related to certain locations and may assist in a forfeiture action.
- **Connection or Flow Charts**—One of the most difficult legal issues in gang and drug organization cases is whether the AUSA is contending with one or more than one organization or conspiracy. For instance, different drug gangs occasionally occupy the same location. What might seem like one, unified gang may be a combination of two or three discrete groups selling narcotics near each other simultaneously. Well-placed "inside" witnesses can help sort out which target is associated with which gang, but creating a flow chart to show multiple targets acting in concert will allow the AUSA to demonstrate the specifics of the narcotics conspiracy.
- After the goals and targets are defined, information and data gathering will continue through search warrants, electronic surveillance, grand jury testimony, and bank records. At the outset of the investigation, the prosecutor should consult with his or her office's Litigation Support Specialist and Intelligence Analyst to develop a process for

organizing the evidence into a litigation friendly format (Sanction II) for use at trial.

E. Witness issues

Witnesses drive an enterprise prosecution because they best understand the enterprise and can testify about its structure and activities. These witnesses may include the gangster's current and former girlfriends, wives, neighbors, and victims, as well as current and former gang members and rival gang members.

- Developing the witness base.

Enterprise witnesses can lay out the history of the criminal group and provide the structure needed to substantiate the RICO charges. If the AUSA intends to charge a target under RICO, CCE, or a long-term conspiracy he or she will need several good "inside" witnesses to testify about the history and structure of the enterprise. The investigatory strategy must be aimed at developing these types of witnesses. The enterprise case will fail without them.

Event witnesses are knowledgeable about specific crimes or events relevant to the investigation. AUSAs need local police officers and detectives to maintain contact with the witnesses and to arrange witness interviews. In a comprehensive gang case with many violent racketeering acts, there could easily be 100 to 200 witnesses. Therefore, delegating witness responsibilities is particularly important.

There is often overlap between the two types of witnesses, particularly with cooperating gang members. There must be independent corroboration of the information provided by all gang witnesses, especially those connected to the enterprise. Corroboration can be as seemingly insignificant as a telephone record proving that a defendant did indeed contact the witness on a particular day.

- Special concerns.

Some potential witnesses will have "issues" or "baggage" and often they have special concerns. They may need relocation for their safety or counseling for substance abuse, and many will have criminal histories. A victim-witness may need grief counseling or access to crime victims' funds to repair the harm caused by the gang. Each USAO has Victim-Witness Specialists who can assist in identifying programs

that address many of these issues. The specialist can also assist with the determination of whether the witness qualifies for Emergency Witness Assistance Program funds used for relocating witnesses and can help locate other local and federal programs and grants devoted to victim-witnesses.

Jail separation and safety issues also frequently arise for custodial witnesses in gang prosecutions. Contact the United States Marshals Service or the Bureau of Prisons, depending on the custodial status of the witness, and alert the agency to any dangers for the witnesses. Should the witness develop medical problems while in custody, inform the agency. There is nothing wrong with assuring that the witness receives proper treatment or needed medication so long as precise logs of every perceived benefit are kept. This information can subsequently be provided to the defense in accordance with the Brady/Giglio obligations.

If the witness faces charges or is under investigation, resolve the charges with a plea agreement that takes into account all of the witness' criminal conduct, especially if the witness committed the crime or crimes as a member of the enterprise. Make sure that the witness and his or her lawyer understand the consequences of withholding information about the witness' involvement in the gang. Put everything in writing and make no promises outside of the four corners of the plea or cooperation agreement. If the witness engaged in a capital crime, the AUSA is required to consult with the Criminal Division's Capital Crimes Unit at Main Justice before finalizing any plea.

F. Broaden horizons: Think like an investigator

Gang investigators remark that to be successful they need to "think like a gang member." Prosecutors should heed this advice. Facts that may not seem relevant in a more routine conspiracy case may be highly probative to an enterprise theory investigation. The prosecutor must broaden his or her scope of vision and think like a gang investigator to successfully use the enterprise theory. Here are three suggestions of places to look for enterprise evidence.

- Use the prison system.

When bank robber Willie Sutton was asked why he robbed banks, he replied: "Because that's where the money is." See Federal Bureau of Investigation, Famous Cases, Willie Sutton, available at <http://www.fbi.gov/libref/historic/famcases/sutton/sutton.htm>. Where should the AUSA look for evidence when he or she is pursuing an enterprise theory case against an organized gang? Look "where the gangsters are." Look into the prisons, because that is often where the leadership element of the enterprise is found. It is in prison where gangsters are most organized, and, in many ways, where they are most vulnerable to investigation. Prison may be the end of the line for gangsters, but it can be a starting point for a gang investigation.

Certain gangs were "born" in the prison system, but use their influence in prison to wield power on the street. For example, the Mexican Mafia, also known as "the Eme," originally formed in prison to provide protection for Hispanic inmates from other organized prison gangs. Over time, the Mexican Mafia grew in size and power to become one of the most powerful and violent prison gangs in the Southwest. The gang exerted control not only over the prison population, but also over its members and associates outside the prison. The Mexican Mafia's membership consists of Hispanic gang members from various Southern California street gangs who, once incarcerated, abandon local rivalries and band together under the umbrella of the Eme.

"Members," or "brothers," of the Eme exert control over local street gangs outside of prison through trusted "right-hand" men known as "shot callers." The shot callers are members of local street gangs, but they assert authority and control over their particular gangs at the behest of a Mexican Mafia member. Below the shot callers are "soldiers," who are essentially local gangsters aspiring to become Mexican Mafia members. Soldiers are required to "put in work," which means that they must commit a variety of illegal activities for the benefit of the Mexican Mafia to earn the trust of a brother. As an organization, this enterprise can be very formidable.

The organization of a gang like the Eme, however, can also work to the advantage of the prosecutor. The strict discipline of the gang leaves significant trace evidence in its path. The investigative team can gather intelligence from many sources in prison. AUSAs should interview

prison gang investigators who can provide a wealth of information. The team will have to sift through the intelligence, but there will be gold among the dross. For example, gang investigators may have prison videos of the target gang congregating in prison or initiating a prison assault.

Do not rely only on gang experts. Seek enterprise evidence in the communications between incarcerated gangsters and their contacts on the outside. Cover all channels of communication between prison and the street, including telephone calls, mailings, and visitor logs. The gangsters have to communicate with the outside world to exert influence on the street, and each channel of communication can yield evidence. Intercept the letters, birthday cards, and other notes sent to and from prison by the targets of the investigation. Collect the prison phone calls (where recorded) made between targets. Gangsters are aware that their phone calls are being recorded, but they may have to let slip valuable nuggets of information in order to get their message to the street. Additionally, visitor logs can identify trusted couriers of information too sensitive to be relayed on the phone.

Finally, conduct interviews of gang "dropouts" in prison. Every broad-based gang has dropouts in prison—gang members who have either voluntarily or involuntarily resigned from participation in the gang. Not every dropout will contribute to the investigation. The AUSA will have to sift the relevant from the immaterial, and the accurate from the fanciful, but this is how to build an enterprise case. Similarly, key gang members are often incarcerated on local charges. Consider approaching the right target at the right time. For example, pull court bail records and find out who the gang's "boss" failed to bail out. That person is a potential cooperator. If the AUSA has confidential sources, inquire about disputes among different gang members. This could be helpful in deciding who to approach and when.

For all prison interviews, be conscious of the holding in *Massiah v. United States*, 377 U.S. 201 (1964). The Sixth Amendment right to counsel is violated when the government deliberately elicits incriminating statements from a defendant after he has been indicted and in the absence of his counsel. *Id.* at 206. Be sure to review *Massiah* and its progeny in the respective circuit *before* conducting prison interviews, and maintain a clear

line between gathering historical evidence and actively pursuing intelligence in prison.

- Look for association evidence.

Gangs members associate. The more organized the gang, the more disciplined the association. Organized criminal gangs operate like businesses or organizations, where rank and respect within the pecking order are essential. Experienced investigators know that "respect, power, and money" are the driving forces behind organized crime. Thus, when investigating organized gangs, the prosecutor should look for evidence of the organization's rules and regulations, which often include a ban on cooperation with law enforcement. AUSAs should also search for evidence of the gang's methods and means of enforcing those rules. For example, breaches of any of the rules can result in a "green light," which is authorization to assault or even kill another gang member, depending on the nature of the violation. For Hispanic gangs, such "green light" assaults or murders are usually carried out by local gang members who execute the order to curry favor with the leaders or shot callers of the gang or Mexican Mafia.

AUSAs need to collect "association" evidence such as photographs and mementos of gang membership. Hard-core gang members routinely take photos of themselves and their colleagues "in association," flashing signs, wearing colors, and displaying tattoos. This is as true of motorcycle gangs like Hells Angels and the Mongols as it is of Hispanic street gangs like 18th Street or MS-13. The gang members routinely keep this type evidence as mementos for themselves or, more importantly, as proof of their bona fides both to members of the gang and to rivals. Organized gangs have a pecking order or chain of command, however informal, and the chain of command is always subject to change. Thus, each individual gang member who worked hard to make his way up the ladder needs to keep proof of his progress and association within the gang. A personal letter from the gang's shot caller, or a cherished photo depicting all of the "veteranos" of a gang is just as important to the hard-core gang member as a law school diploma or a "handshake" photo with the United States Attorney is to the federal prosecutor. It is very important to find the association evidence.

- Follow the money.

Where there is smoke, there is fire, and where there is money, there are records of it. Thus, if the gang makes any profits from its criminal activity, there will be some record of that activity. Gangsters do this to protect their own interests. If they are collecting money on behalf of the enterprise, they have to keep some form of record to prove that they are not "shorting" the enterprise. The records are a form of insurance for the rest of the gang. There is no honor among thieves and there is even less honor among gangsters who are making money from their illegal activities. Wherever there is money, there will be a dispute over shares.

California's Hispanic gangs control local drug distribution by levying a "tax" or "rent" on neighborhood drug dealers, who agree to make such payments in exchange for the right to deal safely in a particular gang's territory. The local gangs, in turn, will remit a portion of those collected "taxes" to the Mexican Mafia to guarantee the safety of any of its incarcerated gang members.

To make this racketeering enterprise function, the gangsters have to keep track of the payments. One method used is to mark the individual bills or stacks of bills with some form of source notation. Look for money orders, wire transfers, and large cash receipts.

Such records provide valuable *documentary* evidence of the existence of the enterprise for the prosecutor and, when he or she collects it, there is no need for a dirty witness to introduce or discuss it. Any documentary evidence that the AUSA can introduce through witnesses who are neither gangsters nor criminals is worth its weight in gold.

G. Do not forget asset forfeiture

Finally, do not just follow the money. Seize it and forfeit it. When indicting a case, be sure to utilize all available forfeiture statutes in the pleadings, notably 21 U.S.C. § 853 (drug forfeitures) and 18 U.S.C. § 982 (money laundering), as appropriate. RICO's forfeiture statute, 18 U.S.C. § 1963, is particularly well-suited for dismantling highly-structured or more sophisticated criminal enterprises that may have accumulated varied valuable assets or that have used businesses and bank accounts to facilitate

operations. Keep potential forfeitures in mind during the course of the investigation. For example, a motorcycle gang might own a bar or "clubhouse" which warrants forfeiture, while other gang "assets" do not (real properties contaminated by methamphetamine labs). Street-level drug gangs tend to spend their proceeds quickly and generally do not acquire substantial assets. However, for gang leaders who do profit, forfeiture is another legal means to "hit them where it hurts."

If forfeiture does not yield a specific valuable asset, the forfeiture of a sum equal to the amount of the gang's criminal proceeds not only has symbolic value, but can also sometimes be collected through the forfeiture of untainted "substitute assets." Consult with the local forfeiture AUSA, and/or the Criminal Division's Asset Forfeiture and Money Laundering Section (AFMLS) or OCRS regarding forfeiture early in the investigation, and as often as necessary, to insure that forfeiture is fully integrated into the efforts to dismantle the gang.

IV. Conclusion

Enterprise theory prosecutions target criminals in their collective groups, rather than focusing on isolated episodes of their criminal conduct. As a result, although the enterprise theory of prosecution is not appropriate for every gang case, it should be a part of any comprehensive anti-gang strategy. An enterprise theory case provides a full picture of a street gang's criminal activities and the resulting punishment and deterrence can prove more extensive and effective than stand-alone cases. Enterprise theory prosecutions can also impact entire communities, rather than individuals. For example, according to local officials, the RICO prosecution of twenty-two Rolling 60s Crips gang members in North Las Vegas, Nevada, reduced the crime rate in the area by as much as 31 percent over a two-year period. In short, enterprise theory cases are certainly resource-intensive, but if the goal is to dismantle an organized street gang, it is wise to consider the option.❖

ABOUT THE AUTHORS

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Specialized Tools for Use in Gang Cases

Since the number of criminal investigations initiated by federal law enforcement targeting violent, organized gangs, as well as the number of gang-related indictments obtained by United States Attorneys' offices and the Criminal Division, continues to increase, prosecutors may find that the use of specialized law enforcement tools will enhance

the quality of these oftentimes difficult and complex prosecutions. Some of these "tools," including ATF's unique technology and experience, the Special Operations Division's national and international expertise, and the Cybercrime Lab's one-of-a-kind technological expertise, are discussed in the following three articles.

ATF's Unique Technology, Investigative Experience, and Statutory Authority, in Gang Prosecutions

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I. Introduction

Project Safe Neighborhoods (PSN) challenges federal prosecutors with the difficult task of defining their community's unique crime problem. Even more complex is the challenge of determining how

criminal gangs contribute to this dilemma. To citizens who live in fear, the worst gang in America is the one that is in their neighborhood—the one trying to recruit their child at school, the one selling drugs on their block, the one whose stray bullet ended the life of their neighbor's child.

Gangs are using increasingly sophisticated firearms and weapons and are frequently involved in drug trafficking crimes. PSN task forces report that gangs are a key element of their gun violence problem and, in many areas, the primary problem. The strategy used by a number of districts to reduce gang violence is to use the PSN team infrastructure to focus on the entire street gang and bring charges under the Racketeer Influenced Corrupt Organization Act, 18 U.S.C. §§ 1961-68, and drug conspiracy violations.

The hallmarks of the strategy are as follows.

- The partnerships between federal, state, and local enforcement agencies led by the U.S. Attorney's office in each judicial district.

- The implementation of a focused strategic plan that allows each participating agency to lend its expertise to solve the problem.
- The training that provides officers, special agents, and prosecutors with the knowledge and skills they need to successfully take violent offenders and organizations off the streets.
- The accountability that is demonstrated in terms of safer neighborhoods.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has extensive investigative experience and statutory authority over the "tools of the trade" (firearms) that make gang members a threat to public safety. ATF has instituted a multifaceted approach to combat the problem of gangs in America. This strategy recognizes that the gang problem is vastly different from one community to another. Yet, no single initiative, investigative technique, statute, or preventive measure will always be the most effective.

Gangs in one community may be organized into a large criminal conspiracy. In another community, the gang problem can take the shape of a loose-knit neighborhood group. Both communities have serious problems, and ATF—in partnership with local police and U.S. Attorneys' offices nationwide—has developed strategies to solve each community's specific problems.

Accurate and timely intelligence is the foundation for removing the worst offenders from the larger, more organized criminal groups. ATF uses unique programs and assets under PSN to disrupt the conspiracies of gangs that rely on complex organizational structures to further their criminal ambitions.

II. Putting the pieces of the puzzle together: Intelligence and analytical resources

A. National Integrated Ballistic Information Network

Through the use of ATF's National Integrated Ballistic Information Network (NIBIN), law enforcement agencies have a tool to establish connections in gang-related shootings to other gang-related criminal activity through the recovery of firearms from gang members and associates. The network gives agencies the ability

to expeditiously compare shell casings or bullet fragments recovered from separate shootings, through the use of computerized imaging systems, as well as support from forensic examiners. It also allows examiners to compare the unique "signatures" or markings of projectiles fired from recovered firearms to recovered evidence. Every major population center in the United States has access to NIBIN technology.

In Stockton, California, gang-related crimes are rampant, and the local police are diligent about recovering all ballistic evidence found at crime scenes. In one shooting incident, police recovered a 9mm Beretta semiautomatic pistol. Police discovered that the firearm was linked to twenty-six separate crimes, including three homicides, by using NIBIN. Police departments nationwide that make use of NIBIN are seeing real results and, consequently, crimes are being solved.

B. Firearms tracing and crime gun analysis

Firearms tracing is the next step in the investigative process. Tracing is particularly important because it helps law enforcement agencies identify the purchasers of firearms and how firearms are being diverted to the criminal element. From the moment a firearm is manufactured, business records follow its movement through commerce. When firearms are recovered by police, equally detailed records are also created, reflecting when, where, and from whom guns are recovered. Firearms tracing is the conduit through which these two sets of records become interconnected.

Firearms tracing can become a powerful source of intelligence and even evidence, particularly in gang investigations. The tracing process provides important links by examining the purchasing patterns of traffickers to gang members. Prosecutors use this information to prove the structure and hierarchy of a gang.

ATF has a one-of-a-kind firearms tracing infrastructure that is integral in the fight against violent crime. As the only agency authorized under federal law to conduct firearms tracing, ATF's National Tracing Center performs hundreds of thousands of firearms traces each year for international, federal, state, and local law enforcement agencies.

ATF developed E-Trace to expedite the tracing process. E-Trace provides law enforcement agencies with the ability to send trace requests electronically to the National Tracing Center, receive the results, and perform limited analyses on those results securely via the Internet. This is a free service, and there are no software or hardware requirements other than access to the Internet. Currently, more than 2,600 state and local law enforcement partners use this tool.

ATF can detect trafficking patterns related to the sources and types of crime guns, both within state boundaries and across jurisdictions. Crime gun tracing is the first step in combating illegal firearms trafficking. Information developed as a result of the trace process essentially defines the nature of illegal trafficking within any given region.

Comprehensive firearms tracing not only provides intelligence regarding the sources of crime guns recovered from gang members, it also assists local officers and federal prosecutors to identify, target, and investigate straw purchasers and the traffickers who employ them. This provides PSN task forces with the ability to perfect gang cases and stop the future supply of illicit firearms to gang members.

Continuing analysis of the trace data allows law enforcement to constantly reevaluate changes in purchase patterns. Data mining by ATF's Violent Crime Analysis Branch can determine specific trends and identify potential targets. The analysis can also include crime-gun mapping, which ties the locations of crime guns recovered in one jurisdiction to the guns' specific source areas. These analyses are powerful graphic evidence of the interstate nature of federal firearms violations and conspiracy charges at the time of trial.

In addition to the analytical services provided by the Violent Crime Analysis Branch, ATF has regional crime gun centers in New York, Washington, Chicago, and Los Angeles that provide support to federal, state, and local law enforcement agencies by disseminating intelligence information on local gang concentrations and criminal trends.

III. Sharing knowledge and best practices: Training and information sharing

ATF provides a three-day training course for federal, state, and local law enforcement officers and prosecutors in conjunction with PSN. The course, developed and delivered in partnership with the Department of Justice (Department), the International Association of Chiefs of Police, the National District Attorneys' Association, and the National Crime Prevention Council, consists of strategy planning sessions, training in investigating and prosecuting firearms violators, and instruction in firearms identification and tracing. ATF has trained more than 15,000 law enforcement officers using these programs.

The training is directly relevant to the suppression of violent gangs. It focuses on providing the knowledge, skills, and abilities officers need to more effectively detect firearms violators and to stop the diversion of firearms to criminals.

In addition to the national training program, local ATF field offices provide informal training across the country, partnering with U.S. Attorneys' offices and local police. ATF provides blocks of instruction on firearms identification and training, gang trends, and related street-level enforcement topics.

IV. Rooting out the traffickers: Enforcement and industry oversight

Gang members are often involved in firearms trafficking, both in furtherance of drug trafficking activities and by providing weapons to commit violent crimes. ATF has responded to the problem with a comprehensive national firearms trafficking effort. ATF defines firearms trafficking as the illegal diversion of firearms out of lawful commerce and into the hands of criminals, prohibited persons, and unsupervised juveniles.

Through its illegal firearms trafficking interdiction efforts, ATF reduces gang violence levels by decreasing the availability of illicit secondary market firearms and by recommending prosecution for those who illegally supply firearms to these organizations. U.S. Attorneys' offices aggressively pursue prosecution of these offenders, including unscrupulous licensed dealers. In order to fight violent crime, it is crucial

that both the illegal users and suppliers of firearms are prosecuted.

ATF has implemented a streamlined inspection program to identify and examine the records of federal firearms licensees who pose the most significant threat.

- Dealers most often used by traffickers.
- Dealers in violation of the law.
- Dealers responsible for the criminal diversion of firearms.

The program helps identify purchasers of firearms who illegally divert firearms to gang members or individuals who have ties to gangs, as well as licensees who disregard the firearms laws and regulations and traffic weapons to criminals. The program uses investigative techniques tailored to the identification of traffickers. The inspections allow ATF to focus on specific high-risk areas of business operations, which may lead to the discovery of illegal firearms diversion.

ATF's industry oversight also includes an outreach and education element. In partnership with the National Shooting Sports Foundation, ATF has developed the "Don't Lie for The Other Guy" campaign to educate the firearms industry regarding schemes employed by traffickers and to enlist the industry's aid in preventing the diversion of firearms to criminals. For more information on the campaign, see <http://www.dontlie.org>.

V. Taking it to the streets: The Violent Crime Impact Teams

The final, but by no means least important, piece of ATF's investigative strategy is the implementation of Violent Crime Impact Teams (VCITs). VCITs, which are part of the PSN initiative, target specific violence-infested areas in cities with high crime rates because gang members tend to prey upon certain neighborhoods. The greatest immediate impact on making these communities safer is accomplished by focusing law enforcement efforts on limited geographical areas.

In June 2004, in collaboration with the Office of the Deputy Attorney General, ATF and the Department announced the deployment of the first VCITs in fifteen cities. The VCIT initiative, which has since been expanded to other high-crime cities, is an ATF-led initiative that leverages

the aforementioned innovative technology and analytical investigative resources.

The initiative brings together the resources of federal, state, and local law enforcement agencies—as well as federal, state, and local prosecutors—to identify, target, disrupt, arrest, and prosecute the "worst of the worst" criminals in specific areas.

Partnerships with federal agencies, as well as state and local enforcement agencies, are essential to the VCIT effort. The VCITs target hot spots for firearms-related homicides, partnering federal agents with local officers during the peak hours when homicides with guns are committed. The strategy has helped lower the number of homicides in many of the targeted areas at a rate that exceeds the national average.

Gangs are linked to the homicide problem in many areas, and VCIT has proven itself to be a unique and collaborative strategy in preventing gang-related violence. VCIT, through its ability to develop effective and reliable confidential informants, has also disrupted home invasion crews that adversely impact communities. It is no surprise that through these initiatives, ATF Special Agents have recommended more than 5,000 gang members and their associates for prosecution during the past five years.

VI. Conclusion

All these methods enable ATF and other law enforcement agencies to "connect the dots" between violent crimes, and allow them to concentrate their efforts on the most serious crime problems in communities. Through collaborative partnerships, ATF and participating agencies target the most violent gang members for violations of federal firearms laws. Offenders are recommended for stiff mandatory sentences, especially when these weapons are linked to drug trafficking activities or other federal crimes of violence. Key violent offenders are immediately taken off the street, gangs are impeded, and future violence is prevented.❖

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The Special Operations Division's National and International Expertise

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The multiagency Special Operations Division (SOD) can enhance the quality of difficult and complex gang prosecutions. The division was established in 1992 as a partnership between the Criminal Division of the Department of Justice (Department) and the Drug Enforcement Administration (DEA). The SOD has grown to include the Federal Bureau of Investigation (FBI), Immigration and Customs Enforcement (ICE), the Internal Revenue Service (IRS), the U.S. Marshals Service (USMS), and several other law

enforcement and investigative agencies. Hosted by DEA and located in the Washington, D.C. area, SOD serves as a coordination and analytical center for electronic surveillance information related to national and global narcotics trafficking and money laundering. SOD is staffed by experienced agents, analysts, Criminal Division prosecutors, and support personnel. Although SOD is not oriented specifically toward information concerning organized street gangs, narcotics trafficking and related offenses comprise a significant portion of the criminal activity conducted by those criminal groups. In this context, the coordination and analysis functions of SOD can be highly useful to agents and prosecutors using sophisticated law enforcement tactics to attack organized criminal street gangs.

The agents and prosecutors at SOD primarily focus on coordinating multidistrict narcotics investigations and prosecutions that frequently have international reach. Components of these cases are often worked in the field by several

different federal agencies, with frequent involvement of state and local law enforcement as well. In these large and many-faceted investigations, SOD serves as the center point of the operation. The division is tasked to balance, coordinate, and manage investigative actions that are planned and executed by multiple special agents and prosecutors in the field. Coordinating the steps of special agents and prosecutors who are targeting the cell of the network operating in their respective districts enables SOD to ensure that one district does not take actions that will undermine operations in the other districts. This approach often results in coordinated multidistrict operations that maximize the disruptive impact law enforcement has on the entire targeted criminal organization, from command-and-control elements to mid-level managers to street-level criminals.

This approach can be equally effective in the prosecution of multidistrict gang cases where portions of the gang's criminal activities are carried out by different cells in separate federal judicial districts. In a typical narcotics-distribution conspiracy, it is frequently the case that law enforcement authorities in District A will plan to take investigative steps against their gang targets without consultation or coordination with Districts B, C, D, and E. The efforts of other law enforcement authorities against their related gang targets in these secondary districts (Districts B through E) might be compromised or undermined by the actions planned in District A. Agents and prosecutors should coordinate cases through SOD in order to avoid conflicts and coordinate with related active cases in other districts. This will ensure that the collective efforts of agents and prosecutors in all districts have the maximum impact of disrupting and dismantling the targeted criminal gang.

In addition, coordinating with SOD can assist the prosecutor in understanding the true multidistrict nature of the gang and its intricate criminal activities. The gang may be involved in many aspects of crime, included, but not limited to the following.

- Narcotics and firearms trafficking.
- Money laundering.
- Financial structuring.
- Tax evasion.
- Other offense conduct.

Receiving additional information and instruction from SOD about the true scope of the domestic activity helps the federal prosecutor in debriefing and deploying confidential sources, questioning cooperating defendants and other government witnesses, and cross-examining defense witnesses in pretrial hearings and at trial. This additional information can also help agents and prosecutors plan more effective and timely enforcement actions, including the use of search warrants and electronic surveillance.

Moreover, SOD coordination can assist the prosecutor in identifying any international reach of the gang's criminal activities. Much of the gang activity that occurs in the United States is limited to domestic criminal activity, which has no nexus to gang members or organizations in other countries. Limited anecdotal reporting suggests, however, that gang members or gang organizations that operate within the United States may be engaging in transnational criminal activity, meaning their illegal activity or communication extends beyond national boundaries. Gang members may be involved in a variety of crimes with an international nexus, such as those listed below.

- Smuggling drugs, arms, or aliens over the U.S. border from abroad.
- Smuggling illicitly-gained U.S. currency to gang members in foreign countries.
- Communicating with gang members in other countries for illegal purposes, such as to receive directives from foreign organizational leaders to conduct criminal activity within the United States.

Learning more about the transnational aspects of a targeted gang's criminal activities also helps the prosecutor establish critical partnerships with foreign law enforcement and prosecution counterparts. This contact can facilitate the gathering of useful gang-related information or intelligence. Not only do these partnerships benefit the U.S. prosecutors' efforts to successfully disrupt criminal gang activity domestically, they aid foreign law enforcement partners in dismantling these violent criminal enterprises on an international level. Given that many deported gang members return to the United States only to commit additional crimes, disruption and dismantlement of gangs abroad can have a positive impact on the Department's anti-gang efforts. The Criminal Division's Office of

International Affairs (OIA) can advise and assist prosecutors in securing the return of fugitives from abroad for prosecution in the United States. OIA can also help the AUSA obtain evidence, witnesses, and other assistance needed for the successful prevention, investigation, and prosecution of crimes in the United States. OIA Attorneys can be reached at (202) 514-0000.

SOD can give agents and prosecutors a deeper understanding of a targeted gang's criminal deeds and schemes by illuminating the big picture that shows the multidistrict and international aspects of the gang's activities. Moreover, coordinating through SOD will most assuredly highlight the need for interdistrict and international cooperation in the battle against organized criminal gangs. ❖

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Cyber-Technology in Gang Cases

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I. Introduction

Gangs use technology to coordinate activities, recruit new members, and commit crimes. New technology enables them to work faster and more efficiently, which poses novel challenges for law enforcement. But as gangs use technology more and in new ways, it also provides law enforcement with new sources of leads and evidence. Every cell phone text message, Web site post, or e-mail creates an electronic trail that can be invaluable to prosecutors.

This article examines some of the ways gangs use technology and the evidence they create in the process. It also covers what to look for and where to find it. Finally, the article touches on some promising ways law enforcement can use technology in their gang reduction efforts.

The Computer Crime and Intellectual Property Section (CCIPS) provides guidance on the legal issues concerning computers and on-line investigations. The section's new Cybercrime Lab can provide further technical and practical guidance. Contact the section at (202) 514-1026, or at www.cybercrime.gov.

II. Technology used by gangs

Portable electronic devices (PEDs) are one common technology gangs use. Distinctions among cell phones, personal digital assistants, and laptops have blurred. Many of these devices now connect to the Internet, in addition to their simpler functions. An investigative team can no longer treat a cell phone as a portable version of a regular phone and expect to obtain all the important evidence from call records or a wiretap. This fact makes the investigation more complex, but it also increases the types of evidence available to law enforcement. For example, many PEDs store information on the device, so a forensic analysis can recover additional valuable information. The forensic analysis must be conducted as soon as possible because some devices lose all information if the batteries die.

In the same way that PEDs are varied in their features and designs, so too are the carriers who provide communications to and from these devices. Service providers differ from one another in the architectures they use and the records they keep. Consequently, the information they are able to retrieve and supply to law enforcement varies widely. In an investigation, the safest course of action is to question the company about its capabilities, considering the opportunities the available information may create.

Despite these difficulties, there are still common elements in PED services, and an understanding of these technologies and processes is useful.

A. Push-to-talk or walkie-talkie services

In addition to ordinary telephone calls, many cell phones can be used to make push-to-talk (PTT) or walkie-talkie calls. This service allows immediate communication—two gang members can talk at the push of a button without dialing a telephone number. Some services also allow PTT communication to a group of other phones in a type of instant conference call. These can be attractive attributes for gang members.

Gangs may favor PTT services for another reason. According to the National Gang Threat Assessment, gang members believe that PTT communications are difficult or impossible to trace. *See 2005 Gang Threat Assessment* (NAGIA 2005), 3 available at http://www.nagia.org/PDFs/2005_national_gang_threat_assessment.pdf.

Generally, records for PTT services relate to billing, both in terms of what information is available and how long it is retained. They are often less extensive than ordinary telephone call records. Some services allow a person to manage PTT contacts both on a phone and on a Web site. If contacts are managed on a Web site, they may be more readily available to the service provider.

B. Wireless location information

Since many gang members carry cell phones, obvious questions are: "To what extent *does* a cell phone report physical location?" and, "To what extent *can* a cell phone report physical location?" The legal and technological issues involved are substantial. Nevertheless, a few guideposts will

provide a helpful context for detailed discussions with cell service providers or other agencies of the government.

Although capabilities to provide location information vary among providers, most providers will have certain minimum information. Recently, cell phone companies have begun enhancing their ability to locate a user's cell phone in order to meet Enhanced 911 (E911) requirements. E911 rules require providers to give dispatchers on wireless 911 calls additional location information. Companies are also increasing their ability to locate a user's phone to sell location-based services, such as driving directions.

There are two basic approaches to cell phone location.

- GPS-based. A GPS-equipped phone calculates its latitude and longitude and then communicates that location to the network. This enables a phone to tell the network its location when the user initiates a location-based activity. But, since the activity is initiated on the phone, a company may or may not be able to poll a particular phone for its location.
- Network-based. The network examines information, such as which towers "see" a particular phone and the strength of the signal each tower sees. The network can calculate a phone's general location from this information. Typically, the only requirement is for the phone to be on. Thus, a company is more likely to be able to initiate this search for a phone without user action. In any event, if a phone is turned off or otherwise disabled, it provides no location information.

Location information also generally includes a "confidence measure," or an indication of how precise the company believes the location to be. To put phone location precision in perspective, it is useful for seeing the direction of a target's travel along an interstate highway, but it will not follow a target between rooms in a building.

C. SMS text messaging, instant messaging, and e-mail

PEDs send and receive text communications with several technologies. For years, many cell phones have allowed a form of text messaging between phones called Short Message System (SMS). SMS messages usually do not traverse the

Internet. Since the billing structure for text messages involves little or no information beyond the number of messages transmitted, carriers typically keep few records involving the details of their customers' text messaging.

It is important to remember that communications are sometimes routed via the Internet, or they begin or end on an Internet-connected computer. In those cases, evidence is often available from traditional service providers. As cell phones become more like fully functional computers, they are expanding to offer access to applications such as instant messaging and e-mail. If the cellular network merely provides transmission to the Internet and the many applications available on it, these types of communication will pass through the hands of more than one company. For instance, if a cell phone user sends an e-mail, the cell phone company may pass the communication to a third party e-mail service. The third-party e-mail provider will have more control over the communications and records than the cell phone company. Also, there may be a traditional Internet service provider at the other end of the communication (such as AOL Instant Messenger or Hotmail). These companies generally have their own record retention policies and evidence collection capabilities.

III. Traditional technology

A. Web sites

Gang investigations can also involve the use of traditional computers and the Internet. Gang Web sites are used for recruitment and communication about gangs' activities. *See 2005 Gang Threat Assessment* (NAGIA 2005), 4, available at http://www.nagia.org/PDFs/2005_national_gang_threat_assessment.pdf. Many gang Web sites also have forums for group communication, such as bulletin boards or chat rooms. *Id.*

Many people believe that the Internet provides a layer of anonymity for activity, and some criminal enterprises rely on that perceived obscurity. However, that anonymity can often be pierced with on-line detective work, legal process, or a search.

In order to set up a Web site, the owner of the site must reserve a domain name, for example,

"somegang.com." The registration process usually involves providing a valid payment which can yield important evidence. The process also involves providing organizational and contact information to the registrar. Registrars report the information of their customers to the "who is" database. This information is self-reported and often unverified, so it can be, and often is, false. Nevertheless, it sometimes provides valuable leads.

There are free tools for obtaining this registration information that require little technical knowledge. The tools perform a "who is" lookup and show the information entered for the domain registration. The Web site www.whois.sc also offers a history of changes for "who is" information (registration and a fee are required for extensive lookups). Historical records can be useful because even if someone is careful to give no useful information now, he or she might have been less careful in the past. AUSAs who are interested in learning more can contact a CCIPS duty attorney.

The data can still be useful even if it is fictional. For example, people listing mostly bogus information often use an accurate e-mail address in case someone has legitimate technical questions. An accurate e-mail address is significant in the context of an on-line investigation. If the e-mail provider is in the United States, a subpoena can often yield records with significant evidentiary value. Even false information can have value.

- An alias or nickname can show a connection to an individual.
- The same set of (false) contact information can be used for several Web sites, indicating a connection between them.

Often the servers hosting a Web site possess valuable records of a gang's activity. A gang probably gets this service from a Web hosting company and these companies can provide valuable information.

- The credit card number used to pay for hosting services.
- Statistics and records indicating who administered the site, visited it, or made particular posts.

Any of this information can be a link to the identity of targets.

CCIPS has extensive experience in on-line investigations and is happy to provide guidance or help with all aspects of these processes.

B. Personal web sites

There are many social networking and blogging sites, such as MySpace.com, Xanga.com, FaceBook.com, Friendster.com, and LiveJournal.com. These sites have tens of millions of users and a disproportionate share of them are young adults—a demographic overlapping that of gang members. As use of these sites continues to increase, use by gang members can be expected to increase as well. A linked community can sometimes span across several such sites.

These social networking sites are built on the concept of allowing people to share information about themselves with the world. If any subject in an investigation uses social networking sites, all their personal information has immense investigative potential. Further, the communication and networking aspects of these sites can be even more valuable. Often, a user's page can be linked to friends. In addition to a "friends" section, there is often a list of friends' comments—a chronological record of publicly viewable messages that friends have left this user. Such public information is obtainable with the click of the mouse. Legal process can be used to obtain additional private communications.

Gang members often frequent other types of Web sites to show allegiances, confrontations, and even solicit prostitution. *See 2005 Gang Threat Assessment* (NAGIA 2005), 4 available at http://www.nagia.org/PDFs/2005_national_gang_threat_assessment.pdf. Music production company Web sites are particularly popular among gang members, as are on-line video games. To some extent, gang communication on these sites may be incidental, but members are also increasingly using them as a medium for gang-related communications.

C. Gang member's computer

A gang member's personal computer can provide a wealth of information. Evidence of communications is the most valuable and most likely to be found. Evidence of a crime, such as business records, may be found on a personal computer. A personal computer can also be used to commit a crime, for example, to produce bad

checks or fake identification, or to communicate a threat.

If a gang member's personal computer is seized, qualified personnel should recover and analyze data to avoid the risk of obtaining evidence in contravention of the 4th amendment. It is also essential that prosecutors and agents give computer forensic analysts sufficient information about the computer's owner, the owner's activities, and what evidence is sought. Prosecutors and agents also need to understand how the evidence is found and its context on the computer.

D. E-mail/Web browser

E-mail is one common form of electronic communication. E-mail can be accessed through an e-mail program or a Web-based interface. An investigation usually starts by finding e-mail addresses that a target and his or her associates use, which is useful information itself. The next step is usually to compel e-mail service providers to produce further transaction or content information related to the subject's communications.

Evidence is often easy to find if a target uses an e-mail program like Outlook, because an analyst can find e-mail account information from the program's settings. At this point, the service provider can be compelled to produce the relevant evidence that is justified and required. Users also often store their communications locally on a computer; for example, Outlook files are named with the extension ".pst." Other common mail files to search for are: .dbx (Outlook Express), .snm (Netscape Messenger), and .mbx (Eudora Mail). It is sometimes easiest to open and read a suspect's e-mail using the same program he or she used to create it. Forensic tools also often allow for easier review of mail files. It is important that the review be conducted in a forensic environment, regardless of the tool used, so communications such as a "read-receipt" are not inadvertently sent to a target revealing that e-mail was viewed.

A person usually leaves significant tracks on a computer when using a Web-based e-mail account. Some of this information can be easily viewed on a running computer or a running copy of a seized computer. An average Web browser, such as Internet Explorer running with default settings, keeps excellent records to make the user experience faster and customizable. These records

are also extremely useful for an investigation. Easily viewable records include the list of URLs typed into the address bar, a more comprehensive history of pages visited, browser cache, cookies, and stored passwords. The browser cache is a memory of visited pages that is saved for quick reloading. There are several tools available for examining browser cache, like the free "Offline Cache Explorer." A cookie is a small file sent from a visited Web site to the user's computer for identification. A cookie indicates that a computer visited a particular Web site and may contain additional information.

A little more effort can uncover other places a user's Internet activity is recorded. Windows logs every Web page visited (using Internet Explorer) in files called index.dat. The information in these files can indicate e-mail activity and Web activity in general. Several forensic tools allow an investigator to review the history in an index.dat file, as well as other browser files, such as cached sites visited.

E. Instant messaging

Instant messaging (IM) was created for faster and less formal communication than e-mail. Nearly half of people age eighteen to twenty-seven use IM even more than e-mail. Eulynn Shiu & Amanda Lenhart, *Pew Internet & American Life Project: How Americans Use Instant Messaging* iii (2004), available at http://www.pewinternet.org/pdfs/PIP_Instanmessage_Report.pdf. Gang members will likely increase their use of IM, just as they have increased their use of personal Web pages. The nature and amount of evidence created by instant messaging can vary widely, as do the technical and legal processes involved. In any event, there are still common elements across services that are useful to know. Please consult with CCIPS if questions arise.

IM use can yield information about a target's associates, since most IM services offer the ability to store a list of frequent contacts. This is a window into an otherwise closed network of individuals. Each IM user, including the users on a person's contacts list, is represented by a screen name. This identifier is often the same as user names and e-mail addresses elsewhere. A person's profile is often available to others. A person's on-line status (presence information) is also available to others who add a particular user to a contacts list. While these sources may sound unhelpful,

they often contain personal information, such as plans for the evening or links to other sources of information about the user, such as a user's page on a social networking site. All this data can help investigators piece together a user's real-world identity, associates, and activities.

Most of the major IM programs allow users to log their chats, which saves them directly on the user's computer. In fact, some programs log chats by default. If an IM user's computer is seized, an examiner should determine if logging was enabled and if any chat logs were saved to the computer's hard drive.

The management and examination of chat logs or e-mails recovered from a user's computer, or through some other investigative process, present some special problems. First, chat logs and e-mail often contain overwhelming amounts of information. The program used to generate the communications is often the best tool for managing and searching them. If this isn't effective, the Cybercrime Lab has experience designing and programming solutions to manage and search logs. The analysts in the lab are always available for consultation. Another major challenge in recovering evidence from logs is that proper spelling and grammar are rarely used. Keyword searches are rarely effective because of individual or random spelling variations and even the substitution of numbers for letters. See, e.g., English-to-12-Year-Old-AOLer Translator, <http://ssshotaru.homestead.com/files/aolertranslat.or.html> (last visited Mar. 10, 2005).

F. Business/crime records

In addition to being a means of communication, personal computers also store records of enterprises or businesses and produce tools of crime. This type of use is less common among gangs, but it does occur. According to the National Gang Threat Assessment, "[r]ecent information indicates that gangs are using computers to produce fraudulent checks and counterfeit currency and to develop and maintain databases of gang and drug activity [and] use laptops, personal digital assistants, and personal computers to produce materials and maintain records of their own criminal enterprises." See *2005 Gang Threat Assessment* (NAGIA 2005), 4, available at http://www.nagia.org/PDFs/2005_national_gang_threat_assessment.pdf. Gangs are more involved in drug dealing than

computer-aided check forgery. But if computers are used to commit or facilitate crimes, it usually creates excellent opportunities to recover evidence.

IV. Law enforcement resources

National networks and databases enable a coordinated law enforcement response to gangs. Coordination is valuable to any broad law enforcement initiative, but it is particularly valuable with gang activity since gangs tend to consist of repeat offenders and gangs can be widely dispersed networks. The Regional Information Sharing Systems network (RISSNET) is a national network of six regional systems providing information-sharing in areas like gang activity, terrorism, and drug trafficking. RISSNET also provides analysis and other assistance with gang investigations. It was originally a state and local effort, but now includes national law enforcement. See the RISSNET Web site at www.rissinfo.com.

The FBI's Violent Gang and Terrorist Organization File (VGTOF) is another national system. VGTOF is a database that includes information on people associated with gang and terrorist activity. It is a component of the National Crime Information Center in the FBI's Criminal Justice Information Services Division. VGTOF is used by national, state, and local law enforcement.

These information-sharing programs have great potential, but face significant obstacles. Many offices involved in gang investigations have stand-alone databases or programs that cannot talk to the national networks, and it is not always feasible to upgrade or replace them. The problem is magnified when new information becomes available. If an office uses both a stand-alone system and a national network, the office must determine which system gets the new data first, and often the decision is the stand-alone system. Many offices can and do contribute to the national systems, and though the systems are not complete, they are a valuable resource.

As computers and the Internet take a more central role in everyone's life, it becomes even more essential for prosecutors to be familiar with them. A case will progress more quickly if knowledgeable investigators and prosecutors are involved in the initial investigation. The investigative team must also give the technical analysts meaningful guidance so they can work more efficiently.

The attorneys and technologists at CCIPS are ready and willing to help AUSAs with technical issues in the cases. Additionally, CCIPS encourages AUSAs to attend the annual "Basic Cybercrime and Computer-Based Evidence" course at the National Advocacy Center. ❖

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Victim and Witness Challenges in Gang Prosecutions

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I. Introduction

Some of the biggest challenges in dismantling organized criminal activity involve finding, working with, and securing the victims of, and witnesses to, crimes. This was the reality in the past when we were battling the Mafia, and it continues to be true today as we take on organized gangs. The Federal Witness Security Program (WSP) came into existence specifically to secure witnesses testifying against the Mafia, and it has been an enormously successful tool. Now, with the prominence of violent street gangs, that tool and others, such as the Emergency Witness Assistance Program (EWAP), are useful in meeting the challenges that confront prosecutors. This article will identify some of the witness security and other victim/witness challenges that prosecutors, law enforcement investigators, and United States Attorneys' staff have faced in recent successful prosecutions against violent gangs. It will also provide some general guidance and advice on using the tools available to address those issues. Some of the most useful techniques and tools remain quite sensitive, so feel free to contact the authors and ask for more detailed information and guidance.

A recent criminal prosecution of four members of the Mara Salvatrucha (MS-13) gang in the Eastern District of Virginia illustrates many of these challenges and suggests some possible solutions. Brenda Paz was a member of MS-13 and was sixteen years old when she first began cooperating with law enforcement. Brenda Paz was emancipated by the state and was placed into a safe house by law enforcement. She was later transferred to the WSP. She became pregnant and unhappy with the isolation and restrictions of the WSP. Eventually, she elected to leave the

program and return to the gang. Three weeks later her corpse was discovered adjacent to the Shenandoah River in Virginia. Her throat was severed and she had been stabbed in the chest thirteen times.

II. Who are the witnesses in gang prosecutions?

A. Cooperators

A frequent strategy in gang cases is the use of cooperators from inside the gang to build the case. The term "cooperators" refers to members of the same gang who have pleaded guilty and have agreed to cooperate with the government. These members are often among the most knowledgeable witnesses available to the government. Cooperators can explain the rules and structure of the gang and the terminology used by the members. Working with cooperators and others involved in the criminal subculture presents a host of issues and challenges. One of the most significant challenges is to keep cooperators out of harm's way, and sometimes the challenge is to keep him or her alive. In addition, prosecutors must deal with the cooperator's criminal history and motivation, given his or her sentencing exposure. Another challenge is that these witnesses are often illegal immigrants.

The Brenda Paz murder would not have been solved without the use of this class of witness. Witnesses are reluctant to cooperate, even under the best of circumstances, against the more violent street gangs. Few individuals come forward voluntarily with information when an investigation begins with the violent murder of a federal witness. Frequently, law enforcement's first step is to make an aggressive effort to enforce the narcotics, firearms, and immigration laws against gang members and attempt to obtain intelligence from those arrested. If faced with deportation, many otherwise reluctant cooperators come forward. The prosecutor must then address the approaching deportation of what may be the only witnesses. It is essential that good communication be maintained between those

working with the witnesses and the U.S. Immigration and Customs Enforcement (ICE) officials.

B. Girlfriends

Almost all of these violent street gangs are composed of young men. Very few young women are permitted to join these gangs. Girlfriends of male gang members, however, are sources of information about gang activities. Apparently recognizing this possibility, MS-13 does not permit girlfriends to be present during meetings and does not discuss gang business in their presence. This class of witness generally has some limited information, which is of varying utility. Given their lack of culpability, they most often can be used to corroborate the more criminally-involved cooperating witness. The girlfriends are increasingly middle school dropouts, frequently on juvenile probation for petty offenses (although this is a plus because it greatly assists in tracking the witness and ensures she is watched), and sometimes have multiple children. They are extremely difficult to place into any witness security program, particularly if they lack sole custody of their children or the children's fathers have, or want visitation rights (and the fathers are often gang members who cannot be told of the mother's cooperation).

Often these witness groups are interconnected. For example, one MS-13 member was told that his girlfriend would be the next murder victim if she cooperated with authorities. He sent her home to her mother, who did not live in the area, for safety, and he later joined them. When he was detained later at the local immigration office where he went to obtain a replacement green card (because of an intervening criminal conviction), he began cooperating with law enforcement to ensure his girlfriend's safety. His girlfriend also came forward and told law enforcement what she knew. Both witnesses were very helpful and directed the investigation in the early stages.

C. Rival gang members

Victims who belong to other gangs are sometimes good sources of information. This witness class is often a challenge because these witnesses do not want to use law enforcement to address their ongoing disputes with a rival gang, preferring to deal with these problems themselves.

Under these circumstances, convincing them to step to the sideline is half the battle.

D. Community members

Community members who unwittingly become involved, receive information, or are victimized may also be witnesses. "Clean" witnesses often have very limited information. If they can detail tattoos, weapons, or number of involved participants this information anchors the case as it goes forward. In the Brenda Paz case, there were no such witnesses, other than hotel clerks who could corroborate dates various guests registered. The "guests" were often gang members' girlfriends who provided hotel clerks with driver's licenses as identification when registering for a room on behalf of the gang member. (The girlfriends were used to register for the room because they had a clean driving record and no outstanding warrants for their arrest.)

III. Types of challenges

A. Fear

The number one concern of most government witnesses is fear. Victims and witnesses, in many types of cases, are naturally concerned about their safety while they participate in the criminal justice process. In prosecutions against violent gangs, however, the intimidation factor is multiplied many times, and is a serious impediment to investigating gang-related crime and bringing those criminal cases to trial. Gangs can hold entire neighborhoods and/or communities in a grip of terror, which intimidates anyone from coming forward to provide information.

Safety of victims and witnesses is a primary concern to law enforcement and prosecutors alike. The first right guaranteed victims under the recently-enacted Crime Victims' Rights Act (CVRA), Pub. L. No. 108-405, 118 Stat. 2260 (2004), codified at 18 U.S.C. § 3771, is the right "to be reasonably protected from the accused." 18 U.S.C. § 3771(a)(1). As recounted by the CVRA's Senate sponsor in a subsequent law review article:

The placement of this right as the first right is quite deliberate. Senator Feinstein thought the right so important that she directed during the drafting that it be moved from paragraph 2 of the list of rights in the [previous victims' bill of rights] to paragraph 1 of the new law. This

placement reinforces the principle that government's first and foremost obligation to its citizens is to protect them -- especially those who already have been victims of a crime.

Jon Kyl, Steven J. Twist, & Stephen Higgins, *On the Wings of their Angels: The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act*, 9 LEWIS & CLARK L. REV. 581, 595 (Fall 2005). Of course, safety cannot always be guaranteed. The Attorney General Guidelines for Victim and Witness Assistance advise that "[w]here necessary, prosecutors should inform the court of the threat level, risk, and resources available to create a reasonable plan to promote the safety of victims and witnesses." AG Guidelines Art. IV.B.2.a. The Guidelines further encourage the use of pretrial detention, protective orders, the EWAP, the WSP, and state and local resources to promote the safety of victims and witnesses.

Intimidation can take many forms. Overt threats include assaults and shootings, verbal threats to kill, and murder-for-hire (placing a "hit" on a witness). The investigation cannot move forward until this type of threat is forcefully addressed. The targets must be detained, either through a criminal or immigration charge. The staff of the detention facilities must be informed of the threat presented by those they house. The communications with the detainees must be monitored to ensure threats are not coming from inside the jails. An aggressive response by the government serves notice that witness intimidation will be prosecuted immediately and vigorously. This response also lets witnesses know that they are not alone.

Threats can also be more subtle. Thus, gestures and vague statements can be understood as explicit threats by the witness. EWAP allows services to be provided where there is a perceived threat by the witness—an explicit threat is not required.

During the secretive grand jury investigation, the government has an opportunity to identify and address potential concerns before the criminal prosecution becomes public knowledge. Defendants detained on unrelated narcotics, weapons, and immigration charges likely do not realize the scope of the government's investigation and the depth of the government's case. Similarly, they probably do not realize how many law

enforcement agencies are working together because they have never been exposed to the concerted effort these investigations demand. In appropriate cases, prosecutors should consider seeking permission from the court to delay identifying witnesses whose safety is threatened. In 1994, Congress amended 18 U.S.C. § 3432 to allow a court to make findings that a witness need not be identified where the life or safety of any person may be jeopardized (capital prosecutions otherwise require the disclosure of a witness list and place of abode in advance of trial).

Prosecutors must address witness security concerns at the earliest possible point in the investigation. Relocation measures are much more effective if they are already in place by the time the witness' cooperation is made public. Applications for the WSP can take several months to process, and in the meantime, measures must be taken to secure the witness. In addition, some programs limit their applicability to before and shortly after the trial. EWAP, for example, may not be available if the application is submitted more than sixty days after the sentencing of the defendant(s). If the prosecutor waits to address security issues until a cooperator is released from prison, permission to use EWAP is difficult to obtain.

One of the more difficult decisions in an investigation involves who to approach, without inadvertently disclosing the identity of a witness. Many of the threat problems can be most effectively addressed by carefully plotting the investigation to eliminate the gang's ability to deduce who is cooperating. The only problems generated will be incorrect assumptions made by the gang. It is essential that all members of the prosecution team are aware of all assignments, to avoid errors and mistakes when multiple law enforcement organizations are involved. This is difficult and challenging to the team effort when investigators are not accustomed to working with other law enforcement organizations. On the other hand, in the field of gang enforcement, language skills serve to narrow the group of investigators who speak with witnesses, which also provides opportunities to develop the essential teamwork needed.

B. Security for incarcerated cooperators

Steps to secure cooperators should be taken while he or she is incarcerated. It is easier to secure cooperators who are detained or serving time on their own charges. The Federal Bureau of Prisons (BOP) has done an outstanding job in this area and, because of the success, most prisoners request and accept the protection afforded by the WSP within BOP. This is an excellent program because the witness stays secure and is available for trial. As an added benefit, the jury hears that the witness is serving his sentence, albeit within a secure program inside the prison system. In addition, if family members are threatened as a result of the witness' cooperation, they can be relocated through the WSP while the witness is incarcerated, or given funds (investigative agency funds or EWAP funds) to relocate on their own. The incarcerated witnesses can be provided with WSP services upon release, if necessary, or with funds to assist with parole/probation issues and housing.

The more challenging problem is securing cooperators who reject, or do not qualify for, the BOP program, or who are being held on material witness warrants. The established means of securing their safety involve the use of separation orders, special, cooperator-only floors in local jails, or separating prisoners by moving them to different regional facilities. The availability of these options varies depending upon how many regional jails exist in a district. The U.S. Marshals Service maintains contracts with local jails for this purpose. It is never too early to alert the Marshals to the potential challenges faced in a gang-related case.

C. Immersion in the criminal subculture

Gang members and their girlfriends often view the gang as a family and demonstrate greater loyalty to the gang than to their own family. The gang lifestyle is addictive. Those caught up in it crave the sense of belonging and the risk of violence. They often speak gang jargon better than either English or their native language (assuming it is other than English).

A solid, trusting relationship between the witnesses and law enforcement is essential to keep the witnesses safe and cooperative prior to trial. Law enforcement and prosecutors must recognize, however, that there are going to be times when the

witnesses are tempted to withdraw from the cooperation and return to the gang. A network of committed resources is invaluable when this occurs. Many investigators do not have the time to be available to the witnesses twenty-four hours a day, seven days a week. Despite every effort, witnesses often return to the culture with which he or she is familiar and comfortable.

The reality is that, with this type of case, the government is usually better served when its witnesses, where appropriate, are incarcerated. In the District of Columbia, a gang member witness left the WSP without informing anyone. Once he was located and arrested on a material witness warrant, the prosecutor asked the court to keep him in jail pending the trial because it was the safest course, and offered the best chance of ensuring his availability at trial. Although the witness was very angry with the prosecutor for recommending his detention, several months later when he testified, he had overcome his anger and was a strong witness for the government.

In addition to the safety risks, there are also witness availability issues. Witnesses who are on the street are likely to flee once the trial begins and some will not be found. One lesson the AUSAs in the Eastern District of Virginia have learned is that multiple sources of testimony are absolutely essential in building a gang case.

D. Lack of judgment about the witness' own safety

For the most part, a witness' safety is in his or her own hands. Arrangements for relocation, changes of identity, and other methods of concealing the witness' whereabouts can be made, but if the witness does not follow reasonable precautions, none of those methods will provide security. A recurring issue with victims and witnesses in gang cases is their failure to follow reasonable safety precautions, such as avoiding known danger areas or not revealing their location. USAO staff must remind witnesses of these basic precautions. The WSP will terminate a witness from the WSP if the witness fails to follow the safety rules. In those instances, the USAO must come up with another alternative for the witness. Sometimes a material witness warrant is the only alternative available. The witness will not like it, but it addresses the safety concerns. Do not be reluctant to use the material witness warrant in these cases. The appointed lawyer can

become a buffer with this most difficult group of witnesses.

It may be apparent from the outset that a witness will not be capable of following rules, particularly the rules regarding contact with persons who may be known to the perpetrators. In such situations, a social services program with intensive counseling may be a more practical alternative and more likely to be successful. Social services programs also have rules, however, and the witness may not be able to take advantage of the benefits of such programs, even with intensive counseling and support. If the witness seems incapable or unwilling to take basic protection steps, the government can ask for a pretrial deposition (*see Fed. R. Crim. P 15.*) There are numerous disadvantages in doing this, but it may keep the witness safe. The motive to harm or kill the witness in order to prevent his or her testimony may be reduced by the taking of the deposition.

E. Life skills challenges

Many of the witnesses have a host of life skills issues. They may be facing issues such as poverty, unemployment, and credit problems, which can make it difficult to be self-supporting. Although many government programs, including EWAP, provide emergency funding for short-term needs, witnesses need to have long-term plans concerning their safety and livelihood through the trial and beyond. Many witnesses will need help in developing and implementing these plans. School and/or job training are often acceptable goals, but extremely challenging to complete. Witnesses may lack experience in budgeting money and recklessly spend the funds that are given to them. USAO staff need to be firm with witnesses and set appropriate boundaries so that their poor judgment is not merely enabled.

Witnesses may be overwhelmed at the thought of relocating and living without the financial and emotional support of the gang. The USAO staff can help witnesses by fully explaining what is being done and why. Always be candid with the witnesses about the challenges they may face and try to prepare them for what they can expect. Referrals to social services agencies may be appropriate to provide witnesses with support for changes in lifestyle. Encourage the witnesses to contact the USAO if they are

experiencing difficulties, so efforts can be made to avert a major crisis.

The challenges are often multiplied when a witness has children. As previously mentioned, the presence of children can complicate the application process for the WSP. Child custody and visitation must be worked out so that the witness can confidentially take the children into the WSP. If the witness receives EWAP services, USAO staff should be aware of additional needs, such as helping the children change schools and keep up with schoolwork, and support the witness in maintaining an acceptable level of parenting skills. USAO victim witness staff may be able to assist with these tasks, or provide referrals to social services agencies that can support the witness and children. A witness may realize and agree that the custody of his or her children should be left with the current custodian for the short term. This will give the witness a chance to get settled and present a better picture to the children's custodian and to the court of jurisdiction over the children. The presence of children often provides the witness with the motivation to follow through with the plans to better his or her life and provide a home in a safer environment.

F. Immigration status

Do not ignore the immigration status of a witness. If appropriate, refer the witness to an immigration attorney, who can give advice about a visa. There are several types of visas available to a victim or witness.

- S Visas are available for certain witnesses.
- T Visas are for victims of severe forms of trafficking in persons.
- U Visas are available for victims of crime.

Significant Public Benefit Paroles (which allow an alien, per request of a law enforcement agency, to enter the United States to take part in legal proceedings when there is a benefit to the government) can also be arranged in appropriate circumstances. It is wise to obtain the participation of ICE agents in the investigation to identify significant issues and to ensure the witness is not deported before trial. An incarcerated witness may not consider immigration problems until the release date nears. At this point, he or she may find that a detainer has been placed by ICE.

In a recent case in the District of Columbia, a cooperator who was being processed for witness security measures was mistakenly deported back to his home country before the witness security measures could be put into place. In order for the case to proceed, much time, effort, and money were expended to bring the cooperator back to the United States under a Significant Public Benefit Parole. Prosecutors and investigators must be mindful of the transnational reach of many gangs. If a gang has ties to the country to which a witness is deported, he or she may remain in danger when returned to that country.

G. Juvenile witnesses

An increasing challenge in prosecuting gangs is the fact that many of their members are juveniles. Federal prosecutors must first transfer juvenile targets to adult status, something many prosecutors have never done. Similarly, juvenile witnesses have often severed ties to their families and present a plethora of challenges to investigators. MS-13 has members as young as thirteen and fourteen years old, and the girls that are involved with the male gang members are frequently minors.

A juvenile gang member, turned witness, presents enormous challenges to law enforcement personnel. The upside, however, is that the juvenile may have never been exposed to the criminal justice system. If this is the case, the juvenile frequently starts talking when confronted with the harsh violence of the gang. In the Brenda Paz investigation, one juvenile witness was subjected to repeated threats upon his life by gang members who were concerned that he might start cooperating. Ultimately, those threats served to convince the witness that he had no choice but to come forward. Other juvenile witnesses who were originally drawn to the gang by the social aspects of the lifestyle came to be deeply shaken by the violence, and were receptive to leaving the gang when offered the opportunity. These witnesses—young people who have never seen the resources the government can bring to confront a problem—often become some of the most useful witnesses. Solid coordination with the state is necessary to address the juvenile witness' situation because of the witness' age and circumstances. One witness in the Brenda Paz murder investigation was not called as a witness by either side at trial, but still was able to take advantage of available resources. The ability to

address a wide range of problems serves to demonstrate the government's commitment to resolving the gang violence problem. The attention given to juvenile witnesses may give investigators leads on other potential witnesses who might be able to assist the prosecution with gang-related cases.

Juvenile witnesses may not be able to enter any of the witness security programs that the government has available. Those under eighteen years of age cannot receive EWAP services unless accompanied by a guardian. The WSP also has limitations on the age of applicants. One solution—if your juvenile witness is close to the age of majority—is to seek a declaration of emancipation from a local court. Once emancipated, the juvenile may be able to access the WSP and the EWAP. If the guardian is not cooperative in providing relocation or other services to the juvenile, it may be appropriate to involve a child protective services agency.

H. Physical and mental health issues

Physical and mental health problems can be addressed at a cooperator's sentencing or with the cooperator's probation officer. A witness with significant substance abuse problems should be under supervision before entering into a witness security program, to ensure the problem is being addressed. Substance abuse issues can be addressed by making the individual's admission in the WSP dependent upon substance abuse or mental health counseling. Other social service issues can also be addressed in the WSP to ensure successful program participation. Before sentencing, and for witnesses who are not under court supervision, USAO staff can make referrals to community resources, such as substance abuse counselors, mental health programs, or immigrant aid agencies.

I. Witnesses without criminal involvement

A witness who has no criminal involvement sometimes has significant fears and a very difficult time dealing with the challenges of being a participant in a criminal case. Relocation may be very traumatic if he or she has to leave a job, family, friends, and familiar surroundings. This class of witness tends to be very limited in gang cases. It is true, however, that family members who are not members of a gang can observe criminal activity. This witness often reports the

criminal activity quickly, and it is only later when the ramifications of that testimony become apparent, that he or she becomes recalcitrant. Fortunately, security and cooperation issues can be addressed before an indictment is returned and the witness' identity becomes known to the defendants.

IV. Conclusion

Efforts to intimidate witnesses challenge the core of our judicial system. The failure to hold those who intimidate or harm witnesses responsible perpetuates a dangerous aura of invincibility within gangs. Success in this area demonstrates to the gangs that they can be splintered and dismantled. Success demonstrates to witnesses that they will be protected.

Victim/witness resources can greatly facilitate the prosecution of these challenging targets by providing needed support and services to those victimized by the gang and those who choose to testify against the gang. Those tasked with dismantling criminal organizations must work closely with the USAO victim witness staff to access the variety of resources that exist to support victims and witnesses. There are few instances where a single law enforcement organization can pursue these types of investigations alone. Increasing the number of law enforcement agencies involved generally produces a much stronger case for the courtroom. Similarly, teamwork between government-based victim witness staff and those assigned to work an investigation or case can significantly strengthen the individual witness' capacity to testify. The stronger the case, the more comfortable the witnesses, especially when they realize they helped break the code of the gang. Similarly, the cascading testimony from multiple witnesses serves notice to the gang that they are not above the law and will be held accountable for their actions. ❖

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Immigration Authorities and Gang Enforcement

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I. Introduction

Historically, street gangs in the United States formed within new immigrant communities, initially as defensive organizations and as a replacement for their families from which they had been separated. These associations quickly transitioned into criminal organizations and began victimizing their own communities. Similarly, today's transnational street gangs, such as Mara Salvatrucha (MS-13), were formed from groups of newly-arrived immigrants whose motivation was protection from existing gangs. Ultimately, these gangs emulated domestic street gangs in their structure, subculture, and criminal activity.

Transnational street gang members are unique from domestic gangs in that, like the immigrant populations from which they draw their membership, they are very mobile, highly adaptable to new geographic areas, and they maintain connections in their native countries. As such, they tend to be involved in cross-border crime or violations with a nexus to the border. While this poses challenges to law enforcement, the fact that the majority of transnational street gangs are made up of foreign-born members presents a unique opportunity to utilize immigration authorities when targeting the organizations.

As with any criminal organization, the ultimate goal of law enforcement is to disrupt and dismantle criminal street gangs. An essential element of this strategy is the use of a "zero tolerance" policy in gang suppression, which translates to apprehending all gang members for any violation of law. An aggressive enforcement strategy has an immediate disruptive impact on a gang's criminal activity. It also provides an opportunity for law enforcement to debrief gang

members, develop informants, and gather useful intelligence about a gang's history, structure, leadership, and criminal activity.

Federal law enforcement relies heavily on street-level enforcement by state, local, and tribal agencies as an essential building block to charge violations of Racketeer Influenced and Corrupt Organizations (RICO), 18 U.S.C. §§ 1961-1968, Violent Crime in Aid of Racketeering (VICAR), 18 U.S.C. § 1959, conspiracy, and federal firearm violations. The application of immigration laws will supplement, and can work hand-in-hand with street-level enforcement by state, local, and tribal agencies, when building such an investigation against a transnational street gang.

II. How it works

Working in partnership with state, local, tribal, and other federal law enforcement, United States Immigration and Customs Enforcement (ICE) officials target transnational street gangs that are identified as the most significant threats to communities. ICE obtains intelligence on all documented members and associates of a targeted transnational gang. Biographical information relating to those gang members is queried by the ICE Law Enforcement Support Center (LESC) through various Department of Homeland Security (DHS) law enforcement and commercial databases. This research identifies gang members who are immediately subject to arrest for various criminal and administrative (removal proceedings) violations. Working with its law enforcement partners, ICE prioritizes gang members for apprehension based on their criminal history, position in a gang, and potential investigative value. Coordinated enforcement actions are carried out to arrest members of specific gangs for violation of state or federal laws. Such operations often result in the apprehension of a significant number of gang members and provide an opportunity to develop informants. Further, any gang members who were previously deported are subject to prosecution for Reentry After Deportation/Removal, 8 U.S.C. § 1326. Because of prior criminal convictions, many previously

deported gang members are further subject to sentencing enhancements that can result in significant prison terms.

Gang members may be subject to prosecution for other violations of law based upon their prior conduct, including submissions and requests for immigration benefits. For example, MS-13 gang members may have filed for, and received, Temporary Protected Status (TPS). In obtaining this status, they may have misrepresented facts relating to criminal misconduct. The TPS application questionnaire includes questions relating to whether the applicant has engaged in drug trafficking or other criminal activity. ICE has assisted in successful prosecutions of alien terrorists for similar offenses, and these same prosecution options are also applicable to many gang members. Further, prosecutions for these types of criminal violations can be an incentive for gang members to cooperate with investigators. In addition, transnational gang members who are not subject to arrest for a criminal violation are often subject to removal proceedings. They are either in the United States illegally or have violated their lawful immigration status due to criminal conduct. Arrest for removal proceedings may not provide the necessary incentive for all gang members to cooperate with investigators. It has been, however, a very effective tool in securing cooperation from certain gang members, particularly those from Central America, who fear the rigid gang enforcement policies in their native countries. These initial enforcement actions serve to support a gang investigation in several ways.

A. Immediate disruption

Coordinated enforcement actions can result in the immediate disruption of a street gang. A unified operation conducted by federal, state, and local law enforcement sends a message to the gang and the community that the gang problem is taken seriously. When gang members are removed from the streets, it has a positive impact on the quality of life in that community.

B. Development of intelligence and sources of information

Every opportunity to arrest a gang member gives law enforcement a chance to develop intelligence on the gang's structure and criminal activity. Additionally, gang members facing significant sentences for criminal violations, or

who fear deportation to their native countries, can be persuaded to cooperate with investigators.

C. Probable cause for future enforcement actions

Many members of transnational street gangs can be prosecuted in Immigration Court removal proceedings pursuant to the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101-1537. Once deported, gang members are subject to felony prosecution if they illegally return to the United States. Therefore, any law enforcement officer participating in the investigation has probable cause to arrest a gang member who was previously deported. An arrest under these circumstances might yield additional evidence, either from items found when conducting searches incident to arrests or admissions made by the defendant. It also provides an opportunity to obtain search warrants for evidence of alienage (foreign birth certificates, passports, national identity cards, among other things) in support of criminal charges against gang members who have illegally reentered the United States.

III. Immigration-Related investigative tools

The following immigration-related criminal statutes can be used to further transnational gang investigations.

A. Reentry After Deportation/Removal (8 U.S.C. § 1326)

Prosecution for illegal reentry is a staple in transnational gang investigations. The majority of the "hard core" members of a transnational gang have been convicted of various criminal offenses, were subsequently deported from the United States, and returned here illegally. Prosecutions for illegal reentry provide a vehicle to incapacitate the most active and violent members of a transnational street gang. These gang members are eligible for significant prison sentences, upon conviction. The apprehension of those charged with illegal reentry also provides an opportunity to obtain and execute search warrants for the homes and other locations where these gang members have a proprietary interest. In addition to the seizure of evidence that would support an illegal reentry charge (birth certificates, passports, and others), weapons,

contraband, and additional evidence to support conspiracies or enterprise prosecutions (RICO and VICAR) are often recovered during the execution of such search warrants.

B. Illegal Alien in Possession of a Firearm (18 U.S.C. § 922(g)(5)(A))

Street gang members frequently possess and use firearms to ply their trade and transnational street gangs are no exception. Members of transnational gangs who are in the United States illegally are prohibited from possessing firearms under federal law. In jurisdictions that have state statutes that are comparable to 18 U.S.C. § 922(g)(5)(A), a defendant can be prosecuted by the state authorities or such prosecution can be referred to the federal authorities. In federal firearm prosecutions, the firearm at issue can be forfeited upon conviction. A conviction for an 18 U.S.C. § 922(g)(5)(A) violation is considered an aggravated felony under the Immigration and Nationality Act and may make an alien subject to administrative removal, without a hearing before an Immigration Judge (IJ). Should the alien return to the United States illegally, he could be prosecuted for illegal reentry after deportation and be subject to a sentence of up to twenty years. As with illegal reentry prosecutions, illegal alien in possession of a firearm cases provide further opportunities to recover incriminating evidence, through searches incident to arrests, admissions made by the defendant, and, if probable cause can be established, items recovered during the execution of search warrants.

C. Federal violations related to the possession and use of counterfeit documents

Transnational gang members frequently lead double lives. At night and on weekends, they may be involved in criminal activity as part of their gang life, but during the day, many are employed. Like some of the "undocumented" work force, illegal alien gang members may have committed various federal felonies involving the falsification of records to obtain employment. For example, they may buy a counterfeit Social Security Card, a United States birth certificate, or a resident alien ("green") card, proceed to a prospective employer, present the counterfeit documents, and falsify form I-9, Employment Eligibility Verification

Form to secure employment. These acts are violations of the multiple statutes referenced.

- 18 U.S.C. § 1028(a)—Fraud and Related Activity in Relation to Identity Documents.
- 18 U.S.C. § 1546—Visa Fraud.
- 18 U.S.C. § 1001—False Statements.
- 18 U.S.C. § 1621—Perjury (including, falsification of certain immigration documents).
- 18 U.S.C. § 911—False Claim to United States Citizenship (For aliens who falsely claim United States citizenship on form I-9).
- 42 U.S.C. § 408—Social Security Fraud.

Like the other immigration related offenses, these violations may provide an opportunity to execute search warrants to obtain evidence in support of the fraud charges, which will often lead to the recovery of contraband and evidence of additional crimes.

IV. Removal proceedings

Aliens can be removed from the United States when an order of removal has been issued against them. Most of the time, this occurs after an alien has been afforded an administrative hearing (a removal hearing) before an IJ. Removal hearings and proceedings are initiated when ICE takes an alien into custody, serves the alien with a Notice to Appear (NTA), and files the NTA with the Immigration Court. An alien is entitled to a detention hearing before an IJ to determine whether he will remain in custody during the pendency of the removal proceedings. An alien can be detained by the IJ during the immigration proceedings if he is either a flight risk or a danger to the community. It is usually not difficult to establish these factors for aliens who have engaged in gang-related criminal activity. In some cases, such as when an alien is paroled into the United States (that is, when an alien is allowed to enter the United States on a temporary basis for urgent humanitarian reasons or a significant public benefit), the IJ does not have authority to release the alien.

Attorneys from the local ICE Chief Counsel Office represent the government in these hearings. The removal proceeding consists of two stages: (1) the government proves the charge(s) alleged in

the NTA and (2) the IJ considers whether an alien is entitled to relief (for example, asylum or adjustment of status) that would permit him to remain in the United States. If the government prevails before the IJ, the alien can appeal the decision to the Board of Immigration Appeals (BIA). ICE can physically remove an alien from the United States after the removal order becomes administratively final, unless a federal court issues a stay of removal. An order becomes administratively final on the date the IJ order is entered, if an alien does not appeal, or the date the BIA issues its decision, if an alien has appealed the IJ's decision.

Criminal prosecutors must keep in mind that the arrest of an alien for a criminal offense almost never impacts his immigration status, absent a criminal conviction. ICE cannot detain an alien arrested on criminal charges if he is otherwise in legal immigration status. If an alien is not in legal status (for example, the alien overstayed his visa), he is subject to arrest by ICE on that basis alone and administrative removal proceedings may be initiated.

If an alien is in legal status, a conviction may trigger various immigration consequences, including arrest by ICE and removal from the United States. All convictions, however, do not impact an alien's immigration status. In most cases, the conviction must be a felony. Two misdemeanor convictions, however, will bar an alien from obtaining TPS in the United States, a form of relief that permits certain aliens from designated countries (typically, countries with ongoing armed conflict or a major natural disaster) to temporarily remain in the United States. Also, an alien may be subject to removal even if a court sentences him to probation. If a court sentences an alien to a year or more imprisonment, however, the alien will likely be barred from most forms of relief from removal—even if the court suspends the sentence.

The type of offense and the length of sentence can also impact an IJ's authority to release an alien from ICE custody during the removal proceedings. Issues related to administrative detention can arise after a defendant is no longer detained in federal or state criminal custody. For instance, drug and firearm convictions usually subject an alien to mandatory detention. Further, a sentence of imprisonment of one year or more will usually trigger mandatory detention. Assistant United States Attorneys (AUSAs) are encouraged

to contact the local ICE Chief Counsel Office for case-specific advice on the immigration consequences of a criminal conviction, prior to entering into a plea agreement.

V. Judicial and stipulated removals as part of plea negotiations

AUSAs can play a crucial role in removing alien gang members from the United States. Pursuant to 8 U.S.C. § 1228(c), an alien can also be removed from the United States based on a judicial order of removal in conjunction with criminal prosecution. This order is issued by the United States District Court at the time of sentencing, upon the request of the AUSA. The AUSA must follow strict procedural requirements to obtain a judicial order of removal. First, prior to the commencement of trial or entry of a guilty plea, the AUSA must file with the district court, and serve upon the defendant and the local ICE Special Agent in Charge (SAC), a notice of intent to request judicial removal. Second, the AUSA, with concurrence of the local ICE SAC, must file, at least thirty days prior to the date of sentencing, a charge containing factual allegations regarding alienage of the accused and identifying the crime or crimes which make the defendant removable. If the AUSA demonstrates that the offender is removable, the district court can issue an order removing the alien from the United States.

In many instances, acceptance of a judicial removal can be made a condition in a plea agreement. This authority is specifically set forth in 8 U.S.C. § 1228(c)(5). As it is accomplished by plea, the formal requirements set forth in subpart (c)(2) are not required. The AUSA must still obtain concurrence of the local ICE SAC. It is also wise to consult with local ICE counsel to assure that the alien is pleading to a proper removal charge.

AUSAs can also participate in removing alien gang members from the United States by including stipulated removal provisions in the plea agreement. A stipulated removal is a written agreement by the alien not to contest deportation before the IJ. The local ICE attorney files a joint motion for a stipulated removal order with the Immigration Court. The removal order becomes administratively final after the IJ grants the motion and signs the removal order. AUSAs are encouraged to contact the local ICE Chief

Counsel Office for use of the stipulated removal order.

VI. Criminal and civil denaturalization

The possibility of using immigration provisions against street gang members who are naturalized citizens must not be discounted. As a member of a criminal organization, there is always a possibility that a gang member was involved in undetected criminal activity predating naturalization. Prior arrests and convictions are usually identified through fingerprint checks during the naturalization application process. A gang investigation, however, might reveal undetected criminal acts that were committed by the naturalized gang member that were either not documented on the application for naturalization or were overlooked during the fingerprint check. In such cases, criminal or civil denaturalization should be explored in conjunction with criminal charges. In most cases, the criminal conduct that was used as grounds for denaturalization can also be used to initiate removal proceedings after denaturalization. The relevant statutes for both follow.

- **Naturalization Fraud (18 U.S.C. § 1425(A)):** Upon conviction for naturalization fraud, a subject is automatically denaturalized. Naturalization fraud has a ten-year statute of limitations.
- **Civil Denaturalization (8 U.S.C. § 1451):** Civil denaturalization is also pursued in U.S. District Court. There is no statute of limitations on civil denaturalization.

VII. Conclusion

Because transnational street gangs have a significant foreign-born membership, immigration enforcement actions can have an immediate impact by disrupting gang activity. Immigration enforcement also provides an opportunity to develop intelligence, sources of information, and evidence to facilitate enterprise investigations against gangs. The consistent application of immigration enforcement efforts can often help to disrupt and dismantle a gang.

ICE has the authority and expertise to apply immigration enforcement to disrupt transnational street gangs and to help develop enterprise investigations to dismantle their organizations. AUSAs are strongly encouraged to contact their local ICE Office of Investigations or the ICE Headquarters, Human Rights Violators and Public Safety Unit Chief at (202) 305-1598, when embarking on a transnational gang investigation or prosecution.❖

ABOUT THE AUTHOR

❑ **Claude Arnold** oversees ICE's national gang enforcement initiative—Operation Community Shield. He has more than sixteen years of experience in immigration enforcement and has spent the majority of his career investigating and supervising the investigation of transnational street gangs.⌘

The author wishes to thank Mark Jebson, Deputy Chief Counsel for ICE in Detroit, Michigan, for his contribution to this article. Mr. Jebson previously served as an Assistant United States Attorney in Dallas, Texas, where he prosecuted terrorism-related cases.

The Criminal Division Offers Expert Advice and Assistance For Gang-Related Cases

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Narcotic and Dangerous Drug Section
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I. Introduction

Combating gangs and gang violence is one of the Department of Justice's (Department's) top national priorities. No other organized criminal threat involves such a wide range of serious offenses and affects so much of our country, from the smallest towns to the largest cities. In addition, gang activity often spills across our nation's borders, creating and reinforcing an increasingly vicious cycle of violence.

In May 2005, the Attorney General directed that a series of important additional steps be taken to further combat gangs and gang violence. Shortly thereafter, the Criminal Division launched a three-part initiative designed to complement and support the Attorney General's efforts. Since that time, the Criminal Division has worked under the leadership of the Anti-Gang Coordination Committee run by the Office of the Deputy Attorney General (ODAG) and with other colleagues in the Department, including the Executive Office for United States Attorneys (EOUSA), FBI, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Drug Enforcement Administration (DEA), Office of Justice Programs (OJP), Bureau of Prisons (BOP), United States Marshals Service (USMS) and others, to implement the Department's strategy for the Criminal Division and to focus its expertise and resources to combat the gang problem. The Criminal Division's approach to help better combat gangs is described as Gang Reduction through Investigation and Prosecution, or "GRIP." Operation GRIP has three primary components.

- GRIP in the field, directly assigns Criminal Division prosecutors to lead and support

investigations and prosecutions around the country.

- GRIP at headquarters, utilizes Criminal Division expertise as a resource to help leverage the efforts of investigative agencies and Assistant United States Attorneys (AUSAs).
- GRIP overseas, aims to enhance international operational efforts designed to combat transnational gangs.

Operation GRIP allows the specialized and varied skills and resources of the Criminal Division to be coordinated and organized to more effectively attack the problem of domestic gang violence and to support gang-related enforcement efforts in the field.

The Criminal Division has a wealth of resources that are brought to bear in the fight against gang violence. Criminal Division section experts in forfeiture and money laundering; witness protection and immunity; federal juvenile prosecutions; federal violent crime and firearms offenses; capital crimes; securing foreign-based evidence; and in the use of sophisticated tools, such as the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961-68, the Violent Crime in Aid of Racketeering (VICAR) statute, 18 U.S.C. §1959; and wiretaps and electronic evidence are available to work with United States Attorneys' offices. The experience of the computer crime and computer forensic experts in the Division and the resources, know-how, and relationships of the Division's interagency and international experts and trainers, are also accessible for the USAOs' anti-gang efforts. In addition, specific Division programs, especially through Operation GRIP, can be utilized to complement other established law enforcement initiatives and to deliver Division resources and expert case assistance, which can enhance the efforts of gang prosecutors around the country.

II. Criminal Division Sections

A. Domestic Security Section (DSS)

Law enforcement authorities report that gangs are responsible for most of the violent crime in the major cities of the United States. DSS attorneys, whose mission is to enhance the security of our nation's citizens and borders by enforcing federal criminal laws relating to violence, weapons, and immigration are poised to help attack the menace of gang-related crime. DSS attorneys can provide USAOs with legal expertise on firearms offenses, violent crime offenses, and immigration offenses, including guidance regarding multidistrict cases, charging options, and assistance interpreting these statutes. Particularly relevant to juvenile gangs, DSS can also provide expertise on bringing federal charges against juvenile offenders under the Federal Juvenile Delinquency Act, 18 U.S.C. §§ 5031-37. This expertise helps USAOs to determine whether the state or federal forum is the most appropriate, whether to transfer the juvenile for adult criminal proceedings, and to understand associated procedural issues unique to juvenile proceedings.

DSS also plays a leading role in developing, supporting, and implementing the Department's anti-gang efforts and Project Safe Neighborhoods (PSN), the Administration's gun violence reduction initiative. DSS is a lead contributor to the PSN initiative and can provide information regarding how PSN has been, and can be, used as part of a district's anti-gang efforts, including best practices and innovative strategies involving prosecution, prevention, training, and enhancing public awareness. In addition, DSS attorneys frequently collaborate with EOUSA on training and conferences on subjects relating to gangs, firearms, and violent crime. DSS can assist Law Enforcement Coordinating Committees and USAOs that are organizing such training by identifying speakers and topics. For further information, please contact DSS Trial Attorneys Nancy Oliver or Sam Marsh, at (202) 616-5731. For additional PSN-related information, please contact John Irving, Counsel to the Deputy Attorney General and National PSN Coordinator, at (202) 353-8878.

B. Organized Crime and Racketeering Section (OCRS)

Gang cases are often complex and frequently involve multiple targets with criminal activity in more than one district. OCRS attorneys are prepared to provide USAOs with legal advice on RICO, VICAR, and other complex, multidefendant and multijurisdictional cases. Experienced OCRS Litigation Unit Trial Attorneys, either individually or in tandem with AUSAs in the field, often staff investigations and prosecutions involving significant organized crime enterprises and gangs.

Remember, all requests to bring RICO and VICAR charges must be approved by the OCRS RICO unit. (*See* USAM §§ 9-110.101, 9-110.802.) Expert attorneys in this unit provide helpful advice to AUSAs and agents regarding the appropriateness of RICO as a tool for a district's gang problem, the type of evidence and investigative work required to support RICO charges, and how to structure an effective RICO indictment and prosecution memorandum. OCRS can also provide training for AUSAs and agents to familiarize them with these statutes and how they can be utilized to dismantle gangs and other criminal organizations. For further information, please contact OCRS Deputy Chief P. Kevin Carwile, at (202) 514-3705, or Assistant Chief Amy Chang Lee, at (202) 514-6882.

C. Narcotic and Dangerous Drug Section (NDDS)

A large part of gang activity today involves the manufacture, distribution, and trafficking of drugs and narcotics, often across state and national borders. NDDS expertise, developed from years of investigating and prosecuting high-level members of foreign-based international drug trafficking organizations, is very useful in coordinating enforcement efforts against major gangs.

Several NDDS Trial Attorneys are situated at the Special Operations Division (SOD), a DEA-led multiagency center which coordinates and supports regional and national-level investigations and prosecutions against major drug trafficking and money laundering organizations by targeting their command, control, and communications structures operating across jurisdictional boundaries. Initial case

coordination with the NDDS attorneys at SOD can enhance the quality of a multidistrict gang and narcotics prosecution, through the use of electronic surveillance-based information. SOD can also share actionable investigative information with joint interagency task forces and AUSAs in support of these multijurisdictional gang investigations.

Coordinating a case with NDDS attorneys assigned to SOD assists in developing an effective plan of attack, deconflicting with other districts and agencies investigating the same or related targets, understanding the transnational reach of the case, and identifying the importance of disrupting and dismantling criminal narcotics enterprises, both domestically and abroad. SOD played an active role in coordinating legal and investigative issues that arose during the course of a recent investigation that involved gang cells operating in various cities throughout the United States. Additionally, NDDS attorneys maintain relationships with many overseas-based U.S. law enforcement agents, as well as foreign law enforcement and criminal justice representatives involved in the investigation and prosecution of drug organizations and/or criminal organizations, including those involving gangs.

Trial Attorneys in the NDDS Litigation Unit are available to provide field support for the investigation and prosecution of gangs involved in large-scale drug trafficking. These attorneys, along with NDDS Policy Unit attorneys, are also available to review and edit pleadings associated with drug-related cases and provide expert advice on a broad range of drug investigation- and prosecution-related issues, including charging decisions, coconspiracy liability, cooperating witnesses, and sentencing.

NDDS Policy Unit attorneys can also provide assistance and training to AUSAs and agents in methamphetamine manufacture and distribution, and its precursors, and other synthetic drugs, diverted chemicals, and pharmaceutical controlled substances. Also, attorneys in the NDDS Wiretap Unit are available to provide direct support to USAOs, upon invitation, on the use of Title III wiretaps in Organized Crime Drug Enforcement Task Force investigations of gangs involved in large-scale drug trafficking. For further information, please contact NDDS Chief Kenneth Blanco or Joseph Donovan, Deputy Chief for Policy, at (202) 514-0917, or Adam Cohen, Deputy Chief for SOD, at (703) 488-4348.

D. Asset Forfeiture and Money Laundering Section (AFMLS)

Gangs are often sufficiently organized or sophisticated to profit from control of criminal activity in their territories. Therefore, curtailing or eliminating the proceeds of criminal activity can have a substantial impact on reducing the gang problem in a district. Attorneys in the AFMLS Litigation Unit can advise AUSAs whether asset forfeiture or money laundering charges would be appropriate for their particular gang prosecution, what kind of evidence and investigative work might be necessary or helpful, and how to structure indictments and prosecution memoranda in the event they pursue forfeiture or money laundering charges. Such advice might be tailored to the nature of the specific gang investigation, such as the forfeiture of firearms, gang clubhouses, or prison bank accounts. In appropriate cases, AFMLS will assign litigators to participate in gang-related investigations and trials.

Additionally, AFMLS attorneys can provide advice on forfeiture and money laundering motions and pleadings for gang-related prosecutions. They also regularly provide training to federal, state, and local prosecutors and investigators on all aspects of asset forfeiture and money laundering. AFMLS can also provide information and sample documents relating to asset forfeiture and money laundering matters, including restraining orders, seizure warrants, indictments, complaints, jury instructions, orders of forfeiture, plea agreements, interlocutory sales, and expedited settlement forms. The AFMLS point-of-contact for gang-related issues is Mia Levine, Senior Trial Attorney, at (202) 305-4223.

E. Office of Enforcement Operations (OEO)

OEO attorneys oversee the use of the most sophisticated investigative tools at the Department's disposal. Since typical gang-related offenses, such as narcotics distribution, RICO, and firearms charges, are already Title III predicate offenses, OEO can assist gang-related law enforcement efforts by facilitating Criminal Division approval of proposed interceptions of wire, oral, and/or electronic communications pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-

351, 82 Stat. 197 (1968) (codified as amended in scattered sections of 18 U.S.C. and 42 U.S.C.). The advantages of using interceptions pursuant to Title III in gang-related cases are many.

- Identities of informants can be protected.
- The full scope of criminal conduct perpetrated by members of the gang and their hierarchy can be revealed.
- The identities of leaders who emerge after arrests of former leaders are also frequently revealed.
- The defendants often convict themselves by their own words.

Of course, a Title III application must be precisely written to meet probable cause and other requirements. It is time- and resource-intensive, and is always under the supervisory authority of the court.

OEO's Victim-Witness Specialist can assist victims of, and witnesses to, gang violence, by providing travel funds that will allow them to travel to testify in Criminal Division gang prosecutions, as well as provide referrals to outside resources for counseling and other assistance. [Please note that the Department's Office for Victims of Crime (within the Office of Justice Programs) is able to provide approved victims of gang violence with certain compensation for injuries suffered as a result of that violence. Their Web site is www.ojp.usdoj.gov/ovc.] OEO attorneys also coordinate and administer matters relating to all aspects of the federal Witness Security Program (WSP), and approve or deny requests by federal agencies to use federal prisoners for investigative purposes. OEO's Witness Security and Special Operations Unit assists AUSAs and agents and approves gang-related law enforcement efforts, including covert operations in correctional facilities, through its oversight of the use of federal prisoners by investigative agencies. *See* USAM 9-21.050. Many of the cooperators and targets of these investigations are members or associates of violent gangs.

OEO also assists gang-related law enforcement efforts through its initial review of requests to immunize witnesses pursuant to 18 U.S.C. §§ 6001-6005. Title 18 U.S.C. § 6003 covers court and grand jury proceedings, and is applicable in the gang context. Only statutory immunity, as distinguished from informal

immunity, requires Assistant Attorney General approval. All requests for immunity in matters must be forwarded to OEO's Witness Immunity Unit, using the Department's standard immunity request for approval. *See* Criminal Resource Manual § 721. While the usual factors should be considered in an immunity request, including the value of the person's testimony and the likelihood of adverse collateral consequences to the person from compelling his testimony, possible problems and issues in the gang context should also be considered, including the close family relative exception, the person's conviction prior to compulsion, and authorization to prosecute after compulsion and related Kastigar issues.

OEO's Policy and Statutory Enforcement Unit (PSEU) assists gang-related law enforcement efforts through its initial review of requests and recommendations regarding closure of federal court proceedings to the general public. Closing the courtroom for a cooperating defendant may be particularly important when the matter involves a gang operating in a relatively limited geographic area. The PSEU also assists gang-related law enforcement efforts through its initial review of requests, and preparations of related recommendations, for S visas. These visas grant immigration status for up to three years to alien witnesses or informants who possess critical reliable information about a criminal organization or enterprise, and are willing to supply, or have supplied, such information to federal or state law enforcement authorities or a federal or state court. The parents, spouse, and children of a cooperating alien are eligible for derivative S visa status. While the WSP protects witnesses from potential danger in the United States, S visas help to protect witnesses likely to be in danger as a result of their cooperation, if they are deported. If approval is granted, S visas can be a powerful incentive in obtaining the cooperation of alien gang members who fear retaliation, if deported, based on their cooperation with law enforcement and/or their gang membership.

OEO assists gang-related law enforcement efforts through its oversight of the Special Administrative Measures (SAMs) Program. OEO is responsible for the initial review of requests to impose SAMs on BOP inmates, and non-BOP federal pretrial detainees, pursuant to 28 C.F.R. § 501.2 (to prevent the unauthorized disclosure of National Security Information (NSI) classified information), 28 C.F.R. § 501.3 (to prevent acts

of violence and terrorism), and the inherent authority of the Attorney General (for non-BOP federal pretrial detainees). Section 501.3 is appropriate in the case of a violent gang member. The Attorney General must personally approve the original imposition of SAMs, while the Assistant Attorney General for the Criminal Division may approve the imposition of all SAM extensions, as well as modifications that lessen the confinement condition(s).

SAMs are imposed in order to prevent communications that may facilitate criminal acts that could result in the infliction of death or serious bodily injury. In the gang context, such communications may include exhortations to or from coconspirators to undertake acts of violence, identification of government employees or their families for later retaliatory acts by gang members, instructions to or from the restrictee regarding the taking of some action designed to further violent objectives, intelligence gathering about the facility or personnel where the inmate is housed or was questioned, and information about questioning techniques and the information disclosed during questioning. Requests for implementation of SAMs should be submitted via fax, or otherwise in writing, to the Director of the Office of Enforcement Operations.

Finally, OEO approves or reviews other matters that may be involved in gang-related prosecutions, such as disclosure of grand jury information, attorney and press subpoenas, and the transfer of prisoners to and from foreign countries to serve the remainder of their prison sentences. Attorneys from OEO are available to provide training on electronic surveillance policies and procedures, as well as matters relating to witness security. In addition, they will provide advice and sample pleadings and forms in any OEO subject area. The point of contact for all OEO matters involving gang cases is Thomas Taylor, Associate Director for Policy, Office of Enforcement Operations, at (202) 353-8035. The OEO Victim-Witness Specialist is Jennifer Parks, at (202) 305-9286.

F. Office of International Affairs (OIA)

Since many gang members, although born in or living in the United States, maintain ties with counterparts in foreign countries, important transnational and international issues associated with gang prosecutions often arise. OIA provides

advice and assistance on international criminal matters, including those involving gang-related issues to USAOs, as well as to state and local prosecutors. OIA attorneys coordinate the extradition or other legal return of international fugitives, including fugitive gang members, and all international mutual legal assistance, such as the formal exchange of evidence.

In concert with the State Department and other responsible officials, OIA attorneys participate in the negotiation of new treaties, conventions, and other bilateral and multilateral agreements on international criminal matters. OIA attorneys are permanently assigned as Department Attachés to the Embassies in Mexico City, San Salvador, and other overseas locations. OIA attorneys also serve on a number of committees of international organizations that are directed at resolving a variety of international law enforcement problems, such as narcotics trafficking, organized crime, cybercrime, corruption, terrorism, and money laundering. The Criminal Division established the International Anti-Gang Task Force to better coordinate intra- and interagency transnational operational efforts and address critical gang-related issues, such as the repatriation of deportees from the United States back to their country of origin and the improvement of existing extradition treaties and mutual legal assistance practices. The OIA point of contact for gang-related issues is Senior Counsel John K. Wallace III, at (202) 305-9254.

G. Computer Crime and Intellectual Property Section (CCIPS)

The 2005 National Gang Threat Assessment revealed that gang members are becoming more sophisticated in their use of computers and technology and that these tools are being used to recruit, coordinate, and commit crimes faster and more efficiently. *See 2005 Gang Threat Assessment* (NAGIA 2005), available at http://www.nagia.org/PDFs/2005_national_gang_threat_assessment.pdf. The use of technology by gangs is also providing law enforcement with new leads and evidence. CCIPS attorneys and technical experts remain on the cutting edge of new technology and can help find ways to use technology to advance investigations. In particular, CCIPS' newly formed Cybercrime Lab can provide training and expert advice on technical components of investigations and prosecutions. The CCIPS points of contact are

Stephen K. Brannon, Cybercrime Analyst,
Cybercrime Lab, at (202) 353-9404, and Mick
Stawasz, Senior Counsel, at (202) 353-3626.

H. Capital Case Unit (CCU)

The increase in gang violence means a corresponding increase in gang cases that involve crimes for which the death penalty can be sought. CCU is charged with overseeing the Department's capital prosecutions. In addition to providing the expertise and analysis necessary to complete the preliminary capital review process, CCU attorneys provide legal, procedural, and technical assistance to USAOs in capital investigations and prosecutions; provide training for federal capital litigators; draft legal memoranda and pleadings; maintain a resource library on capital issues; and provide assistance in capital trials, appeals, and postconviction litigation. For further information, please contact CCU Chief Margaret P. Griffey at (202) 353-9723.

III. Conclusion

In the past year, the Criminal Division has joined with USAOs to enhance federal investigation and prosecution of gang violence, as part of the Department's overall strategy to coordinate anti-gang activity and the Criminal Division's Operation GRIP. Although numerous gangs have a nationwide presence, the successful prosecution of gangs depends upon district-by-district coordination at the federal, state, and local level. The role of the USAOs is obviously indispensable. Whether the district is one with a well-established record of gang prosecutions or is confronting a more recent gang phenomenon, Operation GRIP offers a variety of vital tools and resources that can greatly enhance the USAO's efforts to combat gang activity.❖

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Gang Prevention: How to Make the "Front End" of Your Anti-Gang Effort Work

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I. Introduction

Most people agree with the basic concept that if young people are prevented from joining gangs or if the violence associated with gangs can be stopped,

great strides toward accomplishing shared public safety goals will be made. Agreement on this concept, however, is still a long way from having the will, resources, or ability to implement prevention programs that show results. Some people may be skeptical about the feasibility of effective gang prevention, thus, they do not have the will. A few may think too narrowly about gang prevention and the assets that relate to it, thus, they feel there are no resources. Others may have the will and the resources, but they overlook

the best practices in implementing gang prevention and related activities.

Gang prevention is challenging work. There have been many advances, however, in knowledge and practice, that greatly increase the ability to be successful. U.S. Attorneys' offices can be highly effective leaders in local anti-gang initiatives that incorporate prevention. Federal prosecutors have a clear vested interest in gang prevention and provide a vital link between knowledge and resources at the federal level, and action at the local level. The purpose of this article is to provide federal prosecutors with a firm knowledge of the foundations for gang prevention that are required to get results from the front end of local anti-gang initiatives. Successful gang prevention is based on the proper balance of (1) attractive alternatives to gangs, (2) effective support systems for young people, and (3) accountability of young people to their parents, schools, and communities. Discussed below are the principles of effective gang prevention, a framework for implementing them within a community-based anti-gang initiative, and information about resources to assist in these efforts.

II. Foundations of effective gang prevention

Gang prevention is an effort to change the life trajectory of a young person who is otherwise likely to join a gang. Young people who join gangs are exercising a choice. The decision to join a gang is usually not made under extreme duress, though there are pressures placed on adolescents in this area. In fact, young people frequently see gangs as an attractive choice or a solution to their problems. From a practical perspective, gang prevention must address the needs and desires that underlie these choices in order to be effective. There are several sources of information on what young people want and what they need that have direct relevance to gang prevention. The first source of information on this topic comes from what we know about normal adolescent development.

A. Normal adolescent development

It is not a coincidence that the onset of adolescence overlaps with the average age for joining a gang (twelve to fourteen years old). The central developmental challenge of adolescence is

described by psychologist Erik Erickson as "identity vs. role confusion." ERIK ERICKSON, *CHILDHOOD AND SOCIETY* 150 (Penguin Books 1993). In short, all adolescents are trying to figure out who they are as they move toward adulthood. It is not uncommon for them to "try on" different identities during this time. This is a normal process that is harmless for most youth, but can also lead to risky and illegal behaviors.

The heightened importance of peer groups, and what psychologists call "egocentrism," are two other key developmental characteristics of adolescence. As children turn into adolescents, their focus of social attention and approval shifts from adults to their peers. During this time, adolescents become increasingly egocentric—meaning that they perceive the world as revolving around them—and they are deficient in the ability to accept other perspectives. Egocentrism has a number of consequences. For example, otherwise neutral events are more likely seen as personal slights, perceived injustices are often blown out of proportion, and the ability to empathize with others is underdeveloped. Taken together and applied in the context of a community with high levels of gang activity, normal adolescent development can result in very dangerous outcomes. Consider the common adolescent experience of being embarrassed or humiliated in front of a group of peers. This situation is difficult for any adolescent, but it can become deadly in the context of gang involvement. Gangs have access to illegal guns and norms that support violence as an appropriate method for resolving conflict. Many in local law enforcement are well aware of how frequently gang violence stems from seemingly minor "beefs" between adolescents.

B. Why young people join gangs

Gang researchers Scott Decker and Barrik Van Winkle describe forces that "pull" and "push" young people into gangs. *See*, SCOTT H. DECKER & BARRIK VAN WINKLE, *LIFE IN THE GANG: FAMILY, FRIENDS, AND VIOLENCE* (Cambridge University Press 1996). If you ask current or former gang members, they are likely to describe the "pulls." That is, they will describe those attractive features of gang membership and the gang lifestyle that typically include respect, excitement, social opportunities, protection, and money. Respect in the context of gang membership translates more directly into

intimidation or fear. Everyone wishes to be treated with respect, but gang membership offers young people a shortcut to earning respect. Excitement in the gang refers to risky behaviors, illegal activity, and generally upending the societal norms that define appropriate and inappropriate behavior, for example, parties where alcohol, drugs, and members of the opposite sex are readily available. The desire for protection among young people sometimes strikes a chord of compassion in adults. Some are tempted to ask, "Could it be that young people are really safer in gangs?" The answer is no. Despite myths to the contrary, gangs do not protect their members. Gang members are more likely to become victims because they embrace a lifestyle in which their own violence begets more violence. Finally, although some gangs and gang members make large sums of money through drug distribution or other criminal enterprises, many gangs lack the organizational sophistication to carry out these operations and, those that do, tend to concentrate most of the profits in the hands of a few people at the top. Thus, gang members often suggest motivations for joining gangs that seem like rational needs and desires. Gangs do not deliver on these promises, however, and the fun and excitement that are delivered lead to hazardous and destructive behaviors that can be fatal or life altering.

The forces that "push" young people into gangs have been verified by numerous longitudinal research studies that examine the conditions early in life that are related to an increased probability of gang membership in later years. Researchers have identified dozens of these conditions, called risk factors, that fall into five general categories or life domains. Researchers James "Buddy" Howell and Arlen Egley of the National Youth Gang Center (NYGC) recently summarized the five domains of risk factors for gang membership.

- Community or neighborhood risk factors—such as access to drugs, availability of illegal firearms, and the local crime rate.
- Family risk factors—such as sibling antisocial behavior, low parental control, and family poverty.
- School risk factors—such as low academic aspirations, low school attachment, and learning disabilities.
- Peer group risk factors—such as association with delinquent peers and/or aggressive peers.

- Individual risk factors—such as aggression or fighting, conduct disorders, and antisocial beliefs.

J.C. Howell & A. Egley, *Moving Risk Factors Into Developmental Theories of Gang Membership*, 3 J. YOUTH VIOLENCE AND JUV. JUST. 334-54 (2005).

The more risk factors in the life of a young person, the greater the probability for joining a gang. A study of Seattle youth found that those with seven or more risk factors at age ten to twelve were thirteen times more likely to join a gang than those with no risk factors. KARL G. HILL, CHRISTINA LUI, AND J. DAVID HAWKINS, DEPT OF JUSTICE, EARLY PRECURSORS OF GANG MEMBERSHIP: A STUDY OF SEATTLE YOUTH (2001). This cumulative effect of risk factors is very important to gang prevention and intervention. No one risk factor rises clearly above the rest, and different configurations of risk factors are likely to be present in different communities and for different individuals. Thus, gang prevention and intervention efforts must be poised to identify those risk factors that are at play, determine which are most amenable to change, and target those with effective services at the community, family, or individual level.

In summary, there are a variety of things that young people want and need that have direct relevance to gang prevention. Adolescents need opportunities to explore their identity and the healthy paths to adulthood. They need to do this with their peers in a social setting that is safe. They want to have fun and excitement. They want to be respected. They want access to money. Indeed, many who work with and have studied at-risk youth find that they would be content simply to have improved access to meaningful employment. They have a wide variety of needs and personal challenges that fall into the five risk-factor domains related to their community, school, family, peers, and personal issues. The needs and desires of youth can point the way to alternatives that can compete with the features of gangs that attract them. These needs and desires also help us understand what is required for effective support systems. Superior gang prevention efforts blend effective support systems with attractive alternatives to gangs, and target these services to adolescents who are most at risk for gang involvement.

III. Community-based anti-gang initiatives

A. Gangs and crime in the community

It is frequently said that no two gangs are alike. Even gangs that share the same name may have very different structures, group dynamics, membership characteristics, and offending patterns. Likewise, no two communities are exactly alike, as local leaders and community members are quick to point out. The best anti-gang initiatives are tailored to meet local needs and challenges, but benefit from broader-based research and best practices. On the front end of these initiatives are concerted efforts to understand how local gang characteristics and dynamics interact with a range of social forces that are also local and community-based (for example, demographic trends, housing, employment, historical events, law enforcement practices, and others). Before tackling the local issues, there is value in considering a general framework for the ways that gangs affect communities.

Figure 1, on page 53, provides a general sense of how gangs relate to illegal activity and population in a community with gang problems. Group 1, at the top of the triangle, represents serious, chronic, and violent offenders that are a relatively small portion of the population, but are responsible for a disproportionately large share of illegal activity. Group 2 consists of gang-involved youth and associates who make up a relatively larger share of the population, are responsible for significant levels of illegal activity, but are not necessarily in the highest offending category. Members of this group typically range in age from twelve to twenty-four years. Group 3 is made up of the seven to fourteen-year-old youth who have already displayed early signs of delinquency and risk for gang membership, but are not yet gang-involved. They will not all go into gangs, but they are the likely pool of candidates for gang membership in the near future. Group 4 represents everyone else living in a community where gangs are present.

These four groups clearly relate to four basic strategies for combating gangs. Members of Group 1 are candidates for targeted enforcement and prosecution because of their high level of involvement in crime and the low probability that other strategies will reduce their criminal

behavior. Effective enforcement and prosecution targeted at this small group of individuals will reduce community crime because each individual in this group is responsible for committing a large number of crimes. These individuals represent perhaps as little as 7 or 8 percent of offenders, but may account for 40 or 50 percent of all crime. Members of Group 2 are candidates for gang intervention, members of Group 3 are candidates for secondary prevention, and members of Group 4 are recipients of primary prevention services. With the exclusion of targeted enforcement (which is well-covered in other portions of this Bulletin), each of these strategies is discussed in turn as they relate to groups identified in Figure 1.

B. Gang intervention

Gang intervention includes a balance of services and opportunities with supervision and accountability (namely, "carrot and stick") that is tailored to the circumstances of individual gang-involved or high-risk youth. Gang members and associates typically engage in elevated levels of violence, property crimes, weapons violations, and drug offenses relative to their nongang-involved peers. They are also more likely to be exposed to numerous risk factors in the five domains already discussed. Beyond that, there are few simple ways to characterize them.

- They may or may not be in school.
- They may or may not be employed.
- They may or may not be on probation or otherwise in the juvenile or criminal justice system.

Effective gang intervention requires coordinated partnerships of agencies and service providers that use information-sharing across agency types (police, juvenile courts, schools, prosecution, community agencies) to facilitate targeting and outreach to gang-involved youth and their families, a system of graduated sanctions, and effective case management. Partners in gang intervention often include law enforcement, courts, probation offices, social services, employment services, schools, community groups, faith-based groups, and others. The basic intervention message to gang-involved youth can be summed up as follows: "We are working together to reduce violence and gang activity in our community. We are aware of your gang involvement and are concerned about illegal

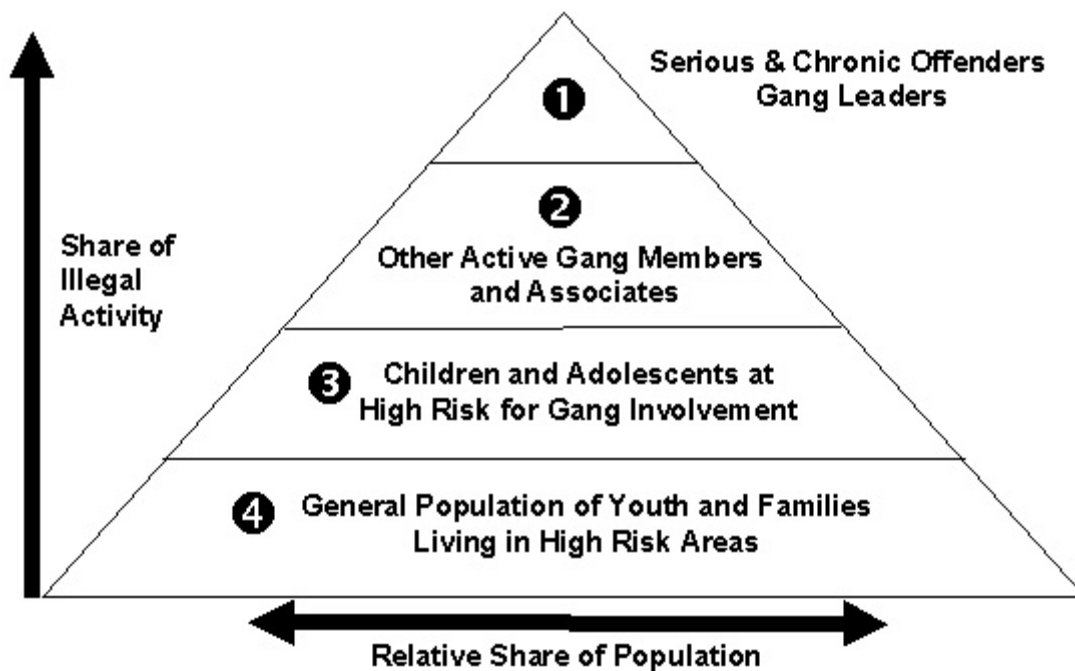


Figure 1

activities and the safety threat you pose to yourself and others. We are offering alternatives to the gang lifestyle in the form of social services, job opportunities, and educational opportunities. Whether you pursue these alternatives or not, you will be held accountable if you continue to pose a threat to community safety."

C. Secondary prevention

Secondary prevention refers to programs and services that are directed toward youth who have already displayed early signs of problem behavior and are at high-risk for gang involvement. This is the group that rises to the top of the prevention priority list for many people because they are most likely to face the choice of whether or not to join the gang in the near future. This is the group that most needs the three basic elements of effective gang prevention.

- **Attractive alternatives.** Attractive alternatives divert time and attention from the gang lifestyle by providing healthy and accessible venues for fun, excitement, and social interaction. These are safe venues to learn and practice healthy forms of gaining and showing respect.

- **Effective support systems.** Effective support systems are necessary to address specific social, emotional, and psychological needs and challenges faced by adolescents in general, and high-risk adolescents in particular.
- **Accountability.** Accountability is required to demonstrate and enforce clear expectations for appropriate behavior. Inappropriate behaviors in the context of prevention programs frequently do not rise to the level of illegal activity. Consequently, enforcing clear standards may take the form of withholding access to the most attractive features of program participation. In cases where behaviors are more serious, clear and appropriate sanctions beyond the program should be readily available.

D. Primary prevention

Primary prevention refers to services and supports that reach the entire population in communities with high crime or gang activity. These efforts typically address needs or risk factors in a way that is available to all youth and families, or supports the community as a whole. Delivery of these services may flow through units

of government, local schools, community organizations, or faith-based organizations. Examples include public awareness campaigns, one-stop centers that improve access to public services, school-based life skills programs, community clean up and lighting projects, and community organizing. Such a broad range of activities does not strike some people as having much bearing on gang prevention but, in fact, gangs thrive in areas that appear to be forgotten or overlooked. When there is clear evidence that residents care about their community, gangs begin to lose their foothold.

IV. A framework for implementing multiple anti-gang strategies

The strongest community-based anti-gang initiatives will combine four strategies—enforcement, intervention, secondary prevention, and primary prevention—to maximize the impact across the individuals in all four groups represented in Figure 1. Each strategy helps the others in important ways. For example, enforcement and intervention efforts interface with many of the high-risk youth who are perfect candidates for secondary prevention services, such as the younger siblings of active gang members. Appropriate referral mechanisms take advantage of these contacts to channel high-risk youth into appropriate prevention services. Also, the work of prevention practitioners may be hindered by local gang dynamics and activity that directly affect their younger clients and their families. An enforcement response may be necessary before prevention efforts can take hold. Implementing and coordinating multiple anti-gang strategies in a community is very challenging work, but the hard-earned lessons of communities across the country that have done this can save others from making costly and time-consuming mistakes. These lessons highlight the importance of partnerships, leadership, assessment, and planning.

A. Partnerships and leadership

United States Attorneys' offices (USAOs) are in an excellent position to exercise broader leadership in gang prevention and community-based anti-gang initiatives. Their leadership in Project Safe Neighborhoods (PSN) provides an excellent foundation for the gang prevention activities described thus far. Effective

partnerships, however, are critical to the success of any such efforts. Such partnerships will include members from different sectors, professions, and walks of life, particularly when gang prevention and intervention are part of the mix. Participants come to the table with different perspectives and knowledge of the issues. Although any partnership is well-advised to work quickly toward meaningful accomplishments, it is also important to give the group time to build a common framework for approaching the central challenge. Community members frequently have a very different perspective on gangs than law enforcement and educators and social service providers may have still different perspectives. An open, but focused discussion on defining the terms gang, gang member, and gang-related incident will help participants share their perspectives, clarify their thinking, and reach a common starting point. Statutory definitions of these terms that relate to prosecution practices are fair game for this discussion, but the discussion can be more far-reaching in the context of a multistrategy, community-based initiative.

Structurally, the partnership should have at least two tiers. The leadership team sets the direction of the initiative, steers resources, and sets and modifies policies and practices. This team must include key leaders from each of the participating agencies, as these leaders can send a powerful signal about the importance of the initiative, as well as commit resources. The operational teams directly implement activities and services for youth, families, and other community members, in a variety of settings. Effective operational teams are important for each strategy, but they are absolutely essential in order for gang intervention and secondary prevention strategies to meet the wide-ranging needs of high-risk youth. Thus, an anti-gang initiative may end up with several operational teams carrying out components of the overall effort and reporting back to the leadership team.

Information sharing is a major issue at the operational level. Professionals in this area are well acquainted with proper standards and practices for sharing information on juveniles. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g. Likewise, law enforcement professionals are aware of confidentiality requirements pertaining to intelligence records and crime incidents. Criminal Intelligence Systems Operating Policies, 28 C.F.R. Part 23.

Information must also flow freely, however, between the operational and leadership levels of an anti-gang initiative. Through direct involvement with these youth and their families, operational level personnel can identify the challenges and obstacles encountered, and communicate them to those who are most able to affect necessary changes.

Creating a community partnership on youth violence or gangs is not always necessary because there may already be an existing group that can be set to the purpose. In some areas, leaders are spread very thin because they are involved in so many partnerships. Building on an existing partnership shows a recognition of the prior work of potential partners and an appreciation for their tight schedules. Even so, starting a partnership is the easy part, maintaining it is much harder. Partnerships that come together in response to high-profile incidents too frequently lead to short-term responses and fall apart due to lack of focus and direction.

B. Assessment and planning

A good way to maintain a community partnership is to collect data to help prioritize issues and specify goals and objectives that clearly define the scope and focus of the initiative. This has emerged as one of the most important lessons in more than ten years of implementing and studying multi-strategy anti-gang initiatives supported by the Department of Justice's (Department) Office of Juvenile Justice and Delinquency Prevention (OJJDP). The same lesson has been drawn from PSN. Careful assessment and planning lead to success and keep partnerships together because they maximize the utility of existing resources, improve targeting of anti-gang activities to geographic areas, improve targeting of services to individuals, and provide a baseline from which program performance can be measured. Further, a detailed plan based on assessment data is critical to securing most forms of outside funding. The NYGC has developed a manual on assessing community gang problems that is available on its Web site <http://www.iir.com/nygc/>. Two of the most important features of a high quality gang problem assessment, as they relate to prevention and intervention, are described below.

- Gang-related crime incident data must be available. There are different ways to define a

gang-related crime, but however it is defined, there is great value in being able to measure the who, what, when, where, how, and why, of gang-related offenses. From a gang prevention standpoint, it is very important to know to what extent gang offenses are occurring in and around school grounds on weekdays during the school year. What proportion of aggravated assaults are gang-related? What is the age range of gang offenders and victims of gang offenses? This is just the beginning of the kinds of questions that have local importance. The problem is that many jurisdictions do not maintain gang crime incident data, or they do a poor job of maintaining these data. Gang intelligence information, while valuable to gang prevention and intervention for other reasons, does not substitute for gang incident data. For example, gang intelligence data may indicate what gangs are active in the area, who their members are, their symbols, their rivalries, their age range, and their size. Only gang incident data, however, will tell you that 40 percent of gang-related aggravated assaults are occurring on weekdays, between the hours of 2:00 p.m. and 6:00 p.m., within a half mile of three local schools. Having this kind of information increases the probability of implementing successful gang prevention, intervention, and enforcement strategies, because it allows leaders and operational personnel to target their resources and services in a way that is tailored to the local gang problem.

- Gang prevention and intervention activities rely on a network of community resources. One agency or organization can not effectively meet the many needs of high-risk and gang-involved youth. It is often necessary to inventory community resources because many communities lack any central directory of services and service providers that might be most beneficial to gang prevention and intervention. A community resource inventory should include such information as the types of services delivered, eligibility criteria, ability to accept new clients, and experience working with high-risk populations. The online Community Guide to Helping America's Youth allows users to register for a password-protected account for storing and mapping community resource inventory data.

This Guide is available at
<http://www.helpingamericasyouth.gov/>.

V. Gang prevention resources

The discussion of gang prevention resources must be divided into informational resources and funding resources. In both cases, however, a common guiding principle applies: do not get hung up on the word gang. The risk factors that are root causes for joining gangs overlap considerably with the risk factors for delinquency and violence more generally. On the information side, there are a host of programs that do not claim to be gang prevention programs, but have demonstrated their effectiveness in addressing one or more of these common risk factors. These programs might be very valuable components within the framework of a multi-strategy, anti-gang initiative.

A. Information resources

There are several reasons why this article does not name a single specific gang prevention or intervention program. Widely popular programs with extensive funding support sometimes show little or no results. Other programs die for lack of funding only to see evaluation reports a year later that show the program was working. Program replication hinges on the quality of program design and the quality of implementation. There is reason to believe that the quality of implementation is the more important of these two. Mark Lipsey is a researcher at Vanderbilt University who has studied hundreds of juvenile justice and delinquency prevention program evaluations using sophisticated statistical techniques called meta-analysis. He found that programs with the highest quality designs, that were well implemented, achieved the best overall success. The programs with the *lowest* quality designs that were *well* implemented, however, performed just as well as those programs with the *highest* quality designs that were *poorly* implemented. Hence, the focus of this article has centered on quality implementation. Nevertheless, program design cannot be overlooked. Mark W. Lipsey, *What Can You Build with Thousands of Bricks? Musings on the Cumulation of Knowledge in Program Evaluation*, 76 NEW DIRECTIONS FOR EVALUATION 7 (1997).

The federal government recently embarked on an unprecedented task as part of President Bush's

Helping America's Youth initiative. All of the youth-serving agencies in the government worked together to establish a single set of criteria for rating the performance of youth-serving programs. The focus of this effort was on program designs that had demonstrated results through evaluation. More than 180 programs that address a wide range of risk factors were identified and have been included in a searchable database on the Community Guide to Helping America's Youth Web site, <http://www.helpingamericasyouth.gov/>. For each program, the database includes information on the program design, the risk factors that are addressed, the target group, the evaluation design, outcomes, references for further information, and a point of contact. The most obvious use of this database is to identify programs for potential replication. However, it can also be used as a point of comparison for existing local programs that are working to accomplish the same ends.

The NYGC is another valuable resource in support of gang prevention and intervention programs. NYGC has been supporting practitioners, researchers, and policy makers, since 1995 with statistics, publications, training and technical assistance on youth gangs. Its goal is to deliver assistance that can be translated easily into policy and practice. The NYGC Web site (<http://www.iir.com/nygc/default.htm>) features scores of gang-specific publications in full text and fully downloadable, a database of gang legislation that is easily searchable by state or by topic, and an interactive listserv called GANGINFO that provides practitioners with a forum for sharing ideas.

B. Funding resources

USAOs and their community partners should have some knowledge of the funding sources available through the Department. Gang prevention programs draw on those same resources, but may also draw on funding streams from other departments and agencies, such as Health and Human Services (HHS), Education, Labor, and the Corporation for National and Community Service. Each of these federal departments has Web sites that should be visited periodically to identify federal programs and funding opportunities. For example, within HHS, the Administration for Children and Families has programs and funding to combat child abuse and neglect. The Department of Education has the

office of Safe and Drug Free Schools that provides assistance for drug and violence prevention activities. The Corporation for National and Community Service supports volunteer organizations around the country that serve underprivileged communities and can directly involve youth.

In addition, there are two sources that provide funding information from across federal agencies.

- The Catalog of Federal Domestic Assistance (CFDA), available at <http://www.cfda.gov/>.
- Grants.gov, available at <http://www.grants.gov/>.

CFDA is the best place to find federal government funding streams and grant programs. Grants.gov is a better resource for finding all the specific grant funding opportunities currently open. The Federal Resource Guide for Weed and Seed Communities is another valuable resource that should be familiar to many USAOs. This printable guide provides brief descriptions of federal agencies and programs that can be particularly helpful in community-based, multi-strategy initiatives. See Dep't. of Justice, Office of Justice Programs, *Federal Resource Guide for Weed and Seed Communities* (2004), available at <http://www.ojp.usdoj.gov/ccdo/pub/pdf/WSFedResGuide.pdf>. At the state level, much of the funding that could be used for gang prevention flows down from the federal government in the form of formula or block grant funding. The state administering agencies for all of the Office of Justice Programs funding can be easily found by state at <http://www.ojp.usdoj.gov/state.htm>.

Private and company-sponsored foundations should also be considered as potential funding sources. There are many foundations that set general goals of supporting projects that reduce violence, help youth, address conditions of poverty, or simply improve community life. There is no single reference or source of information on private and company-sponsored foundations, but there are a growing number of online directories—some of which are free and some that charge a fee to access. In addition to topical focus, foundations vary in geographic range with some focusing more regionally and some operating at a national level.

VI. Conclusion

The most convincing advocates for the importance of gang prevention are the law enforcement officers and prosecutors who have worked for years arresting gang members. They are so convincing because they can give first-hand accounts of the young people that cycle into the gang lifestyle, become offenders, and become victims. Some die young, some go to prison, and some continue on a ruinous path into adulthood. Soon, their children are old enough to be next in line and the pattern continues. The goal of gang prevention is to interrupt this cycle. Some have viewed this as nothing more than a dream. Others are working hard to make it a reality. Whether that goal is achieved, or not, will depend on the willingness to dedicate time and money to this purpose in a way that will continue to build knowledge and increase the number and quality of gang prevention tools at a community's disposal.

For further information about gang prevention and intervention, contact Phelan Wyrick at 202-353-9254. ❖

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Notes



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