

AN ANALYSIS OF GANG ROLES AND GANG LAWS

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I have served as a legal-consultant and expert-witness in over 100 criminal cases. In this context I have specialized in over 80 violent gang and violence cases--most of them involving homicide. A significant aspect of my preparation for a case, whether it is for the prosecution or the defense, has involved determining the level of participation in a gang by an individual accused of gang violence; and whether or not the crime was "gang-related." These issues are significant since many jurisdictions have a "gang enhancement penalty" law. I have found that this is necessary in the context of prosecutors and police officers rushing to judgement on labelling defendants as "gang members." The following issues are involved in accurately determining who is and who is not legally a "gang-member."

A significant factor to be considered in a trial involving a gang or an alleged gang member is his role, if any, in the gang incident under judicial analysis. In this regard, based on my research for my book **GANGSTERS: 50 YEARS OF MADNESS, DRUGS, AND DEATH ON THE STREETS OF AMERICA** (New York University Press, 1998) I have delineated 6 basic types of gang roles and non-roles: (1)"OG's "or "Veteranos" are longtime core gangsters dedicated to their gang. They are individuals who have "put in work" and earned their status in the illegal behavior of the gang; (2) "Gs" are gangsters who comprise the general troops or soldiers in the gang; (3) "Wannabees" are young interns aspiring to become gangsters, and they often commit illegal acts to gain status in the gang; (4) "Gangster-groupies" comprise a relatively new category of youths who do not ordinarily participate in criminal gang activity but gravitate to and apparently enjoy hanging-out with gangsters out of their own ego needs, and intrigue with the gangster life-style. They tend to dress and talk like Gs, and are enamored with G rap-music; (5) "Residents in a G neighborhood" are young men who have grown up in a gang neighborhood. Literally, some of their best friends are Gs. They often hang-out, dress in G clothes-styles, go to school, and party with Gs from their neighborhood. Although they basically lead a legal and constructive life, they are often identified by the police as gang "associates" when they are stopped by the police in the company of Gs. They are often falsely labelled as Gs by police ID as "associates", even though their self-concept and their behavior indicates that they do not belong to a gang or participate in the illegal acts of a gang. (6.) Inactive or "Former Gangsters" are individuals who at one time in their earlier years were participants in a gang. Contrary to popular belief, because of the "near-group" usually disorganized nature of gang structure--many youths leave the gang and become law-abiding citizens. This pattern is more prevalent than the "police perspective" would believe. Many youths, who were in gangs, achieve regular employment, get married and become involved with their family, and seek to continue their education. Regrettably, after leaving the gang, they maintain a relationship with former homies--and find themselves in "the wrong place at the wrong time." "Inactive Gs" are individuals who were in the gang and as gracefully as possible make themselves scarce when G criminal activities are imminent. They enjoy the

comaraderie of their former homies and partying, however, they attempt to stay clear of them when deviant activities are about to occur. Sometimes they are in the wrong place at the wrong time, and get caught up in a crime. They are peripheral participants in the gang and mainly participate in the social non-criminal behavior of the gang. (The theory of the gang as a "near-group" is expounded on in my book, GANGSTERS (NYU Press, 1997.)

These 3 latter categories of less culpable youths, G-groupies, "Resident Gs", and "Former Gangsters" are too often caught in the net of a violent gang incident, identified as co-conspirators, and become subject to the overkill punishment of imprisonment that is meted out to the more involved gangsters under "Gang-Enhancement" laws. As an expert-witness, after careful analysis and interrogation of a defendant and the circumstances surrounding his participation in a specific event, I can make these distinctions in my reports and testimony. This information is of aid to the judicial process in rendering a just decision on a defendant's guilt or innocence in a crime.

A significant factor in the complex of gang activity and behavior is the California Gang-Enhancement Law. In the context of this law, police and prosecutors too often squeeze general deviant behavior into gang behavior, and erroneously prosecute a youth for gang behavior, when they are innocent of this offense. For analysis purposes, following are the main elements of Penal Code 186.22, often referred to as the "gang-enhancement law." The law states in part that: "Every person who actively participates In any criminal street gang with knowledge that the members are engaging in or have engaged In a pattern of criminal gang activity, and who willfully promotes, furthers, or assists In any felonious criminal conduct by members of that gang, Is guilty of a violation of Penal Code section 186.22, subdivision , a crime..."

In the law, "Criminal street gang means any ongoing organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of [crime list.] Active participation means that the person(1) must have a current relationship with the criminal street gang that is more than in name only, passive, inactive or purely technical, and (2) must devote all, or a substantial part a [his] [her] time or efforts to the criminal street gang."

"In order to prove this crime [a gang crime], each of the following elements must be proved: 1.A person actively and currently participated In a criminal street gang; 2.The members of that gang engaged in or have engaged in a pattern of criminal gang activity; 3. That person knew that the gang members engaged in or have engaged In a pattern of criminal gang activity, and 4. That the person aided and abetted member[s] of that gang In committing the crime(s)."

A factor that needs to be added into the analysis of the gang law is that simple membership in a gang does not prove the intent to commit a crime. For example in an opinion rendered in an appeal case (Superior Courts 95CF2769 and J-161645) one Appeal's Court Judge stated: "...mere presence at the scene of the crime which does not itself assist the commission of the crime does not amount to aiding and abetting."

Another significant comment in the Appeal Courts decision states that "evidence that a person was in the company of or associated with one or more persons alleged or proved

to have been members of a conspiracy, is not, in itself, sufficient to prove that such a person was a member of the alleged conspiracy." In brief, association with other gang members "without more" ["more" in the words of an appellate judge means more evidence], does not make an individual gang member guilty of the crimes of others, "unless there is an act of backup". In other words, you can not convict someone as having committed a crime through the disproved time-worn concept of "guilt by association."

Another aspect of this analysis of gang culpability, is that a gang member may commit a crime that has nothing to do with his participation in his gang. A few examples make this point. A gang member may be carrying a weapon for self-protection, and his being armed has nothing to do with his gang affiliation. A "made" member of the mafia may kill a man who he finds in bed with his wife--and the murder has nothing to do with a mafia crime in the context of RICO (Racketeer-Influenced-Corruption-Organization) gang laws. In brief, a violent act committed by a youth unrelated to his gang affiliation, does not warrant the activation of the gang-enhancement law at his trial.

In summary, legally labelling a youth as a "gang member" and convicting him of a gang crime is more complex than it appears in most cases. The utilization of a gang expert-witness's opinion can be a significant factor in the rendering of a just decision for or against a youth being tried for a "gang crime" in the criminal justice process. (6/2000)