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Prosecutors Model

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Problem Statement

While youth gang members account for a relatively small percent of a jurisdiction's overall index crime rate, their crimes are concentrated in certain low income minority or transitional communities and may constitute a large proportion of violent and serious crimes in these areas. Youth gangs intimidate adults and children; generally disrupt communities; and engage in activity which often results in serious injury or even death to both gang members and non-gang bystanders. Older, often former, gang members have become increasingly involved in street level drug trafficking in many large, middle sized, small and suburban communities around the country.

The key responsibility for bringing serious youth gang offenders to justice, protecting the community, and thereby "serving its best interest", has been placed on the county prosecutor or district attorney in conjunction with the police officer. The prosecutor has focussed most sharply on suppression with little attention to other possible strategies for dealing with the increasingly serious problem of youth gang crime.

In many high gang crime jurisdictions vertical prosecution or hard core gang prosecution units have been established to deal with the most serious assaultive offenders and gang related drug traffickers, usually in adult court. Under the specialized gang prosecution approach, a single prosecutor follows a particular case from start to finish to assure that certain gang offenders or suspects are targeted for investigation and prosecution to the fullest extent of the law and in the most efficient manner possible. This procedure has resulted in a significant increase in conviction rates and long sentences, and removal of convicted gang offenders from the community. While gang offenders are now held more accountable for their serious criminal behavior, there is no evidence that the presence of a vertical gang prosecution unit is associated with a reduction in the particular jurisdiction's gang crime or homicide rate.

The present model proposes that the prosecutor, including the specialized gang prosecutor, should implement a number of strategies, in addition to suppression, in conjunction with other actors not only in the criminal justice system, but in the community-based service agency system and the local community. The greater range of strategies to be employed should include primarily suppression, but also community mobilization. Prosecutors should assist community organizations to better develop strategies of social intervention and opportunity provision for gang members and gang prone youth. While the hard core gang unit is an excellent example of innovative organizational development, it is an incomplete remedy for the youth gang problem.

The primary law enforcement functions carried out by the prosecutor at the present time include: case selection and data management; collection and presentation of evidence; development of testimony; victim/witness protection; recommending bail and detention; trial; disposition and sentencing recommendations; and

interagency collaboration and community mobilization to control youth gang crime. These functions are generally directed to serious gang cases. However, they should also be selectively addressed to less serious juvenile gang cases where the youth appears in danger of becoming a hard core offender.

Vertical Prosecution

Specialized or hard-core gang prosecution units were established in a number of counties in the United States with the aid of federal funds in the late 1970s and early 1980s. The hallmark of these innovative prosecution arrangements has been concentration on the most serious youth gang offenders, especially cases involving violence and narcotics. Because of limited resources, vertical prosecution is usually reserved for homicide and the most violent cases. Less serious and non-serious gang cases are handled by regular prosecutors, even in those counties with vertical prosecution units. Such units vary in size from one or two prosecutors to over 40 full time prosecutors, as in Los Angeles County.

Vertical prosecution requires that a single prosecutor handle a case from start to finish, i.e., from investigation through trial, sentencing, incarceration, and probation or parole. It may also require that a prosecutor follow a case from juvenile or family court to adult criminal court. The theory is that a single prosecutor, handling the case exclusively, will be able to conduct it more effectively than if a number of different prosecutors handled the case at the different stages of court processing. Slippage tends to occur in the course of regular gang prosecution and the suspect is more likely to "fall between the cracks" or "escape the full force of the law". Prosecutors in hard core gang units are specialists usually with greater knowledge of gang culture and current gang activities. They can develop better follow-up investigation, control and continuity of cases, thereby increasing the chance of successful prosecution.

Case Selection and Data Management

Of special importance should be the development of written policies and procedures to be disseminated throughout the prosecutor's office which insure efficient selection and prosecution of gang cases. Close working relationships must be established with law enforcement agencies and probation. An information system, preferably computerized, should be created to track youth gang cases. Coordinated training of both police and prosecutors is required in case selection, particularly from the earliest part in the identification of cases which should be pursued through the court. A screening process based on specific criteria should insure that appropriate cases are referred by police or probation to the youth gang prosecutor. Prosecutors should systematically and carefully scrutinize police reports for any indication of gang involvement; e.g., graffiti, tattoos, gang

names, personal gang monikers, known gang members and information that signifies the occurrence of a gang incident. When inappropriate cases are selected and referred to the gang prosecutor, or appropriate cases are misdirected elsewhere, the purpose of specialized gang prosecution is defeated and resources are wasted.

Successful gang prosecution usually begins at the police level. The patrol officer who is usually the first law enforcement officer on the scene should be trained to recognize a gang incident and gather appropriate evidence. The care and reliability of information collected by the officer may determine whether or not an incident is correctly classified as specifically gang motivated, a gang member is involved in a non-gang motivated case, to which prosecutor it should be referred, and how it should be handled. Cases are likely to be lost to both the police or its gang unit and subsequently to the gang prosecutor, when relevant information and evidence are not collected. Criteria or guidelines must be clearly established for the collection, transcription, and submissions of gang relevant information to the prosecutor.

Once a case is selected by or assigned to the youth gang prosecutor or vertical prosecution unit, all further pertinent, current information and history on the suspect and his gang must be obtained. The development and use of an efficient data system to track such information is dependent upon the prior input of reliable data and cooperation from different units of the criminal justice system including police, prosecution, corrections, probation and parole.

A good computerized information system should perform a number of critical functions. It must track the long-term involvement of youth gang members in the juvenile or criminal justice system, in terms of charges, findings, warrants, probation and parole violations. An efficient system should adequately store, manage, and retrieve intelligence data which may be useful in the investigation of additional cases that are likely to be related to current ones.

Coordinated data handling of cases is also necessary. Serious gang offenders often have varied prior police and court records as well as pending gang and non-gang cases. Procedures and practices must be developed to assure rapid exchange of accurate and reliable information and common approaches, particularly when different prosecutors are handling different violence, homicide and narcotics cases for the same youth gang member. Policies regarding the assignment of overlapping cases and coordination within the prosecutor's office need to be established. While police and prosecution data systems in the same county should be similar and highly coordinated, they often are not, especially where different police departments in the county have developed somewhat dissimilar gang data collection and tracking systems to meet particular community needs. Nevertheless, The prosecution office's data system should incorporate key data relevant for gang prosecution across the various police data systems.

Finally, as suggested above, attention should be paid to less serious gang offenses and younger offenders. The gang prosecutor should collaborate with, or at least alert, non-specialized gang prosecutors in juvenile and criminal courts who are assigned cases of younger gang members not targeted for vertical prosecution. The case files of these youth should indicate they are positively identified as gang members and that they require more collaboration than normal processing by prosecuting attorneys. This is based on the assumption that gang members, particularly core gang members, are at high risk of being repeat serious offenders. The gang prosecutor can make a contribution by assuring that selected juvenile cases are fully considered by the judge with special reference to the provision of adequate community-based supervision, including comprehensive services and rehabilitation efforts.

Evidence Collection and Use

Before charges can be filed and/or cases prepared for trial, the prosecutor requires sufficient evidence and other information to develop a viable gang case. The preparation of a case, including proper and purposeful collection of evidence is a process shared by both prosecutor and police. Some jurisdictions have police assigned directly to the prosecutor's office or hard core unit. In other jurisdictions, the prosecutor's office employs its own investigators. In both of these situations, the gang prosecutor must work very closely with investigators to obtain evidence appropriate for the case.

Before a case is filed, the youth gang prosecutor must decide upon the correct charge(s) and begin to develop a strategy and build the case. He may need to collect additional evidence to reinforce his strategy. Guidelines acceptable to both prosecutor and police for filing a gang case should be developed to promote consistency and uniformity. Conflicts can occur when a prosecutor decides not to file a charge against the wishes of a law enforcement officer. Sometimes the prosecutors will bring a more serious charge than is customary in order to induce an alleged offender to become an informer in return for the prosecutor's acceptance of a lesser charge. The prosecutor should decide on a specific charge according to the facts regarding the incident. Some of these problems can be avoided through the development of standard operating procedures. A consistent policy on which cases will be selected and which charges filed should also be made public. It assists not only in the creation of uniform prosecution policy but assures equal protection of the law for suspects.

Testimony and Victim/Witness Protection

Several factors related to testimony in gang cases need to be considered: pre-trial witness testimony; protection of the gang member as witness and/or victim; and the use of the police officer as an expert witness. Issues of reliability of testimony,

intimidation, and criteria for determining whether the expert witness is an "expert" have to be resolved.

A witness or a victim of a gang crime is more likely than a non-gang case to be intimidated by gang members to prevent him from testifying. Thus, the victim or witness may recant or forget important aspects of his story for fear of retribution. Loss of this testimony is likely to damage the prosecution's strategy. One way of handling this problem is to video record pre-trial testimony. The witness or victim should state on tape that he knows he is being recorded and is aware of his constitutional rights. Thus, if the victim or witness becomes uncooperative at the trial, the prosecutor has the videotape as a back-up to safeguard his case. Such evidence, of course, may also be used and interpreted differently by the defense.

The prosecutor should provide, or at least advocate for the development of a victim/witness protection program. These programs are responsible for protecting victims/witnesses at their residence or sometimes should help to relocate them. Special attention should be directed to maintaining open lines of communication between the witness and the prosecutor before trial so that appropriate support is provided to the witness.

Attempts at intimidation of the victim or witness may occur during the trial, particularly in adult court. Associates of the gang member(s) are likely to be spectators at the proceedings. Intimidation of the victim or witness occurs when gang members, as spectators, "represent" or "throw hand signals", wear gang colors or display other gang symbols. The prosecutor must be alert and prepared to take action to prevent intimidation from occurring within or outside the courtroom. Should such intimidation occur, the prosecutor may request the presence of police gang unit officers, arrange to check attending gang members for outstanding warrants and serve them, and, if necessary, charge contempt or even violation of probation or parole against gang members involved in such intimidation or attempted intimidation.

Gang members constitute a large proportion of victims and witnesses in gang cases. This may pose special problems. The victim may deliberately avoid cooperating with the prosecutor in order to maintain a code of street gang "honor" or silence. The gang member victim may prefer to seek revenge later on the streets rather than going through the legal process.

The gang member witness also may attempt to fabricate or manipulate testimony to get back at a rival gang member. A gang member may exaggerate the seriousness of events leading to an incident alleged to have been committed by a rival gang or gang member. The gang member witness may seek to abuse the legal system in various ways. For example, although he is technically a victim of a violent crime, he may have deliberately challenged the offender or initiated the incident which led to the injury. If this is the case he may also be charged in the incident. Gang member testimony must be scrutinized for reliability to uncover any potential motive to manipulate the justice system.

Expert Witnesses. A law enforcement officer is often called by the prosecutor to serve as an expert witness. Caution must be exercised, however, if the rationale for using the officer as an expert witness is primarily based on the officer's experience or simply his repeated observation of or exposure to gang events. The defense may argue that such experience or observations alone do not qualify the officer as an expert. He may charge further that the police officer's source and use of data are biased and unreliable. To qualify as an expert for testimony, one must have special knowledge, training or education or special skills in the particular subject. The prosecutor should encourage at least some special gang unit officers to acquire the necessary background to meet these criteria, such as formal training, advanced education in the subject matter, presentation of conference papers, and publications.

Bail and Detention

Attention to bail in adult court and to detention in both juvenile and adult cases must be considered by the prosecutor in youth gang cases where incidents of inter-gang or intra-gang violence are likely to result in violent acts of retaliation against the offender as well as the witness. The prosecutor may best serve the interests of both society and the alleged offender by recommending high bail or detention in certain gang cases consistent with the law. However, the prosecutor should have persuasive information in order to convince the court of the necessity of custody for youth gang offenders or victims, e.g., evidence indicating the strong possibility of witness intimidation and retaliatory acts of violence.

High bail or detention may assure the presence of the suspect in court. In some states, under certain conditions the witness may be considered for detention or bail as an inducement to testify. The gang prosecutor should be aware that some gang members may have access to large sums of cash, derived from drug trafficking, which can be used for the purpose of bail. The prosecutor should challenge the source of this cash, when it does not seem reasonable that the bail money was obtained legitimately. If the source of this money cannot be proved to have been obtained through legitimate means and there is evidence of a "drug taint", seizure of this money can be pursued.

Trial Proceedings and Reference to Gang Membership

Reference in court by the prosecutor to a defendant as a gang member and attempts to educate jurors about youth gang patterns can be powerful incriminating tactics. Such tactics, however, are open to abuse. Standing alone, gang membership is inadequate evidence of guilt by association. To be admissible, gang membership must be relevant to some issue in the case. Guidelines for the use of references to the defendant's gang membership should be set by the court with the assistance of the prosecutor. Guidelines need to be

developed by which gang membership of the defendant is determined with reasonable certainty. Police hearsay information is not sufficient. The most reliable evidence of gang membership is ordinarily self-admission. Other forms of evidence are the youth's observed or proven association with gang members, identification by the youth as a gang member in a previous case, wearing of colors, tattoos, clothing and hair styles which indicate gang membership. However, such evidence may still not indicate the youth is a gang member, since some youth emulate youth gang styles and symbols while not being actual members of such groups.

Even if youth gang membership can be established through reliable evidence, the particular incident may not have been gang motivated. That is, the violence may not have directly resulted from specific gang related activity. For example, the gang member may simply have gotten into a bar room brawl with someone who is not a gang member or the argument is not over a gang issue; or robbed a store out of his own interest. The prosecutor should be cautious when making a reference to a defendant's gang membership and identifying the incident as gang-related. He should not exceed the bounds of admissibility, especially for non-gang motivated cases involving a gang member as a defendant.

Disposition and Sentencing Recommendation

After the defendant is found delinquent in juvenile court or guilty in adult court, the prosecutor needs to make a sentencing recommendation to the judge regarding supervision, probation, and/or incarceration. Such recommendations should be well-grounded and utilize the pre-sentence investigation of the probation department. The probation officer's report usually contains a wide range of information useful for sentencing purposes, including the gang member's delinquent or criminal history, social and psychological information, educational and employment background, peer group and gang affiliation and other data pertinent to the case. Pre-sentence reports provide direction to the prosecutor in arriving at sentence or disposition recommendations.

In some youth gang cases, usually those which are the most violent and where the gang member has been a chronic gang offender, the best interests of society may be served when the prosecutor recommends incarceration and a long sentence. In many other cases, the best interests of society and the youth may be served through court supervision or probation by developing plans which include, in addition to special restrictions (e.g., curfew and non-association with gang members), referral of the youth to community-based programs for social intervention, education and employment programs. The prosecutor should consider recommending special parental responsibilities in certain cases involving juvenile gang members. For example, the prosecutor may recommend that the parents attend parent education or effectiveness classes, particularly when there are younger children in the family who are likely to emulate older gang siblings. Once the judgment of supervision for the youth is made, the prosecutor should remain

available to probation and parole departments to investigate and seek possible revocation of supervision when youth gang members are in violation of their probation and parole orders.

Interagency Collaboration and Community Mobilization

The gang prosecutor sometimes becomes a key organizer or administrator of a justice system or community wide task force established to deal with the gang problem. The prosecutor as a criminal justice system and community leader needs to thoroughly understand and articulate the issues and rationales behind an effective response to the problem. He should acquire a good understanding of the purpose and activities of a variety of organizations which prosecutors are generally not always familiar with, e.g., youth service and treatment agencies, schools, churches, and grassroots organizations. He needs not only to facilitate coordination among criminal justice agencies locally and with representatives from other jurisdictions, but to assist community-based agencies to better reach out to gang youth, particularly in regard to prevention and rehabilitation programs. In his role as a community mobilizer, he must be convinced of the value of a variety of strategies, including counseling, remedial education, job training and youth employment as well as involvement in the development of local citizen gang control programs. He should clearly recognize the limits of an exclusive suppression approach.

The gang prosecutor has an important role to play outside as well as inside the courtroom. He should participate in local agencies or community meetings and respond directly to the concerns of local citizens about the problem. He can be an advocate for new programs targeted at gang youths. He may be called on to assist with mediation of gang conflicts or the development of projects which involve a variety of agencies or community groups, e.g., city-wide graffiti removal projects and local community gang nuisance abatement hearings. He may also be able to establish a "hot-line" procedure in his office which is not only responsive to the need to protect citizens against gang depredations but assist families with children who are gang members to obtain appropriate social services.

The prosecutor is often the key official called upon to define the response to the gang problem for legislative purposes. He may recommend legal conditions and develop specific terminology relevant to legislation. He may advocate for or against certain measures proposed by legislators. Since the gang prosecutor often sets or contributes significantly to policies which impact a variety of organizations both in the justice system and the general community, he should be especially sensitive to the importance of a balanced approach to the youth gang problem which requires social intervention, opportunities provision as well as suppression and community mobilization strategies.

Training

In light of the extraordinary demands and special leadership responsibilities of the gang prosecutor, it is essential that he receive specialized gang training. The training curriculum for the gang prosecutor should include the following:

- General history and understanding of youth gangs, with attention to the local gang situation;
- Nature of youth gang crime: modus operandi, crime patterns, with special reference to issues of violence and drug trafficking;
- Information on gang symbols, language, and attire useful to the prosecutor in gathering evidence regarding gang motivation;
- Information on data systems which can be used for intelligence and tracking purposes;
- Victim and witness protection procedures;
- Information on ways to establish cooperation with juvenile and criminal justice agencies, i.e., probation and parole, especially in regard to monitoring probationers and parolees;
- Knowledge of relevant community-based agency programs and community organization interests;
- Special laws and procedures pertaining to youth gang offenders, including conspiracy law, definitions of gang crime for enhanced sentences, constitutional and other legal issues in the prosecution of youth gang members.

The key trainers of new gang prosecutors should be other experienced gang prosecutors, gang unit police, probation and other justice system officials as well as experienced community agency personnel. Legislators, academics and researchers also have an important role to play in training gang prosecutors in their leadership responsibility.

Issue of Juvenile and Criminal Courts

A critical issue which prosecutors of youth gang members have to contend with is a dual system of justice--the juvenile or family court, on the one hand, and the criminal court, on the other hand. The existence of two court systems, often with different philosophical emphases, presents the gang prosecutor with a complex challenge. The gang member may be a serious violent juvenile or adult offender. However the juvenile court is oriented toward rehabilitation while the adult criminal court focusses on punishment. Vertical prosecution to some extent addresses this issue. The same prosecutor can be assigned initially to the case of a violent youth gang member being tried as a juvenile and continue with it should the youth appear in adult court at a later time. A second strategy is to request the juvenile court judge to certify or transfer the juvenile who has been charged with very

serious violent gang crime to the adult criminal court. The prosecutor, however, needs to be concerned that the traditional protection and services available to juveniles are not denied by virtue of the transfer. The commitment of the prosecutor to the best interests of the community requires that he attend to those court procedures which facilitate prevention of gang crime and rehabilitation of offenders, especially juvenile offenders.

Evaluation

We need to know systematically what the gang prosecutor does with which gang youth and how effective his efforts have been. Descriptive data is needed on which gang offenders are processed through specialized and regular prosecution for what types of crime. We should assess the effectiveness of specialized or vertical prosecution compared to regular prosecution not only in terms of successful convictions, trial victories, and sentences, but also longer term outcomes such as later adjustment in the community and recidivism after incarceration.

The nature and effectiveness of victim/witness protection programs in gang cases should also be carefully documented and assessed. Some comparisons with victim/witness protection in non-gang cases should be made. The relation of such protection to actual convictions needs to be determined. The reasons for waivers of juvenile gang members to adult court should be documented. Again, the results of such waivers in terms of disposition and recidivism rates should be assessed for comparable juvenile gang members who are waived and not waived as well as for comparable non-gang members who are waived and not waived.

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INTRO	.S	21,773	02-11-93 10:03a				

05-15-93 10:08a
Free: 590,336

Directory A:*.*

Current <Dir>				.. Parent <Dir>			
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