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## Testifying in Court as a Gang Expert

**Expert testimony can make gang operations more understandable to the jury and the court.**

April 11, 2008 | by Richard Valdemar

*"Pilate saith unto him, what is truth?" - The Bible*

The grizzly veteran police officer yawned when the bailiff called his name. He put down the Styrofoam cup he had been using for a spittoon and ambled up to the witness stand. He was wearing a plaid shirt and a food-stained mismatched clip-on tie. The brown sports jacket he wore was several years old and was a little too small for his ample frame. His large pistol bulged beneath the coat. He proudly wore a pair of Tony Llama cowboy boots.

After the preliminaries of oath, name, and occupation, a young fresh-out-of-law school prosecutor began his direct examination.

PROSECUTOR: Is your appearance here this morning pursuant to a subpoena issued by this honorable court, which I sent you?

WITNESS: No Sir, I always dress this way for court.

The gang investigator's years of experience, knowledge, and training in the field of gangs is of no value if he is unable to communicate this knowledge in such a way as to convince a judge or jury that this knowledge is truth. I have known many experienced gang investigators who could not credibly testify as expert witnesses. Sometimes this is only a case of stage fright. Good preparation and practice can often get you qualified.

When the trial began in the 1995 RICO prosecution of the Mexican Mafia prison gang, the assembled gang experts from a multitude of jurisdictions and departments (FBI, LAPD, CDC, and LASD) all politely declined to testify as the government's gang expert in federal court, leaving yours truly to take the stand.

At the RICO trial, the Assistant United States Attorney, Lisa Lynch, led me through several hours of testimony resulting in the judge declaring me an expert. I then had to endure many hours of cross examination by the 13 defense attorneys for the Mexican Mafia (EME). These attacks against my knowledge and credibility were brutal and often times very demeaning. The AUSA allowed this so as not to appear "too protective of the government's expert witness." Several EME members had already

pleaded guilty and the case ended with 21 of the 22 defendants convicted under the RICO Organized Crime statutes. The ninth circuit court cited this expert testimony in affirming the RICO convictions.

Not every gang case needs a gang expert. The gang investigator and the prosecutor may decide that "murder is murder." Or perhaps a conviction for assault with a deadly weapon will give the suspect nearly as much time in prison as the additional gang allegations without having to prove the gang enhancements.

However, gang allegations and enhancements can multiply criminal penalties substantially. They are highly prejudicial and do great damage to the defense. In addition, the expert's testimony can make gang operations more understandable to the jury and the court. Explaining how gangs conspire and practice committing crimes together can effectively counter the defense attorney's tactic of suggesting that his client was at the scene but never expected that the trigger man would shoot the victim. Or that his client was only a passenger in the suspect vehicle who was not involved in the drive-by shooting.

Expert testimony can rehabilitate and explain prior testimony. This might happen when a gang witness recants on the stand after identifying the defendant or providing valuable information to the detectives in the field. The expert can explain to the jury about witness intimidation and the "Thou Shall Not Snitch" rules in the gang neighborhoods.

### **Voir dire.**

Before the pressure of anticipation of your expert courtroom testimony starts, write down your gang experience and training. Begin with your school days, because your experience probably pre-dates your first police academy class on gangs. Also include your college experience. Did you have classes in psychology or sociology? Did your professors and textbooks cover deviant behavior and criminal gangs? What books and magazine articles have you read on the subject? Maybe you had a friend or a relative who was a member of a gang. Perhaps you had some exposure to gangs during your military service.

If you were ever assigned to work in a prison or jail, definitely include this. I learned a great deal about gangs in my first assignment to the custody division from the mouths of the gang members themselves. No gang training or seminar taught me more.

Remember to list your academy training on gangs. List the law enforcement gang seminars and breakout classes you have attended. List the gang experts that taught you about local gangs. Include your experience working gang areas. Today almost no urban area is without active gang activity.

Are you a member of a law enforcement professional organization like the California Gang Investigators Association (CGIA) or the California Gang Task Force? Remember to include related organizations like the California Narcotics Officers Association (CNOA), which often provide valuable gang training classes and voices of expertise.

Seek out courtroom qualified experts and pick their brains. Try to attend an "expert testimony" training class put on by your local county district attorney's office or the California District Attorney's Association (CDAA). Go to court, sit in the audience, and listen to an expert as he or she actually testifies.

Write down everything you can think of. Do this over several days. Later you can edit and rearrange your thoughts into some kind of logical order. Read it over to yourself until you can almost recite it by memory. This will help you overcome your initial nervousness on the stand. You won't have to search for the answers or what order you are going to list your own qualifications. It will just come out. This same "bio" can become your affiant statement for future gang warrants.

Go out and look at your local gang graffiti. Know what the common abbreviations and symbols mean. ATM does not mean automatic teller machine to a Hispanic gang member. It means "A Todo Madre!" (Everything mother). Recently I saw a local gang cop on the stand in court who did not know what the Calo expression "Rifa!" meant. This word is taken from the old Calo word for marijuana, "griffa," and which the word "reefer" comes from. Rifa is a very common exclamation for something good. Totally clueless to this expression, his credibility in front of the jury was lost and after a few more poorly answered questions the judge stopped the testimony and dropped the gang allegations.

### **Dress to impress.**

Another mistake many experienced gang cops make is to wear their plain clothes or working clothes to court. Like the grizzly veteran cop described earlier, the boots or tennis shoes, green nylon raid jacket, and pistol hanging on the hip do nothing to impress the judge or jury. If you are expecting to be qualified as an expert, look the part. Wear a conservative dark colored suit with a business-like shirt and tie. If called in from the field to testify, a uniform is preferable to street clothes. If you must wear jeans and a T-shirt, have the prosecutor apologize to the court and tell them that you were working when summoned to court.

I must compliment the officers of the Los Angeles Police Department. They must be required to attend some class on courtroom appearance, which must be skipped at the Los Angeles Sheriff's Academy. I have spent many a day sitting in a downtown Los Angeles courtroom, and on average, whether in uniform or suits, the LAPD officers look neater and more professional than the LASD deputies. They may be no better at qualifying as an expert and testifying in general, but at least they look like they do.

### **Seduced by the dark side.**

I am sorry to say that there are former law enforcement gang experts who have sold their souls for 30 pieces of silver and now exclusively testify for the defense. These "guns for hire" often go to the dark side because that is where the money is. But none of them are very good. These defense gang experts are often placed on the black ball list of their former partners and peers and criticized at conferences and meetings. These same critics think nothing about hiring an ex-IRS employee to defend them when their taxes are audited by the Infernal Revenue Service.

But what is wrong with occasionally testifying for the defense? Senior Los Angeles Deputy District Attorney Anthony Manzella was the brilliant prosecutor in the Avenues Gang murder cases, which were chronicled in the book "Mexican Mafia" written by Tony Rafael. He told me that being a defense witness is a good way to block a defense attorney's suggestion to the jury that you are prejudiced in favor of the prosecution and cannot look at the evidence in an objective way. They will say that you testify only for the prosecution and never for the defense.

I have testified occasionally for the defense. Several times I made appearances to fulfill promises that I made to my informants. Usually it is not a question of guilt or innocence, but merely citing mitigating circumstances or attempting to reduce the enhancements or overall sentence.

And don't forget that not every crime committed by a gang member is committed in the furtherance of the gang. Gang members get jealous of their girlfriends and wives. They cheat each other in drug deals and get drunk and fight with other home boys. Sometimes the gang detective or the prosecutor is overzealous in charging a gang criminal with conspiracy and gang enhancements in these cases.

A few years ago in Orange County I was called by the defense to testify for a man charged with murder. The defendant was a Santa Ana drug dealer who had avoided the Mexican Mafia tax collectors. One day they caught, robbed, beat, and threatened him with a gun. The two EME tax collectors kidnapped him and forced him to drive them around to look for another drug dealer they thought he knew. He drove them around, carefully avoiding the places he knew the other drug dealer might be. But in a bit of bad luck, the man being sought actually drove past the three in the drug dealer's car. The tax collectors forced the drug dealer at gunpoint to follow the other drug dealer. As the victim pulled in front of his home, the tax collectors shot and killed the victim. The murder victim was the drug dealer's brother-in-law.

The Orange County District Attorney's Office filed murder and gang charges, not only against the two EME tax collectors, but against the kidnapped drug dealer as well. The drug dealer admitted that he was a drug dealer, but denied any part in his brother-in-law's murder.

I testified that what the drug dealer had described was a common method employed by the Mexican Mafia tax collectors. I cited another incident that had occurred a few years before in which two notorious Mexican Mafia tax collectors had similarly kidnapped an undercover Pomona narcotics officer who was attempting to buy drugs at a Pomona drug house. Thinking that the officer was just another dope customer, they used him to direct them to the proper door and make entry. The two were arrested by the Pomona cover team as they exited the residence with the tax proceeds. The kidnapped undercover officer was rescued.

The Santa Ana drug dealer was acquitted of the murder charge.

Your expertise should be the truth. If you keep it truthful, whether you are being called by the prosecution or the defense, you will maintain your credibility.