SCOTT HARSHBARGER
ATTORNEY GENERAL

THIRD ANNUAL
POLICE CHIEFS' CONFERENCE

November 30, 1993
Bentley College
Waltham, Massachusetts

150717

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AGENDA

8:00 - 8:30 AM	**REGISTRATION** Coffee & Pastry
8:30 - 8:45 AM	**INTRODUCTORY REMARKS** Scott Harshbarger, Attorney General
8:45 - 9:40 AM	**ATTORNEY GENERAL'S OFFICE UPDATES, SIGNIFICANT CASE LAW & LEGISLATIVE DEVELOPMENTS** Diane Juliar, Chief, Family & Community Crimes Bureau LaDonna Hatton, Assistant Attorney General, Criminal Bureau
9:40 - 10:05 AM	**OFFICE OF THE ATTORNEY GENERAL PROCEDURES FOR THE INVESTIGATION OF CIVIL RIGHTS COMPLAINTS INVOLVING POLICE OFFICERS** Thomas O'Loughlin, Chief, Wellesley Police Department Diane Juliar, Chief, Family & Community Crimes Bureau
10:05 - 10:30 AM	**EMERGING TECHNOLOGIES IN LAW ENFORCEMENT** R. Michael Cassidy, Chief, Criminal Bureau
10:30 - 10:45 AM	**BREAK**

10:45 - 11:45 AM	**CONFRONTING GANGS IN YOUR COMMUNITY** Ed Flynn, Chief, Chelsea Police Department Steven M. Salvatore, Sgt., Bureau of Criminal Investigations, Connecticut State Police Laurel H. Brandt, Assistant District Attorney, Hampden County Donald Robitaille, Lt., Chelsea Police Department
11:45 - 12:45 PM	**WORKING WITH THE MEDIA** Thomas Samoluk, Director of Communications, Assistant Attorney General LaDonna Hatton, Assistant Attorney General, Criminal Bureau Kevin Cullen, Reporter, Boston Globe Brent Larrabee, Chief, Framingham Police Department
12:45 - 1:00 PM	**OPEN DISCUSSION**

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I.

ATTORNEY GENERAL'S OFFICE UPDATES, SIGNIFICANT CASE LAW & LEGISLATIVE DEVELOPMENTS

THE OFFICE OF THE ATTORNEY GENERAL

ELDERLY PROTECTION PROJECT

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108-1698
TEL: (617) 727-2200 EXTENSION 2888 FAX: (617) 727-3251

SCOTT HARSHBARGER
Attorney General

JANE E. TEWKSBURY
Chief, Family and Community Crimes Bureau

JOHN S. SCHEFT
Project Director

To: Chiefs of Police
From: Scott Harshbarger

I am pleased to inform you that the Elderly Protection Project has begun the third component of its comprehensive training for police officers regarding elder abuse and exploitation. The project previously developed recruit and in-service programs. This final component, the advanced training seminars, will be presented at 16 regional two-day sessions around the state. Its goal is to enable police officers to communicate more effectively with our elder citizens and, through this improved communication, to enhance the appropriateness and effectiveness of the response of officers to instances of elder abuse, neglect and financial exploitation. The training also specifically addresses the specialized needs of mentally impaired elders and those involved in instances of domestic violence.

An important aspect of these advanced sessions is the participation of staff members from the Executive Office of Elder Affairs and local protective service agencies. As you know, these local agencies are responsible for investigating elder abuse, neglect and financial exploitation reports from local police departments and other mandated reporters. These agencies also provide services to elders in need of assistance and can provide services to police who are dealing with elderly individuals in their community. It is our hope that this joint training with protective services workers will promote increased and continued collaboration between your department and the local agency to enhance the quality of future responses to incidents involving elder victims.

A copy of the Elderly Protection Project's schedule of these two-day seminars and an outline of the subjects covered are enclosed; further information regarding specific site locations will be available soon. The evaluations of those who have attended to date have been extremely positive. They have found the program to be interesting, informative and above all, useful. Enrollment is limited, so if your department wishes to participate, please register as soon as possible. To register, please complete the enclosed form and return it with the registration fee of $15 per officer to this office as soon as possible. Certificates of training will be issued to those who complete the course.

I look forward to the participation of your department in this program and the opportunity to continue working with you to develop effective strategies to recognize, respond to, and reduce elder abuse, neglect and financial exploitation.

Attorney General
SCOTT HARSHBARGER

Law Enforcement
Advanced Training

TOPICS COVERED

- **DEMOGRAPHICS:** Presents facts to inform the audience that they will be dealing with more and more older people in the future. By 2020, almost one in five in the United States will be 65 and over, about the same percentage of older people as in Florida today. The implications are becoming more apparent. As the demographics of this country move us toward an older society, contacts between law enforcement and older citizens will increase, especially given the shift towards community policing.

- **MYTHS AND FACTS OF AGING:** Provides information that accurately portrays the capabilities of older people, and looks to break down certain stereotypes that people bring to their interactions with the elderly. Chronological age and functional age are not the same -- about 80% of those over 65 are fully capable of carrying on normal life activities; 81% live with their families and are homeowners. This "real" picture of the elderly not only serves as the basis for greater understanding, which leads to more effective communication, it also underscores the importance of police efforts to intervene in domestic situations and to respond to financial exploitation.

- **FEAR, VICTIMIZATION, AND VULNERABILITY:** Discusses the sources of fear and vulnerability that characterize the elderly's perceptions of and/or experience with crime. This section has important implications for effective crime prevention which, under a community policing orientation, is increasingly viewed as a department-wide responsibility. The training also offers insight on how to deal with the elderly victim/witness.

- **COMMUNICATING WITH THE ELDERLY:** Informs participants of teaching, interview, and behavioral techniques that can help them deal with the hearing and seeing problems experienced by some older people. Through the use of videotape scenarios, participants will examine common interaction failures and then observe ways to be more sensitive to "clues,"thus engaging in "service-oriented"communication.

- **THE VALUE OF SPECIALIZED TRAINING:** Introduces the audience to the Milwaukee Study. Within the context of the elderly, this study demonstrates that the nature of the police response is more significant in the citizen's mind than technical job proficiency. By exposure to the Milwaukee experience, officers will comprehend the value of enhanced communication skills and be more willing to integrate these approaches into their work.

- **CRIMINAL INVESTIGATION:** Offers a checklist approach to investigators embarking on an elder abuse investigation. Emphasis is placed on report writing skills and photographs of the scene and any injuries. Much of the material has been developed from techniques employed in domestic violence cases. Clearly, organized approaches to investigation yield positive outcomes in court.

- **FINANCIAL EXPLOITATION:** Examines the three categories of financial exploitation and the role of the police officer in preventing and investigating these kinds of crime. Financial exploitation is perpetrated by: (1) *Caretakers*, who take advantage of their personal relationships to misuse the elders' funds; (2) *Fiduciaries*, who use their professional position (e.g.,as a lawyer or financial advisor) to divert assets for their own purposes; and (3) *Scam Artists*, who are strangers to the elderly victims they swindle through the use of various fraud schemes. Beyond familiarity with these categories, participants will learn important investigative steps as well as approaches they might employ to educate the public.

- **THE ELDER ABUSE REPORTING LAW AND WORKING WITH PROTECTIVE SERVICES:** Covers the fundamental relationship between law enforcement and local protective service workers -- mandated reporting requirements, the nature of the protective services investigation and family intervention.

- **DOMESTIC VIOLENCE AND CHAPTER 209A:** Reviews the whole panoply of laws concerning domestic violence -- restraining orders, mandatory arrest, civil liability concerns and so forth -- within the context of the elderly victim. Increasingly, a greater percentage of these calls involve elderly victims. The police function can become all the more complicated when, as is often the case, elderly victims oppose police intervention because they fear that removing the abusive caretaker will result in their being institutionalized.

- **MENTAL HEALTH ISSUES AND CHAPTER 123:** Analyzes Chapter 123 from the street officer's and supervisor's perspective. Officers know that being an effective community presence means more than enforcing laws, but they are concerned about being sued and unsure of their authority in mental health matters. Increasingly, elders are finding themselves in abusive situations caused by their mentally ill caretakers. In these instances, officers may employ Chapter 123 to good advantage. Aside from elder cases, Chapter 123 applies in a myriad of situations and, as a consequence, is an essential body of knowledge for any officer.

- **MISSING PERSONS AND ALZHEIMER'S DISEASE:** Looks at the characteristics of elderly wanderers and advocates an immediate response that enlists the support of local agencies.

- **CASE STUDY PANELS:** Presents a series of case studies where officers and protective service workers will have the opportunity to interact and discuss their respective roles and responses. There will also be the opportunity to apply the knowledge gained during the seminar. This format will likely stimulate discussion on other issues of mutual concern and has proven, in other trainings, to be a valuable and enjoyable exercise for participants.

Attorney General
SCOTT HARSHBARGER

Law Enforcement Advanced Training

SCHEDULE

The Elderly Protection Project will hold sixteen (16) regional, two-day, advanced law enforcement trainings. The Attorney General is pleased that Secretary Frank Ollivierre and staff from the Executive Office of Elder Affairs and its local protective services agencies will participate in and help to present the trainings.

The schedule below indicates training dates and the participating protective service agencies and police departments from the corresponding cities and towns.

For further information on course locations or other details, please call or write:

JOHN SCHEFT, DIRECTOR
ELDERLY PROTECTION PROJECT
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE, 18TH FLOOR
BOSTON, MASSACHUSETTS 02108-1698
(617) 727-2200, EXTENSION 2888

SEPTEMBER 22-23, 1993

Montachusett Home Care Corporation

Ashburnham, Ashby, Ayer, Berlin, Bolton, Clinton, Fitchburg, Gardner, Groton, Hubbardston, Lancaster, Lunenberg, Leominster, Pepperell, Princeton, Shirley, Sterling, Templeton, Townsend, Westminster, Winchendon

OCTOBER 6-7

Elder Services Of Berkshire County, Inc.

Adams, Alford, Becket, Cheshire, Clarksburg, Dalton, Egremont, Florida, Great Barrington, Hancock, Hinsdale, Lanesborough, Lee, Lenox, Monterey, Mount Washington, New Ashford, New Marlborough, North Adams, Otis, Peru, Pittsfield, Richmond, Sandisfield, Savoy, Sheffield, Stockbridge, Tyringham, Washington, West Stockbridge, Williamstown, Windsor

OCTOBER 20-21

Baypath Senior Citizens Services, Inc.

Ashland, Dover, Framingham, Holliston, Hopkinton, Hudson, Marlborough, Natick, Northborough, Sherborn, Southborough, Sudbury, Wayland, Westborough

Tri-Valley Elder Services, Inc.

Bellingham, Blackston, Brookfield, Charlton, Douglas, Dudley, East Brookfield, Franklin, Hopedale, Medway, Mendon, Milford, Millville, Northbridge, North Brookfield, Oxford, Southbridge, Spencer, Sturbridge, Sutton, Upton, Uxbridge, Warren, Webster, West Brookfield

OCTOBER 27-28

Elder Services Of Cape Cod and The Islands, Inc.

Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Gay Head, Harwich, Mashpee, Nantucket, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, Wellfleet, West Tisbury, Yarmouth

NOVEMBER 3-4

Elder Home Care Services Of The Worcester Area, Inc.

Auburn, Barre, Boylston, Grafton, Hardwick, Holden, Leicester, Millbury, New Braintree, Oakham, Paxton, Rutland, Shrewsbury, West Boylston, Worcester

NOVEMBER 15-16

Health And Education Services, Inc.

Danvers, Marblehead, Middleton, Peabody, Salem

Senior Home Care Services, Inc.

Beverly, Essex, Gloucester, Hamilton, Ipswich, Manchester, Rockport, Topsfield, Wenham

Greater Lynn Senior Services, Inc.

Lynn, Lynnfield, Nahant, Saugus, Swampscott

DECEMBER 1-2

Western Massachusetts Elder Care

Belchertown, Chicopee, Granby, Holyoke, Ludlow, South Hadley

Greater Springfield Senior Services, Inc.

Agawam, Brimfield, East Longmeadow, Hampden, Holland, Longmeadow, Monson, Palmer, Springfield, Wales, West Springfield, Wilbraham

DECEMBER 8-9

Coastline Elderly Services, Inc.

Acushnet, Dartmouth, Fairhaven, Gosnold, Marion, Mattapoisett, New Bedford, Rochester

Bristol Elder Services, Inc.

Attleboro, Berkley, Dighton, Fall River, Freetown, Mansfield, North Attleborough, Norton, Raynham, Rehoboth, Seekonk, Somerset, Swansea, Taunton, Westport

JANUARY 19-20, 1994

Boston Senior Home Care
Central Boston Elder Services, Inc.
Southwest Boston Senior Services

All of the neighborhoods and areas of Boston

JANUARY 26-27

Chelsea/Revere/Winthrop Elder Services

Chelsea, Revere, Winthrop

FEBRUARY 9-10

Health & Social Services Consortium, Inc. (HESSCO)

Canton, Dedham, Foxborough, Medfield, Millis, Norfolk, Norwood, Plainville, Sharon, Walpole, Westwood, Wrentham

South Shore Elder Services, Inc.

Braintree, Cohasset, Hingham, Holbrook, Hull, Milton, Norwell, Quincy, Randolph, Scituate, Weymouth

FEBRUARY 23-24

Minuteman Home Care Corporation

Acton, Arlington, Bedford, Boxborough, Burlington, Carlisle, Concord, Harvard, Lexington, Lincoln, Littleton, Maynard, Stow, Wilmington, Winchester, Woburn

West Suburban Elder Services, Inc.

Belmont, Brookline, Needham, Newton, Waltham, Watertown, Wellesley, Weston

MARCH 16-17

Somerville-Cambridge Elder Services, Inc.

Cambridge, Somerville

Mystic Valley Elder Services, Inc.

Everett, Malden, Medford, Melrose, North Reading, Reading, Stoneham, Wakefield

APRIL 6-7

Highland Valley Elder Services

Amherst, Blandford, Chester, Chesterfield, Cummington, Easthampton, Goshen, Granville, Hadley, Hatfield, Huntington, Middlefield, Montgomery, Northampton, Pelham, Plainfield, Russell, Southampton, Southwick, Tolland, Westfield, Westhampton, Williamsburg, Worthington

Franklin County Home Care Corporation

Ashfield, Athol, Bernardston, Buckland, Charlemont, Colrain, Conway, Deerfield, Erving, Gill, Greenfield, Hawley, Heath, Leverett, Leyden, Monroe, Montague, New Salem, Northfield, Orange, Petersham, Philipston, Rowe, Royalston, Shelburn, Shutesbury, Sunderland, Warwick, Wendell, Whatley

APRIL 20-21

Old Colony Elder Services, Inc.

Abington, Avon, Bridgewater, Brockton, Carver, Duxbury, East Bridgewater, Easton, Halifax, Hanover, Hanson, Kingston, Lakeville, Marshfield, Middleborough, Pembroke, Plymouth, Plympton, Rockland, Stoughton, Wareham, West Bridgewater, Whitman

MAY 18-19

Elder Services Of The Merrimack Valley, Inc.

Amesbury, Andover, Billerica, Boxford, Chelmsford, Dracut, Dunstable, Georgetown, Groveland, Haverhill, Lawrence, Lowell, Merrimac, Methuen, Newbury, Newburyport, North Andover, Rowley, Salisbury, Tewksbury, Tyngsborough, Westford, West Newbury

TRAINING AGENDA

FIRST DAY

Registration
8:30 a.m. - 9:00 a.m.

DEMOGRAPHICS AND THE ELDER POPULATION: THE IMPLICATIONS FOR POLICE
9:00 a.m. - 9:30 a.m.

MYTHS AND FACTS OF AGING
9:45 a.m. - 10:00 a.m.

FEAR, VICTIMIZATION AND VULNERABILITY: HOW TO DEAL WITH THE ELDERLY VICTIM/WITNESS
10:00 a.m. - 11:00 a.m.

Morning Break
11:00 a.m. - 11:15 a.m.

COMMUNICATING WITH THE ELDERLY
11:15 a.m. - 12:00 p.m.

THE VALUE OF SPECIALIZED TRAINING: THE MILWAUKEE STUDY
12:00 a.m. - 12:30 p.m.

Lunch
12:30 p.m. - 1:15 p.m.

INVESTIGATION: THE VALUE OF REPORTS AND PHOTOGRAPHS
1:15 p.m. - 1:45 p.m.

FINANCIAL EXPLOITATION
1:45 p.m. - 3:30 p.m.

Afternoon Break
2:30 p.m. - 2:45 p.m.

FINANCIAL EXPLOITATION
2:45 p.m. - 3:30 p.m.

SECOND DAY

THE ELDER ABUSE REPORTING LAW AND WORKING WITH PROTECTIVE SERVICES
8:30 a.m. - 10:00 a.m.

Morning Break
10:00 a.m. - 10:15 a.m.

DOMESTIC VIOLENCE
10:15 p.m. - 11:00 p.m.

CHAPTER 123 AND MENTAL HEALTH ISSUES
11:00 a.m. - 11:45 a.m.

MISSING PERSONS AND ALZHEIMER'S DISEASE
11:45 p.m. - 12:45 p.m.

Lunch
12:45 p.m. - 1:30 p.m.

WORKSHOP: CASE STUDIES IN ELDER ABUSE, NEGLECT, AND EXPLOITATION
1:30 p.m. - 2:30 p.m.

Afternoon Break
2:30 p.m. - 2:45 p.m.

Course Evaluation
2:45 p.m. - 3:00 p.m.

WORKSHOP & NETWORKING
Continued
3:00 p.m. - 3:25 p.m.

Participants Receive Certificates
3:25 p.m. - 3:30 p.m.

Attorney General
SCOTT HARSHBARGER

Law Enforcement
Advanced Training

REGISTRATION FORM

POLICE DEPARTMENT: _____

Address: _____

Telephone Number: _____

TRAINING DATES: _____

PARTICIPANTS

1.
NAME: _____ ***POSITION:*** _____
2.
NAME: _____ ***POSITION:*** _____
3.
NAME: _____ ***POSITION:*** _____
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NAME: _____ ***POSITION:*** _____
10.
NAME: _____ ***POSITION:*** _____

PLEASE RETURN YOUR REGISTRATION FORM TO:

Attorney General Scott Harshbarger
Attention: Jeff Donohue, FCCB
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108-1698
(617) 727-2200, extension 2889

M E M O R A N D U M

TO: Massachusetts Chiefs of Police

FROM: Diane Juliar

DATE: November 23, 1993

RE: 1994 Legislative Proposals

Following are brief summaries of several bills affecting police filed by this office for consideration in the 1994 legislative session. Although we obtained input from various police chiefs and officers prior to filing the legislation, we continue to welcome comments on both the desirability and specifics of the proposed statutes.

(1) Elder abuse reporting to police.

The current statute, modeled after the original child abuse reporting law, provides for substantiated cases of elder abuse to be reported only to the DA's office. The child abuse statute subsequently was amended to provide for reporting to both the DA and local police simultaneously. The proposed amendment, suggested by a Chief, would parallel the later amendment to the child abuse reporting statute. The same procedures developed to ensure coordinated child abuse investigations could be utilized by DAs and police conducting elder abuse investigations.

(2) and (3) Police powers under C. 209A. The need for both of these bills became clear in our annual statewide police trainings on domestic violence and from questions received from District Attorneys' offices throughout the course of the past year. These bills would clarify two issues regarding which there is ambiguity and, as a result, some disagreement in interpretation of C. 209A.

(2) Arrests in Substantive Dating Relationship Situations

The first would make clear that the police can act when they have probable cause to believe that there is a "substantive dating relationship" and do not need to wait for court intervention. This type of relationship is covered in the definition of "family or household member", but separated out by the use of language referring to the court determining whether this status exists. It is inconsistent with the

recognized intent of C. 209A which is to allow prompt police action to protect victims of domestic violence. While many prosecutors and police believe that police currently can act when they have probable cause to believe that a substantive dating relationship exists, others do not, or simply aren't sure, because of the ambiguous language of the current statute.

(3) Interjurisdictional Arrest Authority

This amendment would clarify police authority to make arrests in their own jurisdiction for crimes committed in another jurisdiction, based upon probable cause conveyed to them by law enforcement officers in the other jurisdiction, in circumstances where arrest is the "preferred response" but not mandatory under C. 209A. It would make clear that they can make arrests in these circumstances, although they still would not be mandated to do so. Again, this would clarify an issue about which there currently is substantial uncertainty and would further the clear intent of the statute, as it has been interpreted in court decisions.

(4) Ex Parte Temporary Protective Order Under C. 209A

This legislation would allow the statutory provisions currently used to obtain a temporary protective order under C. 209A when the court is closed to be utilized in circumstances where the complainant is unable to appear in court without severe hardship because of the plaintiff's physical condition. That is, it would allow an elderly or infirm victim who would need to be transported to court in a wheelchair, or who was hospitalized, to obtain a temporary order, with the assistance of a law enforcement authority, by phone. It would also explicitly recognize the fact that the court might have to go to the victim, if the victim can't otherwise come to the court, for the later adversarial hearing.

(5) Amendments to the Stalking Law

Since the stalking law was enacted in 1992, police officers and district attorneys have expressed concerns regarding cases that the law, as drafted, does not reach. After listening to the problems voiced by law enforcement officials -- many elicited at the 1992 Domestic Violence Conference -- the Attorney General's Office drafted amendments to the law which are designed to remedy several major areas of concern.

The proposed legislation has four parts. First, the legislation simplifies the underlying elements of the crime of stalking by deleting the "threat" element. By removing this element, the Commonwealth would not have to plead and prove that the conduct included an actual, express threat to the victim, as long as it was shown that the defendant intended to place the victim in imminent fear. This important amendment will substantially ease the burden in charging and prosecuting

stalking cases. If this legislation is enacted, the remaining elements of the crime of stalking will be:

* wilfully, maliciously, and repeatedly
* following or harassing another
* with the intent to place that person in imminent fear of death or serious bodily injury to that person [or another -- see below].

Second, the bill provides that outstanding restraining orders issued by other states will be valid in Massachusetts for purposes of charging under the stalking law. This means that a defendant cannot escape prosecution and the strict penalties under subsection (b) of the stalking law simply because an outstanding restraining order was issued by another jurisdiction.

Third, the bill provides that conduct described in the statute which is intended to put the victim in imminent fear of injury to <u>another</u>, not just of injury to herself, is also covered. This amendment recognizes that a stalker may threaten the victim with harm to her child, or to her new boy friend, and a defendant engaging in such conduct would be equally culpable.

Fourth, the stalking amendments allow the Commonwealth to bring a stalking case in <u>any county</u> where <u>any element</u> of stalking occurred. Thus, if the victim was threatened at her home in Malden, then repeatedly harassed at her parent's home in Pittsfield, with the harassment providing the final element of the crime, the charge clearly could be brought in her "home" court of Malden.

(6) <u>Firearms Legislation</u>

Legislation has been proposed to address the danger posed by firearms in domestic violence situations. While adjustments are still being made, the current draft of the legislation does the following:

* Prohibits the issuance of an FID card or license to carry to any person against whom there is an outstanding domestic violence restraining order.

* Provides for the automatic suspension of an FID card or license to carry when a domestic violence restraining order is issued against the card holder; the suspension period must be at least as long as the duration of the order. There is a special provision addressing situations when the order is subsequently invalidated or vacated.

* Provides that an FID card or license to carry be suspended by operation of law upon the holder's conviction of a felony or a controlled substance offense, with notice given to the licensing authority.

* Provides that if an FID card or license to carry is suspended based upon issuance of a domestic violence restraining order, the holder may have a speedy hearing for its return in court, at the ten day hearing, with notice and an opportunity to be heard provided to the licensing authority.

* Requires FID cards to be renewed every five years to allow periodic review of a cardholder's record, and establishes an expiration schedule for current FID cards.

* Increases the application fee for FID cards and licenses to carry and renewals.

* Requires the licensing authority and the court to forward all action taken on FID cards and licenses to carry to the commissioner of public safety for inclusion in the criminal justice information system.

* Requires the commissioner to search the statewide domestic violence recordkeeping system to determine if an applicant for an FID card or license to carry has a domestic violence restraining order in effect against him/her and to notify the prospective licensing authority.

* Prohibits the issuance of a temporary license to carry to nonresidents or aliens against whom there is an outstanding domestic violence restraining order.

* Permits the suspension of and prohibits the renewal of a temporary license to carry for nonresidents or aliens if a domestic violence restraining order is issued against the license holder or if the license holder is convicted of a felony or a drug-related offense.

9071WPPJDS

G.L. c. 218:

H 2936

Chapter 218

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Ninety-three

AN ACT RELATIVE TO MEDICAL FACILITIES ACCESS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 266 of the General Laws is hereby amended by inserting after section 120D the following section:-

Section 120E. As used in this section, the following words shall have the following meanings:-

"Medical facility", any medical office, medical clinic, medical laboratory, or hospital.

"Notice", (i) receipt of or awareness of the contents of a court order prohibiting blocking of a medical facility; (ii) oral request by an authorized representative of a medical facility, or law enforcement official to refrain from obstructing access to a medical facility; or (iii) written posted notice outside the entrance to a medical facility to refrain from obstructing access to a medical facility.

Whoever knowingly obstructs entry to or departure from any medical facility or who enters or remains in any medical facility so as to impede the provision of medical services, after notice to refrain from such obstruction or interference, shall be punished for the first offense by a fine of not more than one thousand dollars or not more than six months in jail or a house of correction or both, and for each subsequent violation of this section by a fine of not less than five hundred dollars and not more than five thousand dollars or not more than two and one-half years in jail or a house of correction or both. These penalties shall be in addition to any penalties imposed for violation of a court order.

A person who knowingly obstructs entry to or departure from such medical facility or who enters or remains in such facility so as to impede the provision of medical services after notice to refrain from such obstruction or interference, may be arrested by a sheriff, deputy sheriff, constable, or police officer.

Any medical facility whose rights to provide services under the provisions of this section have been violated or which has reason to believe that any person or entity is about to engage in conduct prescribed herein may commence a civil action for injunctive and other equitable relief, including the award of compensatory and exemplary damages. Said civil action shall be instituted either in superior court for the county in which the conduct complained of occurred, or in the superior court for the county in which any person or entity complained of resides or has a principal place of business. An aggrieved facility which prevails in an action authorized by this paragraph, in addition to other damages, shall be entitled to an award of the costs of the litigation and reasonable attorney's fees in an amount to be fixed by the court.

Nothing herein shall be construed to interfere with any rights provided by chapter one hundred and fifty A or by the federal Labor-Management Act of 1947 or other rights to engage in peaceful picketing which does not obstruct entry or departure.

House of Representatives, October 21, 1993.

Passed to be enacted, Edward J. Lynch, Speaker.

In Senate, October 25, 1993.

Passed to be enacted, William M. Bulger, President.

4 November, 1993.

Approved,

3:19 PM

W. Wm. F. Weld

Governor.

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY-

AN ACT

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 265 of the General Laws is hereby amended by inserting after section 13I, as appearing in the 1992 Official Edition, the following section: -

Section 13J. (a) For the purposes of this section the following words shall, unless the context indicates otherwise, have the following meanings:

"Bodily injury", substantial impairment of the physical condition including any burn, fracture of any bone, subdural hematoma, injury to any internal organ, any injury which occurs as the result of repeated harm to any bodily function or organ including human skin or any physical condition which substantially imperils a child's health or welfare.

"Child", any person under fourteen years of age.

"Person having care and custody", a parent, guardian,

employee of a home or institution or any other person with equivalent supervision or care of a child, whether the supervision is temporary or permanent.

"Substantial bodily injury", bodily injury which creates a permanent disfigurement, protracted loss or impairment of a function of a body member, limb or organ, or substantial risk of death.

(b) Whoever commits an assault and battery upon a child and by such assault and battery causes bodily injury shall be punished by imprisonment in the state prison for not more than five years or imprisonment in the house of correction for not more than two and one-half years.

Whoever commits an assault and battery upon a child and by such assault and battery causes substantial bodily injury shall be punished by imprisonment in the state prison for not more than fifteen years or imprisonment in the house of correction for not more than two and one-half years.

Whoever, having care and custody of a child, wantonly or recklessly permits bodily injury to such child or wantonly or recklessly permits another to commit an assault and battery upon such child, which assault and battery causes bodily injury, shall be punished by imprisonment for not more than two and one-half years in the house of correction.

Whoever, having care and custody of a child, wantonly or recklessly permits substantial bodily injury to such child or wantonly or recklessly permits another to commit an assault and battery upon such child, which assault and battery causes

substantial bodily injury, shall be punished by imprisonment in the state prison for not more than five years, or by imprisonment in a jail or house of correction for not more than two and one-half years.

SECTION 2. The second paragraph of section 1 of chapter 273 of the General Laws, as appearing in the 1992 Official Edition, is hereby amended by striking out the first sentence.

SECTION 3. Chapter 127 of the General Laws, as appearing in the 1992 Official Edition, is hereby amended by inserting in section 133, line 4 after the words "thirteen B", the words: "thirteen-J".

D-R-A-F-T

SCOTT HARSHBARGER, ATTORNEY GENERAL

TOM REILLY, DISTRICT ATTORNEY, MIDDLESEX COUNTY

GUIDELINES FOR COMPLIANCE WITH MANDATORY ARREST PROVISIONS OF DOMESTIC ABUSE LAW, G.L. c.209A

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INTRODUCTION

These guidelines are intended to assist police officers in complying with the mandatory arrest provision of the Abuse Prevention Law, G.L. c. 209A, §6(7). While response to the 1990 amendments to the Law has been extraordinary, resulting in a significant increase in the issuance of restraining orders, police officers have raised several practical problems as to compliance in certain situations: when the defendant has violated the restraining order by telephoning the victim; when he cannot be located immediately; when he is located in another city or town; or when he is located in a dwelling. These guidelines are intended to assist police officers in making lawful arrests under these circumstances.

DISCUSSION

I. MANDATORY ARREST FOR VIOLATIONS OF RESTRAINING ORDERS.

The 1990 amendments to the Abuse Prevention Law created a mandatory arrest provision for violations of restraining orders in G.L. c. 209A, §6(7). Under the law,

a police officer who has probable cause to believe that a criminal provision of a domestic abuse restraining order has been violated is required to arrest. Probable cause exists if the police officer receives credible information that (1) a provision of a restraining order, violation of which is a criminal offense ("criminal provision"), was violated, (2) the defendant is the subject of that order, and (3) the order was in effect at the time of the violation.

This provision is unique in that, if there is probable cause, a police officer does not have the discretion to determine whether or not to make an arrest. Information received from the victim that a restraining order was violated, if credible, is enough to provide probable cause and mandate an arrest. Only if the officer believes that the victim is not telling the truth or learns that no restraining order was in effect may he or she decline to arrest.

The mandatory arrest portion of the Abuse Prevention Law, G.L. c. 209A, §6, states:

> Section 6. Whenever any law officer has reason to believe that a family or household member has been abused or is in danger of being abused, such officer shall use all reasonable means to prevent further abuse. The officer shall take, but not be limited to, the following actions:
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> . . .

> (7) arrest any person a law officer witnesses or has probable cause to believe has violated a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to [G.L. c. 209A and related provisions].

This provision requires a police officer to make an arrest whenever the officer determines there is probable cause that the defendant has violated a criminal provision of a restraining order of the types listed in G.L. c. 209A, §6(7). The mandatory arrest provision applies to temporary and permanent orders and judgments issued under: G.L. c. 208, §§18, 34B or 34C (divorce actions); G.L. c. 209, §32 (separate support actions); G.L. c. 209A, §§3, 4, or 5 (abuse prevention law); or G.L. c. 209C, §§15 or 20 (nonsupport orders and modifications).

The criminally enforceable provisions of restraining orders are those to vacate, stay away, have no contact with the victim or the victim's child, and refrain from abusing the victim or her child. Vacate orders are defined to include leaving the victim's home or workplace, remaining away, and surrendering keys. G.L. c. 209A, §1.[1/]

1/ Violations of other provisions of restraining orders, such as those relating to support and custody under G.L. c. 209A, §3, or interference with the victim's occupancy of her home under §1, are noncriminal. No arrest should be made unless there has been a violation of a criminally enforceable provision of the restraining order. Support and custody violations, and interference with occupancy, however, may be prosecuted as civil or criminal contempt. A civil contempt proceeding is one which seeks to coerce compliance with the order by imposing a sanction, such as

Additionally, for violations of any of the above orders or judgments, police officers are required to make arrests on probable cause, whether or not the offense was committed in their presence. G.L. c. 209A, §6(7). Power to make such arrests on probable cause is found in both G.L. c. 209A, §6(7) and in G.L. c. 276, §28.

II. MANDATORY ARREST FOR TELEPHONE VIOLATIONS.

Where a police officer has probable cause that the defendant has violated a criminal provision of a restraining order, arrest is mandatory regardless of the method used by the defendant to violate the order. Even where the violation appears to be minor, arrest is required if the officer has probable cause. Thus, if a police officer receives credible information that the defendant has violated a no-contact order by calling the victim on the telephone, the officer has probable cause and is required to arrest.

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a fine or imprisonment, which can be avoided by complying with the order. A criminal contempt proceeding seeks to punish noncompliance and requires provision of all the procedural rights of criminal defendants.

The Abuse Prevention Law also provides that arrest is the "preferred response" when a police officer has probable cause that any crime involving abuse has been committed, including both misdemeanors and felonies, in cases where no restraining order was violated. For any such crime involving abuse, police officers have the power to arrest on probable cause regardless of whether the offense was committed in their presence. G.L. c. 209A, §1.

III. DIFFICULTY IN LOCATING DEFENDANT.

If a police officer attempts to locate a defendant who has violated a restraining order, and the defendant is not easily found, under the mandatory arrest law, reasonable efforts should continue to find the defendant and conduct a warrantless arrest. Additionally, as soon as it appears that the defendant may not be apprehended quickly, the police should seek an arrest warrant and ensure its entry into LEAPS.

In such a case, the victim should not be sent to District Court to seek a civilian complaint. The mandatory arrest law requires that the police continue to make reasonable efforts to arrest, including obtaining an arrest warrant and attempting to serve it. Sending the victim to apply for a civilian complaint is contrary to the Abuse Prevention Law's purposes and undermines the message to the perpetrator that domestic abuse is a serious crime which will not be tolerated.

Probable cause to arrest does not decrease with the passage of time. Once the officer has received credible information that a valid restraining order against the defendant was violated, probable cause is established that the crime was committed. Unless new facts come to light indicating no restraining order was in effect against the defendant, or that cause the officer to believe that the victim's report was untruthful, the probable cause, once established, continues to exist.

IV. MANDATORY ARREST OF DEFENDANTS FOUND WITHIN AN OFFICER'S JURISDICTION, FOR CRIMES COMMITTED IN ANOTHER TOWN.

The mandatory arrest provision requires an arrest whenever a police officer has probable cause to believe that the defendant has violated a restraining order. This means that a police officer of a city or town must arrest any person located within his or her jurisdiction whom the officer has probable cause to believe has violated a restraining order under G.L. c. 209A and its related provisions.

It makes no difference in the calculation of probable cause that the offense may have been committed in another city or town; if a police officer determines that there is probable cause that a restraining order was violated anywhere in the Commonwealth, the officer is obligated, within his or her own city or town, to make the arrest.

As in any other situation, police officers may rely on information received from the victim, from a witness, or from another law enforcement officer, including an officer in another jurisdiction, to establish probable cause. Once a police officer has probable cause that a restraining order has been violated anywhere in the Commonwealth, the officer must arrest the perpetrator if he is found within the officer's jurisdiction.

V. TRANSPORTATION OF ARRESTED PERSONS BACK TO THE DEPARTMENT OR COURT WHERE THE OFFENSE WILL BE PROSECUTED.

Questions have arisen as to the proper procedures to be followed when a police officer makes an arrest for a restraining order violation committed in another jurisdiction. Where there are no charges to be brought in the arresting jurisdiction, the defendant must be transported back to the prosecuting department. The proper procedures depend, in part, on the method of arrest and the location of the charging jurisdiction.

1. Warrantless Arrest

Where the arrest was made without a warrant, an officer from the prosecuting department should pick up the defendant and take him back to the prosecuting police station for booking. The arresting department should contact the prosecuting department as early as possible to arrange for transportation. If the prosecuting department is unable to pick up the defendant within a reasonable time, the arresting department must transport.[2/]

2/ Confessions or admissions made during an unreasonable delay may be suppressed; if transportation is deliberately delayed in order to assist in eliciting a statement, the statement will be suppressed. Commonwealth v. Cote, 386 Mass. 354 (1982). What is a reasonable time is likely to be determined in light of Mass. R. Crim. P. 7(a)(1), which requires that a person under arrest be brought before a court if then in session or, if not, at its next session. See also Jenkins v. Chief Justice of the District Court Department, 416 Mass. 221, 238-239, 246 (1993) (remanding for implementation, within a reasonable time, of rule that, absent unusual circumstances, arrestees be afforded a probable cause determination within 24 hours).

Under the 1992 amendments to the bail law, a defendant arrested for violating a restraining order (or arrested for committing a crime involving "abuse" as defined in G.L. c. 209A, while a 209A restraining order was in effect) may not be bailed except by a judge. G.L. c.276, §57 (as amended by St. 1992, c.201). Such a defendant, after transport to the prosecuting police department, must be held in custody until bail is set by a judge. As much information as possible should be made available to the prosecutor and judge concerning the nature of the offense, prior incidents, and any other facts relevant to a determination of bail. G.L. c. 276, §58. The judge must consider the defendant's criminal record and domestic violence "registry" information, as well as whether the crime was one of domestic abuse. If a defendant is released on bail, the judge must make "reasonable efforts" to inform the victim of the release. G.L. c. 209A, §6.

If there is no restraining order in effect, the defendant, after he is transported to the prosecuting police department following a warrantless arrest, is entitled to a bail hearing before a bail commissioner or magistrate. As much information as possible should be provided concerning the nature of the offense, prior incidents, criminal record, domestic violence "registry" information, and any other facts relevant to a determination of bail. G.L. c. 276, §58. The bail commissioner is required to consider the defendant's

history of restraining orders, if any, and whether the crime involves "abuse" under G.L. c.209A. If the defendant is released on bail from the police station, the bail commissioner or magistrate must use reasonable efforts to notify the victim of the release. G.L. c. 209A, §6.[3/]

2. Arrest on a Misdemeanor Warrant Within the County of the Offense

If an arrest is made on a warrant for a restraining order violation or other misdemeanor within the same county as the prosecuting department, the same procedure should be followed: an officer from the prosecuting department should transport the defendant to the prosecuting police station for booking. If the prosecuting department is unable to transport, the arresting department must do so.

If the charge is violating a restraining order, or if a 209A restraining order was in effect at the time of the abuse, the defendant must be held until bail is set by a judge. Otherwise, except on a default warrant, the defendant is entitled to a bail hearing before a bail commissioner or magistrate.

3/ Under procedures to be implemented in the near future, a defendant who is not released from custody will be entitled to a speedy probable cause determination, generally within 24 hours. Jenkins v. Chief Justice of the District Court Department, 416 Mass. 221, 238-239, 246 (1993). Recognizing the potential for widespread disruption, the Court permitted a "reasonable time" for implementation of its decision.

3. Arrest on a Misdemeanor Warrant Outside the County of the Offense

If the defendant is arrested on a misdemeanor warrant for a crime committed outside the county where the case will be prosecuted, the procedures are somewhat different. First, if the defendant is charged with violating a restraining order or committing a crime of domestic abuse while a 209A restraining order was in effect, he may not be bailed except by a judge. G.L. c.276, §57 (as amended by St. 1992, c.201). Such defendants must be transported to the prosecuting department and held there until bail is set by a judge.

If the defendant is not charged with such an offense, however, and he is arrested on a misdemeanor warrant outside the county where the warrant is returnable, he is entitled, on request, to be taken before a magistrate or bail commissioner in the county of arrest. G.L. c. 276, §29. The bail commissioner may, but is not required to, release the defendant on bail (except, presumably, in the case of a default warrant). This procedure, required by G.L. c. 276, §29, applies only to arrests on misdemeanor warrants for crimes, not involving restraining orders, committed outside the county where the arrest was made. It does not apply to misdemeanor warrants executed within the same county, felony warrants, or warrantless arrests.

If a bail hearing is held in the county of arrest for such an offense, the arresting department should contact the prosecuting department and/or the victim or other

sources to gather as much information as possible concerning the circumstances of the offense, prior incidents, criminal record, domestic violence "registry" information, and any other facts relevant to a determination of bail, and provide this information to the bail commissioner. G.L. c. 276, §58. If the defendant is released, the bail commissioner or magistrate must make reasonable efforts to notify the victim of the release. G.L. c. 209A, §6.

If the defendant is not released, G.L. c. 276, §31 requires the arresting officer to transport the defendant to the court issuing the warrant. While the statutory responsibility for transport is on the arresting officer, the statute does not prohibit the prosecuting department from providing the transport, as long as there is no unreasonable delay. If the defendant is taken directly to court without booking at the prosecuting department, care should be taken to provide complete information to the prosecuting department, so that the record-keeping requirements of G.L. c. 41, §98F and G.L. c. 209A, §6 can be complied with.

Defendants not charged with violating a restraining order, and who do not have a 209A restraining order in effect, may see a bail commissioner at the prosecuting police station, if they have not previously had a bail hearing in the county of arrest.

At any bail hearing, whether held at a police station or court, as complete information as possible should be provided as to the facts of the case, prior incidents, criminal record, domestic violence registry information, and other facts relevant to bail. The person admitting the defendant to bail must make reasonable efforts to notify the victim of the defendant's release.

4. Arrest on a Felony Warrant Within the County of the Offense

If a felony warrant is executed within the county of the offense, an officer from the prosecuting department should transport the defendant back to the prosecuting police station. If the prosecuting department is unable to pick up the defendant within a reasonable time, the arresting department must transport.

If the charges include violating a restraining order or if a 209A restraining order was in effect, the defendant may not be bailed except by a judge, and must be held pending a bail hearing before a judge. G.L. c. 276, §57. Otherwise, regular procedures should be followed at the prosecuting department for booking, bail, and transport to court.

5. Arrest on a Felony Warrant Outside the County of the Offense

In the case of felony warrants served in another county, G.L. c. 276, §32 states that the arresting officer shall convey the defendant to the county where the warrant was issued. Again, there is no prohibition against the

prosecuting department providing this transportation, as long as there is no unreasonable delay.

Once the defendant is returned to the prosecuting police department, the same procedures as described above should be followed for booking, bail (if no restraining order is involved), and transport to court. For arrests based on felony warrants, it should be noted that there is no provision for bail in the county of arrest. All bail proceedings must be held in the prosecuting department or court.

At any bail hearing, as much information as possible should be provided to the bail commissioner or judge, and, if the defendant is released, the person admitting him to bail must make reasonable efforts to notify the victim of the release. G.L. c. 209A, §6.

6. Power to Transport

In the case of an arrest on a warrant, power to transport the defendant back to the prosecuting department is provided by G.L. c. 276, §23 (statewide power to serve arrest warrants). In the case of a warrantless arrest, power to transport must be considered inherent in the arrest powers provided by the Domestic Abuse Law, G.L. c. 209A, §6(7).

Transportation is a ministerial act, not involving the initial exercise of judgment necessary to determine whether there is probable cause to arrest. Without the ability to return the offender to the prosecuting

jurisdiction, the provisions of the Domestic Abuse Law regarding arrest for crimes committed in another city or town would be a nullity. Statutes must be interpreted consistently with their purpose and in a common sense fashion. Commonwealth v. Gordon, 407 Mass. 340, 346 (1990); Commonwealth v. Tata, 28 Mass. App. Ct. 23, 25-26 (1989), fur. app. rev. denied, 406 Mass. 1103 (1990). Police officers routinely transport persons arrested without a warrant to the local district court, which may be located outside the officer's jurisdiction. See Mass. R. Crim. P. 7(a) (requiring arrestees to be brought to the next court session); cf. G.L. c. 263, §3 (limiting actions against officers assisting with arrest).

As long as prompt transportation is provided, there is no prohibition against using other means of returning the defendant to the prosecuting department. Where the arresting department shares a border with the prosecuting department, the defendant may be transferred at the city or town line. Where available without undue delay, an officer with statewide jurisdiction may transport the defendant.

In some cases, police officers have obtained arrest warrants for the purpose of transporting defendants who were arrested in another jurisdiction without a warrant. This procedure should not be necessary, where there is an explicit statutory authorization (and mandate) to make a warrantless arrest, and where awaiting issuance of an

arrest warrant is likely to delay the return of the defendant. Moreover, if a warrant were sought and issued as to a misdemeanor arrest made in another county, it would then entitle a defendant arrested for an offense not involving a restraining order to request a bail hearing in the county of arrest under G.L. c. 276, §29, as described above. Thus, the better practice after a warrantless arrest is to simply transport the defendant back to the prosecuting department.

VI. ARREST IN DEFENDANT'S OR THIRD PERSON'S DWELLING.

The procedures for arresting a defendant in his own or a third person's dwelling have not been altered by the Abuse Prevention Law. Assuming there are no exigent circumstances allowing a warrantless entry into the defendant's home, and no person has given valid consent to enter and search for the defendant, the Fourth Amendment and Article 14 of the Massachusetts Declaration of Rights require the police to seek an arrest warrant. Payton v. New York, 445 U.S. 573, 576 (1980); Commonwealth v. Forde, 367 Mass. 798, 804-807 (1975).

Where the defendant is in the dwelling of a third party and there are no exigent circumstances and no person has given valid consent to enter and search for the defendant, both an arrest warrant and a search warrant are required. Steagald v. United States, 451 U.S. 204, 216 (1981); Commonwealth v. Pietrass, 392 Mass. 892, 898 n.9

(1984); Commonwealth v. Allen, 28 Mass. App. Ct. 589, 592 (1990).

These rules should be applied to domestic abuse matters in the same way as to other cases. Where police officers are called to a dwelling on a report of violence, the need to prevent imminent harm to the victim will of course constitute an exigent circumstance. The victim may also give consent to enter her own dwelling and to search any areas to which she has access. Thus, the typical case where a warrant is needed will be where the defendant is located in another dwelling at the time of arrest.

The warrant requirement does not mean that arrest is not mandatory or preferred under G.L. c. 209A, §6. It simply means that the police must make the arrest by constitutional means, whether they choose to wait for the defendant to leave the dwelling or seek an arrest warrant and, if necessary, a search warrant. Where arrest is mandatory, or where arrest is the preferred response, reasonable, ongoing efforts to make the arrest should continue.

VII. ARREST IS "PREFERRED RESPONSE" FOR OTHER CRIMES INVOLVING ABUSE, WHERE THERE IS NO VIOLATION OF A RESTRAINING ORDER.

Under the 1990 amendments to the Abuse Prevention Law, arrest is the "preferred response" for crimes of domestic abuse other than violations of restraining orders. G.L. c. 209A, §6(7). The law requires police officers to treat

the safety of the victim and any involved children as the paramount consideration in deciding whether to arrest under the "preferred response" provision.

Under G.L. c. 209A, §6, police officers are empowered to arrest on probable cause for misdemeanors involving abuse,[4/] assault and battery, and any felony regardless of whether the offense was committed in the officer's presence. Thus, even where arrest is not mandatory, a police officer may and should arrest whenever the officer has probable cause to believe that a crime involving domestic abuse was committed regardless of whether it was committed in the officer's presence. As in the case of mandatory arrests, it makes no difference in the determination of probable cause that the offense was committed in another city or town within the Commonwealth.

Where a police officer exercises discretion to make a "preferred" arrest, the same procedures as described above should be followed for transportation of arrested persons back to the prosecuting jurisdiction and for arrest warrants or search warrants for arrests in the defendant's or another person's dwelling.

4/ "Abuse" is defined as attempting or causing physical harm, putting another in fear of imminent serious physical harm, or using force, threat, or duress to coerce sexual relations. The law applies to persons in a wide range of relationships: where the parties are or were married; are or were living in the same household; are or were related by blood or marriage; have a child; or are or were in a substantive dating or engagement relationship.

CONCLUSION

It is hoped that this memorandum has clarified some of the issues relating to mandatory arrest in domestic violence cases. Any questions concerning the issues addressed in this memorandum, or other issues relating to the Abuse Prevention Law, may be directed as follows:

In Middlesex County:

-- during regular office hours, to the Middlesex Abuse Prevention and Prosecution Project, (617) 629-0222 or the Appeals and Training Bureau at (617) 494-4062

-- in emergencies after hours, to the Assistant District Attorney on beeper duty at (617) 430-1520 (touch tone) or (617) 553-0759 (rotary).

-- for questions regarding search warrants after hours, to the Assistant District Attorney on search warrant beeper duty at (617) 430-1522 (touch tone) or (617) 553-0165 (rotary).

Statewide:

-- to the Family and Community Crimes Bureau of the Attorney General's office at (617) 727-2200

-- to the District Attorneys offices

D-R-A-F-T

SUMMARY OF PROCEDURES FOR MANDATORY ARREST UNDER DOMESTIC ABUSE LAW, G.L. c. 209A

Mandatory Arrest

1. Arrest is mandatory whenever a police officer has probable cause to believe that a domestic abuse restraining order has been violated. G.L. c. 209A, §6(7).

2. Probable cause exists if the police officer receives information that: (1) a provision of a restraining order, violation of which is a criminal offense ("criminal provision"), was violated; (2) the defendant is the subject of that order; and (3) the order was in effect at the time of the violation. Unless the officer believes the victim is not telling the truth about the existence of a violation or learns that no valid order was in effect against the defendant, the victim's word alone is sufficient to provide probable cause.

3. The criminally enforceable provisions of restraining orders are those to vacate, stay away, have no contact with the victim or the victim's child, and refrain from abusing the victim or her child. Vacate orders include those to leave the victim's home or workplace, remain away, and surrender keys.

4. Police officers are empowered to arrest on probable cause regardless of whether the offense was committed in their presence. G.L. c. 209A, §6(7); G.L. c. 276, §28.

5. Arrest is mandatory upon probable cause for any violation of a criminal provision of a restraining order. Telephone contact, for instance, is a violation of a no-contact order and requires arrest if probable cause is present.

6. Where the defendant is not located immediately, reasonable efforts to arrest must continue. An arrest warrant should be sought and entered into LEAPS where the defendant is not found quickly. The victim should not be sent to court to seek a civilian complaint in cases where there is probable cause to believe that a restraining order was violated. Probable cause to arrest does not decrease with the passage of time.

Warrantless Arrest Outside Jurisdiction

7. There is no exception in the mandatory arrest law for cases where the restraining order was violated in one city or town in Massachusetts, but where the defendant is located in another city or town. When a police officer receives information from another police officer, or from any reliable source, indicating there is probable cause to believe that a person located within the officer's jurisdiction has violated a restraining order, the officer must arrest, even if the violation occurred in another jurisdiction within the Commonwealth.

8. Following a warrantless arrest for a restraining order violation committed in another city or town, prompt transportation must be provided back to the prosecuting

department and then to court. If the prosecuting department does not pick up the defendant within a reasonable time, the arresting department must provide transportation to the prosecuting department.

Bail

9. Defendants arrested for violating a criminal provision of a restraining order (or arrested for committing a crime involving "abuse" as defined in G.L. c. 209A, while a 209A restraining order was in effect) may not have bail set except by a judge. G.L. c.276, §57 (as amended by St. 1992, c.201). Thus, where a defendant is arrested for such an offense, he must be held in custody until bail is set by a judge. If he is arrested outside the prosecuting jurisdiction, he must be transported to the prosecuting department as described above.

10. If a bail commissioner or magistrate conducts a bail hearing at the police station on a crime not involving a restraining order, as much information as possible should be provided concerning the nature of the offense, prior incidents, criminal record, domestic violence "registry" listings, and any other information relevant to a determination of bail. The bail commissioner is required to take into account the defendant's history of restraining orders, if any, and whether the crime involves "abuse" under G.L. c.209A. If the defendant is released on bail, the bail commissioner or magistrate must use reasonable efforts to notify the

victim of the release. G.L. c. 209A, §6.

Arrest on Warrant Outside the County

11. As to crimes not involving violation of a restraining order or "abuse" occurring during the pendency of a restraining order, if an arrest is made on a warrant, for a misdemeanor, outside the county in which the court which issued the warrant is located, then the defendant is entitled, on request, to be taken before a magistrate or bail commissioner in the county of arrest for purposes of bail. G.L. c. 276, §29. If the defendant is not released, G.L. c. 276, §31 requires the arresting officer to transport him to "the court or trial justice" where the warrant is returnable. There is no prohibition against the prosecuting department providing this transportation, as long as it is done promptly.

12. If an arrest is made on a warrant for a felony, outside the county in which the court which issued the warrant is located, there is no right to request bail in the county of arrest, regardless of the crime charged. The statute, G.L. c. 276, §32, requires the arresting officer to transport the defendant "to the county where the warrant was issued," i.e., to the prosecuting department or the court where the warrant is returnable. Again, there is no prohibition against the prosecuting department providing this transportation, as long as it is done promptly. If the defendant is charged with violating a restraining order or with committing a crime during the

pendency of a §209A restraining order, he may not be bailed by a bail commissioner or magistrate, but must be held in custody until bail is set by a judge.

Arrest on Warrant Within the County

13. For all other arrests on warrants, within the county where the warrant was issued, prompt transportation to the charging police department and then to court should be provided by the prosecuting department. If the prosecuting department does not pick up the defendant within a reasonable time, the arresting department must provide transportation.

Transportation of Arrestees

14. Power to transport the defendant following arrest on a warrant is provided by G.L. c. 276, §23, and power to transport the defendant following a warrantless arrest must be considered inherent in G.L. c. 209A, §6(7). Other methods of transportation are also permissible, such as transferring the defendant at the municipal boundary or having an officer with statewide jurisdiction transport, so long as transportation is provided promptly.

Arrest Warrant to Enter Defendant's Dwelling

15. Where a defendant is located in his own dwelling and no person also residing there has given valid consent to enter and search for the defendant, an arrest warrant must be obtained in order to enter the dwelling to effect the arrest, unless exigent circumstances are present. A report of violence within the dwelling, such that entry is

reasonably considered necessary to protect the occupants, will constitute such an exigent circumstance.

Arrest and Search Warrants to Enter Dwelling of Another

16. Where a defendant is located in another person's dwelling, and no person residing there has given valid consent to enter and search for the defendant, both an arrest warrant and a search warrant must be obtained in order to enter the dwelling, in the absence of exigent circumstances.

Arrest as Preferred Response

17. The Abuse Prevention Law also provides that, where the police have probable cause to believe that a misdemeanor or felony involving abuse has been committed, other than a violation of a restraining order, arrest is the "preferred response." The Law empowers police officers to make such arrests, without a warrant, on probable cause, regardless of whether the offense was committed in the officer's presence. G.L. c. 209A, §6(7). As long as the offender is located within the officer's jurisdiction, he may be arrested on probable cause, even if the offense was committed in another city or town in the Commonwealth. Police officers exercising their discretion to make "preferred response" arrests should follow the same procedures as outlined above to transport offenders and to seek arrest warrants or search warrants for arrests in dwellings.

[SIMILAR MATTER FILED DURING PAST SESSION - SEE SENATE HOUSE NO. ..... OF .....]

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY- FOUR

AN ACT

An Act Relative To Interjurisdictional Arrests In Domestic Violence Cases

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1.

Section 28 of Chapter 276 of the General Laws as appearing in the 1992 Official Edition is hereby amended by inserting in line 11 of said section after the sentence ending with the words "two hundred and nine C." the following:--

Said officer may arrest, without a warrant, and detain a person whom the officer has probable cause to believe has committed a misdemeanor involving abuse as defined in section one of chapter two hundred and nine A or has committed an assault and battery in violation of section thirteen A of chapter two hundred and sixty-five against a family or household member as defined in section one of chapter two hundred and nine A.

[SIMILAR MATTER FILED DURING PAST SESSION -
SEE SENATE HOUSE NO. ..... OF .....]

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY-FOUR

AN ACT

An Act Relative To Chapter 209A, Sec. 1

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1.

Section 1 of Chapter 209A of the General Laws as appearing in the 1992 Official Edition, is hereby amended as follows:--

By striking out in lines 20-21 the words "adjudged by district, probate or Boston municipal courts" and inserting in place thereof the words "determined by".

NOTE — Use only ONE SIDE of each leaf. DOUBLE SPACE. Insert additional leaves, if necessary.

[SIMILAR MATTER FILED DURING PAST SESSION - SEE SENATE HOUSE NO. ..... OF .....]

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY-

AN ACT

AN ACT REGARDING THE CRIME OF STALKING

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1.

Section 43 of Chapter 265 of the Genereal Laws, as appearing in the 1992 Official Edition, is hereby amended:--

A) By striking out in line two of (a) of that section, the words: "and who makes a threat".

B) By inserting in line four of (a) of that section, after the word "injury" the words: "to that person or the person of another."

C) By adding in (b) of that section at line 15, after the words "superior court," the words: "or any similar order which proscribes similar conduct issued by any other jurisdiction, federal, state, or territorial,".

NOTE — Use only ONE SIDE of each leaf. DOUBLE SPACE. Insert additional leaves, if necessary.

SECTION TWO:

Section 43 of Chapter 265 of the General Laws, as appearing in the 1992 Official Edition, is hereby amended by adding a new subsection, (e), as follows:--

(e) The crime of stalking, as set forth herein, may be prosecuted and punished in any county of the commonwealth where the defendant is alleged to have committed any act constituting an element of the crime of stalking.

illegitimate child); *Matter of Adams*, 189 Mich. App. 540, 544 (1991) (inconsistent with purpose and scope of adoption statute to allow joint adoption of two unmarried petitioners); *In re Jason C.*, 129 N.H. 762, 765 (1987) (two unmarried persons may not jointly adopt child). Contra *Adoption of B.L.V.B.*, A.2d (Vt. 1993) (92-321) (permitting joint petition to adopt by two unmarried persons).

The court opines that the use of the singular form "a person" in the first sentence of the statute should not be construed as prohibiting joint petitions by unmarried persons because such an interpretation would not be in the best interests of the child. I have already demonstrated that, whether the petition be singular or joint, has nothing to do with the best interests of the child. The court's reasoning in part 2 of its opinion amounts to a tacit agreement with this position. Furthermore, on examining § 1 as a whole, I find no inconsistent use of the singular form from the first sentence that "[a] person . . . may . . . adopt . . . another person younger than himself," to the final sentence pertaining to nonresidents who wish to adopt. Throughout the section, the singular is preserved. The only time a second petitioner is contemplated is where the initial petitioner has a living, competent spouse. There is nothing in the statute to suggest that joint petitions other than by spouses are permitted.

A biological mother may petition alone for the adoption of her child. *Curran, petitioner, supra.* Helen also meets the statutory requirements and may petition alone for the adoption of Tammy with Susan's consent.[3] G. L. c. 210, § 2. Despite the admirable parenting and thriving environment being provided by these two unmarried cohabitants for this child, the statute does not permit their joint petition for adoption of Tammy.

[3]The standard for involuntary termination of parental rights requires proof of neglect, abuse, or abandonment endangering the child, G. L. c. 119, § 24 (1992 ed.); otherwise, the parents must consent to the adoption, G. L. c. 210, §§ 2, 3 (1992 ed.). The biological father has signed an adoption surrender and affidavit supporting the adoption. G. L. c. 210, § 2. The mother has consented to the joint adoption petition.

TORRE JENKINS & others[1] *vs.* CHIEF JUSTICE OF THE DISTRICT COURT DEPARTMENT & another.[2]

Suffolk. May 4, 1993. - September 13, 1993.

Present: LIACOS, C.J., WILKINS, ABRAMS, NOLAN, LYNCH, O'CONNOR, & GREANEY, JJ.

Arrest. Probable Cause. Bail. Constitutional Law, Arrest, Probable cause. *Practice, Criminal*, Probable cause hearing.

Discussion of the United States Supreme Court's conclusion in *County of Riverside* v. *McLaughlin*, 111 S. Ct. 1661, 1665 (1991), that a judicial determination of probable cause within forty-eight hours after a warrantless arrest will, as a general matter, be sufficiently prompt to satisfy the requirement of the Fourth Amendment to the United States Constitution as expounded in *Gerstein* v. *Pugh*, 420 U.S. 103, 125 (1975). [226-228]

Discussion of the mandate, under art. 14 of the Massachusetts Declaration of Rights, with respect to judicial determination of probable cause following a warrantless arrest. [228-232]

This court concluded that art. 14 of the Massachusetts Declaration of Rights requires that a warrantless arrest must be followed by a judicial determination of probable cause no later than reasonably necessary to process the arrest and to reach a magistrate [232-233]; the court held that, in the usual circumstance, that time period is presumed to be no more than twenty-four hours [234-238].

Review of State and Federal cases and other authorities with respect to statutes and court rules governing the time period within which an arrestee must be presented to a magistrate for a probable cause determination. [234-237]

This court set forth guidelines for implementing its decision requiring a prompt determination of probable cause following a warrantless arrest. [238-245]

[1]Reginald Waller and the Committee for Public Counsel Services ("on behalf of future defendants").

[2]Chief Justice of the Boston Municipal Court Department.

CIVIL ACTION commenced in the Supreme Judicial Court for the county of Suffolk on September 30, 1991.

The case was reported by *Wilkins*, J.

Patricia A. O'Neill, Committee for Public Counsel Services, for Torre Jenkins.

Martin R. Rosenthal for Reginald Waller.

LaDonna J. Hatton, Assistant Attorney General, for the defendants.

William J. Leahy, Committee for Public Counsel Services, for Committee for Public Counsel Services, was present but did not argue.

LIACOS, C.J. On September 30, 1991, the plaintiffs, Torre Jenkins, Reginald Waller, and the Committee for Public Counsel Services (CPCS), petitioned a single justice of this court pursuant to G. L. c. 211, § 3 (1992 ed.), to order that all warrantless arrests in this Commonwealth be followed by a prompt judicial determination of probable cause on completion of the administrative steps incident to arrest.[3] On October 3, 1991, the defendants, the Chief Justices of the District Court and of the Boston Municipal Court Departments of the Trial Court, filed a memorandum in opposition to the plaintiffs' petition together with a motion to dismiss CPCS as an improper party. See *Slama* v. *Attorney Gen.*, 384 Mass. 620, 623-625 (1981). A hearing was held on that day, in the course of which the single justice directed the parties to prepare a joint statement of facts. In the ensuing sixteen months, the parties prepared and filed a joint stipulation of facts, a joint stipulation of agreed and unagreed facts, an appendix to such stipulation containing various documents, several affidavits, and a statement of issues for reservation and report to the full court. On February 2, 1993, the single justice reserved and reported the case on the following documents: The plaintiffs' initial petition, the defendants' motion to dismiss CPCS, the joint stipulation of facts, the appendix

[3]The plaintiffs requested that such probable cause determination occur no later than twenty-four hours following arrest.

to the joint stipulation, two affidavits, and the statement of issues for reservation and report.[4]

We summarize the underlying facts, which we shall supplement as relevant to a particular issue. On Friday, August 16, 1991, at 10:05 P.M., Boston police arrested Torre Jenkins without a warrant.[5] Police transported Jenkins to a Boston police station, where he was detained until the following Monday. On that day, Jenkins was brought to Boston Municipal Court for arraignment. The judge conducting the arraignment hearing set cash bail in the amount of $150.[6] Jenkins sought review of such determination in the Superior Court and, on the same day, a judge in that court ordered his admission to bail on personal recognizance without surety.

Waller was arrested without a warrant by the Boston police on a Friday evening, and detained until the following Monday. At 9 A.M. on that day, police brought Waller to the Roxbury District Court for arraignment.[7] Waller was ar-

[4]As framed in the report, the issues presented are these:

"1. (a) Whether the state constitution requires that a person arrested without a warrant be afforded a judicial determination of probable cause more promptly than within forty-eight hours of arrest as required under the Fourth Amendment to the United States Constitution?

"(b) If so, what is the time limit within which the judicial determination of probable cause must occur?

"2. Whether the probable cause determination must be made upon an evidentiary hearing or upon the complainant's averments as to probable cause in such form as to satisfy the standards of reliability set forth in *Commonwealth* v. *Upton*, 394 Mass. 363 (1985), or whether the probable cause determination may be made in an informal, non-adversary proceeding?"

[5]Police charged Jenkins with criminal trespass. He later admitted to sufficient facts and was found guilty. The case was then placed on file with the consent of the parties.

[6]The joint stipulation of facts does not indicate whether police had probable cause to arrest Jenkins or whether that issue was raised in the course of his arraignment.

[7]There, police filed an application for a criminal complaint charging Waller with possession of cocaine with intent to distribute and possession of cocaine with intent to distribute within 1,000 feet of a school. This application incorporated the police report pertaining to Waller's arrest. The

raigned within approximately one minute. The issue whether police had probable cause to arrest him was never raised. Waller was admitted to bail on personal recognizance without surety.

According to the parties' stipulation of facts, police in this Commonwealth adhere to the following practices with respect to a warrantless arrest. After the arrest, police transport the arrestee to a police station for processing. Police then bring the arrestee to court if the court is in session.[8] If the court is not in session, the arrestee is detained at the police station or transported to another detention facility.[9] An arrestee so detained may be admitted to bail out of court. See G. L. c. 276, § 58 (1992 ed.). Officials authorized to admit such an arrestee to bail are designated by statute. See G. L. c. 276, § 57 (1992 ed.).[10]

Detained arrestees who are not admitted to bail are brought to court at its next session. See Mass. R. Crim. P. 7 (a) (1), as amended, 397 Mass. 1226 (1986) ("A defendant

report stated that Waller was arrested "[a]s a result of information received and observation made . . . ."

[8]Before arraignment, District Court personnel must prepare a criminal complaint, conduct a probation intake interview, check the arrestee's probation record, and locate an attorney to be appointed as defense counsel to offer a bail argument.

[9]The various divisions of the District Court Department have set a time after which they will not conduct arraignments for arrests made during court hours. That time is generally between 3 and 4 P.M. if there is no judicially mandated limitation on jail occupancy, and between 1 and 2 P.M. if there is such a limitation. Arrestees brought to court before that time will be arraigned on the same day. Otherwise, arrestees must wait for the next court session.

On September 20, 1988, a single justice of this court ordered that arraignments in the divisions of the District Court Department in Suffolk County, as well as in the Boston Municipal Court, be heard no later than the end of the morning session, except in extraordinary circumstances.

[10]There are currently ninety-six bail commissioners and 216 clerk magistrates and assistant clerks in the Commonwealth who possess such authority. The plaintiffs have alleged, by affidavits not incorporated in the single justice's reservation and report, that there exists a systemic deficiency whereby arrestees are not informed of their right to seek admission to bail, and are not afforded the opportunity to do so. See our discussion, *infra* at 241-242.

who has been arrested shall be brought before a court if then in session, and if not, at its next session"). If the arrest occurs on a Friday, the arrestee remains in custody for the duration of the weekend. If the following Monday should be a holiday, the arrestee remains in custody until Tuesday. Moreover, some divisions of the District Court do not hold daily sessions during the week. In those divisions, arrestees may be detained for more than four days before being brought to court.[11]

With this factual background, we turn to a discussion of the questions of law raised by this report.[12]

[11]The parties agree that in certain District Courts, such as Edgartown and Nantucket, the delay between arrest and arraignment may be more than four days. The parties, however, disagree as to other District Courts where the District Court does not sit daily during the week. The legal counsel to the Chief Justice of the District Court Department of the Trial Court filed an affidavit stating that, "when a particular district court is not in session, police will take unreleased arrestees to the nearest district court with a sitting judge, who arraigns such arrestees under authorization from the Chief Justice of the District Court pursuant to G. L. c. 218, § 43A. Such arrangements are not required by Mass. R. Crim. P. 7 (a) (1), however, and are viewed by District Court personnel as requiring the voluntary cooperation of the police department involved. Only in the Edgartown and Nantucket district courts, where such arrangements do not exist, may a delay in arraignment be longer than four days."

The plaintiffs dispute the accuracy of such information and contend that delays of more than four days are not limited to the Edgartown and Nantucket District Courts.

[12]In addition to these questions, see note 4, *supra*, the single justice has reported the defendants' motion to dismiss CPCS as an improper party. We need not reach the merits of such a motion because, as the defendants concede, there are two plaintiffs (Jenkins and Waller) who are entitled to advance the questions of law reported by the single justice. See *Massachusetts Teachers Ass'n* v. *Secretary of the Commonwealth*, 384 Mass. 209, 214 (1981), citing *Save the Bay, Inc.* v. *Department of Pub. Utils.*, 366 Mass. 667, 674-675 (1975) (where at least one plaintiff has standing to raise issues argued on report, court need not "determine which particular plaintiff or plaintiffs are entitled to advance particular issues"). As the single justice found, the length of the plaintiffs' detention raises the issue whether a judicial determination of probable cause should have been made sooner. The warrantless arrest of the plaintiffs raises the issue of what procedures and standards should govern a postarrest determination of probable cause.

1. *Requirement of a Judicial Determination of Probable Cause Following A Warrantless Arrest Under the Fourth Amendment to the United States Constitution.*

In *Gerstein* v. *Pugh*, 420 U.S. 103, 125 (1975), the Supreme Court of the United States held that the Fourth Amendment to the United States Constitution mandates the States to "provide a fair and reliable determination of probable cause as a condition for any significant pre-trial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." The *Gerstein* Court also concluded that the existence of probable cause to arrest must "be decided by a neutral and detached magistrate," *id.* at 112, and that such a "judicial determination of probable cause [is] a prerequisite to extended restraint of liberty following arrest." *Id.* at 114.

Following *Gerstein*, Federal appellate courts disagreed as to how "promptly" a State must provide a probable cause determination following a warrantless arrest. A majority of courts understood *Gerstein* to mandate that such determination be made immediately after the completion of the administrative procedures necessitated by the arrest. See *McLaughlin* v. *County of Riverside*, 888 F.2d 1276 (9th Cir. 1989), vacated, 111 S. Ct. 1661 (1991); *Llaguno* v. *Mingey*, 763 F.2d 1560, 1567-1568 (7th Cir. 1985) (en banc), cert. dismissed, 478 U.S. 1044 (1986); *Fisher* v. *Washington Metro. Area Transit Auth.*, 690 F.2d 1133, 1139-1141 (4th Cir. 1982). The United States Court of Appeals for the Second Circuit, on the other hand, concluded that *Gerstein* authorized the States to delay the probable cause determination in order to combine it with other pretrial proceedings. *Williams* v. *Ward*, 845 F.2d 374, 386 (2d Cir. 1988), cert. denied, 488 U.S. 1020 (1989). See Settle, *Williams v. Ward*: Compromising the Constitutional Right to Prompt Determination of Probable Cause Upon Arrest, 74 Minn. L. Rev. 196 (1989).

In *County of Riverside* v. *McLaughlin*, 111 S. Ct. 1661, 1665 (1991), the Supreme Court undertook to define "what is 'prompt' under *Gerstein*." The Court rejected the view that the Fourth Amendment requires a determination of probable cause immediately following completion of the administrative steps incident to arrest. The Court held that principles of federalism demanded that States be given the flexibility to experiment with their criminal procedures. *Id.* at 1668. Such flexibility, the Court concluded, encompassed the States' right to delay judicial determination of probable cause in order to combine it with other pretrial proceedings. The Court reasoned that, in order to ascertain the outer time limit to such delay, the State interest in "protecting public safety" should be balanced with the individual's interest in avoiding "prolonged detention based on incorrect or unfounded suspicion." *Id.* Applying this balancing test, the Court settled on a "practical compromise," *id.*, whereby "a jurisdiction that provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein*." *Id.* at 1670.[13]

Four Justices dissented and expressed disagreement with the Court's conclusion that the administrative convenience of a State justifies delaying the grant of a probable cause determination to individuals arrested without a warrant. *Id.* at 1671 (Marshall, J., dissenting, with whom Blackmun and Stevens, JJ., joined). *Id.* at 1675 (Scalia, J., dissenting).[14] Justice Scalia argued that the Fourth Amendment embodied the long-standing common law rule that police must bring an arrestee to a magistrate for a neutral determination of probable cause as soon as reasonably feasible. Justice Scalia wrote that, at common law, "the only element bearing upon the reasonableness of delay was . . . the arresting officer's ability,

[13]The Court also held that, in some circumstances, a delay of less than forty-eight hours may be unreasonable. "Examples of unreasonable delay," the Court said, "are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay's sake." *County of Riverside* v. *McLaughlin*, 111 S. Ct. 1661, 1670 (1991).

[14]Justice Scalia's dissent extensively discussed the issues presented to the Court. In a short separate statement, Justices Marshall, Stevens, and Blackmun stated that they agreed with Justice Scalia's Fourth Amendment analysis.

once the prisoner had been secured, to reach a magistrate who could issue the needed warrant for further detention." *Id.* at 1672. After an extensive survey of the relevant authorities, Justice Scalia concluded that States need no more than twenty-four hours to complete the administrative steps incident to arrest and to arrange for a probable cause determination by a magistrate. *Id.* at 1672-1675.

The plaintiffs essentially urge us to adopt as matter of State constitutional law the views stated in Justice Scalia's dissent. The defendants argue in response that the balancing test followed by the five Justices in the majority provides the construct of constitutional analysis that we should follow under the State Constitution. The defendants contend that, under this balancing test, a forty-eight hour delay between arrest and judicial determination of probable cause represents an acceptable compromise between the competing interests at stake.[15]

2. *State Constitutional Mandate With Respect to Judicial Determination of Probable Cause Following a Warrantless Arrest.*

Article 14 of the Massachusetts Declaration of Rights, adopted by the people in 1780, provides:

> "Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and

[15]The defendants acknowledge that, in some districts of this Commonwealth, the forty-eight hour Federal constitutional mandate is not respected. In the view that we take under the State Constitution, such violations of the Federal Constitution are subsumed by our disposition of the case.

> no warrant ought to be issued but in cases, and with the formalities prescribed by the laws."[16]

As we do with other provisions of the State Constitution, we construe the language of this constitutional provision "in light of the circumstances under which it was framed, the causes leading to its adoption, the imperfections hoped to be remedied, and the ends designed to be accomplished." *General Outdoor Advertising Co.* v. *Department of Pub. Works*, 289 Mass. 149, 158 (1935). See *Commonwealth* v. *Cundriff*, 382 Mass. 137, 144-145 (1980), cert. denied, 451 U.S. 973 (1981).

It is well known that art. 14 was adopted to prohibit the abuse of official power brought about by two devices which the British Crown used in the colonies: the general warrants and the writs of assistance. See Stewart, The Road to *Mapp* v. *Ohio* and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-and-Seizure Cases, 83 Colum. L. Rev. 1365, 1368-1371 (1983) (reviewing the historical roots of the Fourth Amendment and of cognate provisions of certain State Constitutions). See also *Cundriff*, *supra* at 143-145. The general warrants empowered their holder to seize and burn books or other printed matter deemed "offensive to the state." Stewart, *supra* at 1369. The writs of assistance were a special kind of general warrant which permitted their bearer, usually a customs official, to search with unlimited discretion for smuggled goods without special application to a court. See 2 Legal Papers of John Adams 108 (L. Wroth & H. Zobel eds. 1965).[17] See also Stewart, *supra* at 1370.

[16]It is by now firmly established that, in some circumstances, art. 14 affords greater protection against arbitrary government action than do the cognate provisions of the Fourth Amendment. See *Horsemen's Benevolent & Protective Ass'n* v. *State Racing Comm'n*, 403 Mass. 692, 702-703 (1989); *Commonwealth* v. *Blood*, 400 Mass. 61, 67-74 (1987); *Commonwealth* v. *Ford*, 394 Mass. 421, 426-427 (1985); *Commonwealth* v. *Upton*, 394 Mass. 363, 373 (1985).

[17]In England, the term "writ of assistance" originally referred to the process whereby a litigant in the Court of Exchequer or in Chancery

The crux of the colonists' objection to these legal devices was the unchecked control over the liberty of the people which they vested in law enforcement officers. In the famed Petition of Lechmere, argued in 1761, James Otis presented a theory of American jurisprudence which embodied the colonists' position and formed the conceptual basis of art. 14.[18] See *Cundriff*, *supra* at 144. See also 2 Legal Papers of John Adams, *supra* at 106-147. "[E]very one with this writ may be a tyrant," Otis argued. "If this commission is legal, a tyrant may, in a legal manner also, controul, imprison or murder any one within the realm. [Being] accountable to no persons for his doings, every man may reign secure in his petty tyranny, and spread terror and desolation around him, until the trump of the arch angel shall excite different emotions in his soul." *Id.* at 142. Such evils, Otis concluded, would only be remedied if a neutral judiciary controlled governmental interference with the liberty of the people: "[A]n officer should show probable grounds, should take his oath on it, should do this before a magistrate, and . . . such magistrate, if he thinks proper should issue a *special warrant* to a constable to search the places" (emphasis in original). *Id.* at 144.

John Adams, the principal author of our Constitution, sat in the courtroom and wholeheartedly embraced Otis's argument. *Id.* at 107. See Stewart, *supra* at 1371. "Otis lost his case, but his side was to win the war. Throughout the colonies, opposition to the writs mounted in the wake of Otis's words, and courts proved increasingly reluctant to issue them." *Id.* at 1370-1371.[19]

would obtain the assistance of the sheriff in collecting a debt or gaining possession of property. See 2 Legal Papers of John Adams 107 (L. Wroth & H. Zobel eds. 1965).

[18]That case arose because the writs of assistance were good from the time of their issuance until six months after the death of the monarch. When King George II died in 1760, it thus became necessary for the British authorities to obtain new writs of assistance. See 2 Legal Papers of John Adams, *supra* at 112.

[19]The American rejection of arrests and searches without cause "was also greatly influenced by the *lettres de cachet* extensively used in France. This was an order emanating from the King and countersigned by a minister directing the seizure of a person for purposes of immediate imprisonment or exile. The ministers issued the *lettres* in an arbitrary manner, often at the request of the head of a noble family to punish a deviant son or relative. See Mirabeau, A Victim of the Lettres de Cachet, 3 Am. Hist. Rev. 19. One who was so arrested might remain incarcerated indefinitely, as no legal process was available by which he could seek release. . . . As Blackstone wrote, '. . . if once it were left in the power of any, the highest, magistrate to imprison arbitrarily whomever he or his officers thought proper, (as in France it is daily practiced by the crown,) there would soon be an end of all other rights and immunities.' I Commentaries (4th Ed. Cooley) *135." *Draper* v. *United States*, 358 U.S. 307, 317-318 (1959) (Douglas, J., dissenting). John Adams returned to Massachusetts from France only two months before he drafted the Declaration of Rights. See Cella, The People of Massachusetts, A New Republic, and the Constitution of 1780: The Evolution of the Principles of Popular Control of Political Authority 1774-1780, 14 Suffolk U.L. Rev. 975, 998 (1980). His thinking on searches and seizures no doubt was influenced also by his observation of the French practices of the time.

We note that the National Assembly of the French Republic recently adopted a law overruling a prior decision of France's highest court and authorizing police to stop citizens without cause for "preventive identity controls." Le Monde, Trois Réformes Pour le Contrôle de l'Immigration, July 14, 1993; Le Monde, Les Travaux du Parlement, July 13, 1993. To this day, the constitutional principles embodied in art. 14 distinguish our society from other Western democracies.

The language and structure of art. 14 reflects John Adams's adoption of Otis's views. Beginning with the prohibition of "unreasonable" searches and seizures, art. 14 moves on to define the fundamental components of a constitutionally reasonable search or seizure: First, magistrates — rather than law enforcement agents — control the decision whether to effectuate a search and seizure, including the seizure or arrest of a person. Second, law enforcement agents bear the burden of justifying their intrusion into a person's freedom by presenting the magistrate with sufficient grounds to support the search or the seizure. These two elements are the essence of the constitutional norm regarding searches and seizures, today no less than in 1780.

The warrantless arrest of a person is a circumscribed exception to this norm which was carved by the common law in order to "protect public safety by making a prompt arrest." *Draper* v. *United States*, 358 U.S. 307, 315-316 (1959)

(Douglas, J., dissenting). See *Rohan* v. *Sawin*, 5 Cush. 281, 283 (1851). For the British common law roots of such practice, see 1 M. Hale, Pleas of the Crown 587 (1800). Once the arrestee was secured, however, the rationale for the exception vanished, and the common law rule required that the arrestee be brought to a magistrate as soon as such magistrate reasonably could be made available. *Keefe* v. *Hart*, 213 Mass. 476, 482 (1913).[20] Accord *Tubbs* v. *Tukey*, 3 Cush. 438, 440 (1849). See Perkins, The Law of Arrest, 25 Iowa L. Rev. 201, 254 (1940); 2 M. Hale, Pleas of the Crown 119 (1800); 4 Blackstone, Commentaries *289, *292-*293. Detention of the arrestee for an unreasonable period of time subjected the arresting officer to tort liability for false imprisonment. See, e.g., *Keefe* v. *Hart*, *supra*. Most importantly, the sole element bearing on the reasonableness of such delay was the officer's duty, once the arrest completed, to make a magistrate available. *Id.* at 481-482. See Restatement of Torts § 134 comment b (1934). See also *County of Riverside* v. *McLauglin*, 111 S. Ct. 1661, 1672 (1991) (Scalia, J., dissenting), and cases cited.

We conclude that art. 14 embodies the common law guarantee that a warrantless arrest must be followed by a judicial determination of probable cause no later than reasonably necessary to process the arrest and to reach a magistrate.

[20]This common law concept finds its echo in the constitutional language of the Court in its interpretation of the Fourth Amendment when Justice Powell wrote: "Under this practical compromise, a policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest. Once the suspect is in custody, however, the reasons that justify dispensing with the magistrate's neutral judgment evaporate. There no longer is any danger that the suspect will escape or commit further crimes while the police submit their evidence to a magistrate. And, while the State's reasons for taking summary action subside, the suspect's need for a neutral determination of probable cause increases significantly. The consequences of prolonged detention may be more serious than the interference occasioned by arrest. . . . When the stakes are this high, the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty." *Gerstein* v. *Pugh*, *supra* at 113-114. We attach the same historical underpinnings to our view of the mandate of art. 14.

The historical background to the adoption of art. 14 evinces the intent of its framers to afford the citizens of this Commonwealth at least as much protection regarding a warrantless arrest as was provided by the common law. Cf. 2 J. Story, Commentaries on the Constitution 609 (1833). Accord *Aime* v. *Commonwealth*, 414 Mass. 667, 677 (1993).

As explained above, art. 14 guarantees that control over one's liberty will rest solely in the hands of the judiciary, whose function it is to guarantee that sufficient grounds to justify such deprivation exists. Detaining presumptively innocent arrestees for the sake of administrative efficiency, and after the justification for their warrantless arrest has evaporated, strikes at the core of this constitutional guarantee. Leaving aside the widespread complaints over the poor conditions of detention facilities, see, e.g., Comment, The Forty-Eight Hour Rule and *County of Riverside v. McLaughlin*, 72 B.U.L. Rev. 403, 408 & n.35 (1992),[21] prolonged detention "may imperil the suspect's job, interrupt his source of income, and impair his family relationships" (citations omitted). *Gerstein*, *supra* at 114. A warrantless arrest being the exception to the norm established by art. 14, it follows that, once the exigency that gave rise to such exception has faded, judicial control over whether an individual's liberty should be disrupted must be reestablished promptly.[22]

[21]The plaintiffs have filed affidavits alleging mistreatment of certain arrestees. Those facts were not admitted to by the defendants, and not incorporated in the single justice's report of the case.

[22]We disagree with the defendants' claim that the adoption of a State habeas corpus statute in 1784 belies the framers' intent that arrestees should receive a probable cause hearing on completion of the administrative steps necessary to process the arrest and to reach a magistrate. The defendants base their argument on the fact that, at the time of its enactment, the habeas corpus statute required that an arrestee kept in detention be brought to court within either three, ten, or twenty days. After the arrestee was brought to court, the defendants add, the court was directed to hold a hearing within three days. See St. 1784, c. 72.

The habeas corpus statute did not create the substantive right to the probable cause hearing. Rather, this statute created a procedure whereby higher courts could review the initial determination of probable cause, which itself had to be done immediately after the arrest. See *Gerstein* v. *Pugh*, 420 U.S. 103, 114-115 (1975), and authorities cited.

Having concluded that the only element bearing on the reasonableness of the delay between a completed arrest and a judicial determination of probable cause is the time reasonably necessary to reach a magistrate, we turn to the issue of the outermost time limit to such delay. We pause to note that, ordinarily, constitutional adjudication yields general principles of law rather than a precise rule such as the time limit on the length of an arrestee's detention. See Comment, *supra* at 412. The present case presents an exception because "[a]ny determinant of 'reasonable promptness' that is within the control of the State (as the availability of the magistrate, the personnel and facilities for completing administrative procedures incident to arrest, and the timing of 'combined procedures' all are) must be restricted by some outer limit, or else the promptness guarantee would be worthless." *County of Riverside*, *supra* at 1675 (Scalia, J., dissenting). "Although we hesitate to announce that the Constitution compels a specific time limit, it is important to provide some degree of certainty so that States and counties may establish procedures with confidence that they fall within constitutional bounds." *Id.* at 1670 (opinion of the Court). Declining to reach the issue would amount to inviting future litigation.[23]

The plaintiffs argue that a twenty-four hour time limit fairly reflects the time reasonably necessary to reach a magistrate. The statutes of our sister States, the numerous cases on the issue that were engendered by the Supreme Court's decision in *Gerstein*, and scholarly commentary provide sufficient data for us to consider the question.

Every State in the country has a statute or rule governing the presentment of an arrestee to a magistrate for a probable

[23]The defendants rely on Mass. R. Crim. P. 7 (a), as amended, 397 Mass. 1226 (1986), and on the cases which this rule codifies, for the proposition that the period within which an arrestee must be presented to a magistrate must be flexible. As explained, however, we must give substance to the constitutional principles announced today by choosing an outer time limit which reflects the time reasonably necessary in today's society to reach a magistrate.

cause determination. See Brandes, Post-Arrest Detention and the Fourth Amendment: Refining the Standard of *Gerstein* v. *Pugh*, 22 Colum. J.L. & Soc. Probs. 445, 474-475 (1989). A number of States require that such presentment be made within twenty-four hours of arrest: One State requires that it be done within twenty hours.[24] Seven States require that it be done within twenty-four hours.[25] *Id.* at 478-479 n.230. Twenty-eight States and the District of Columbia have statutes requiring presentment or arraignment "without unnecessary delay" or "forthwith."[26] "[S]tate courts have . . . applied a 24-hour limit under state statutes requiring presentment without 'unreasonable delay.' New York, for example, has concluded that no more than 24 hours is necessary from arrest to *arraignment*, *People ex rel. Maxian* v. *Brown*, [164 A.D.2d 56, 62-64 (1990), aff'd, 77 N.Y.2d 422 (1991)]" (emphasis in original). *County of Riverside*, *supra* at 1676 (Scalia, J., dissenting). Accord *Sanders* v. *Houston*,

[24]See Mo. Rev. Stat. § 544.170 (1991).

[25]See Alaska Stat. § 12.25.150 (1992); Ariz. R. Crim. P. 4.1 (a) (1992); Del. Code Ann. tit. 11, § 1909 (1987); Fla. R. Crim. P. 3.130 (1993); Ind. Code § 36-8-3-11 (1992); Md. R. Crim. P. 4-212 (f) (1993); N.H. Rev. Stat. Ann. § 594:20-a (1991). Of these seven States, two (Delaware and New Hampshire), exclude Sundays and holidays and one (Indiana) excludes Sundays from the computation of the twenty-four hour time limit.

[26]See Ala. Code § 15-10-7(e) (1982); Ark. Stat. Ann. § 16-85-201 (1987); Colo. Rev. Stat. § 16-2-112 (1986) (for misdemeanor arrestee); D.C. Code Ann. § 23-562 (c) (1) (1989); Idaho Code § 19-615 (1987); Ill. Rev. Stat. c. 725, § 5/109-1 (Smith-Hurd 1992); Iowa Code Ann. § 804.22 (1993); Kan. Stat. Ann. § 22-2901 (1988); Ky. R. Crim. P. 3.02 (1993); Mich. Comp. Laws Ann. § 764.13 (1982); Miss. Code Ann. § 99-8-17 (1973 & Supp. 1993); Mont. Code Ann. § 46-7-101 (1991); Nev. Rev. Stat. § 171.1771 (1991); N.J.R. Crim. Prac. 3:4-1(a) (1992); N.M. Stat. Ann. § 31-1-5(B) (1984); N.Y. Crim. Proc. Law § 140.20 (1986 & Supp. 1992); N.C. Gen. Stat. § 15A-511 (a) (1) (1988); N.D. Cent. Code § 29-06-25 (1991); Ohio Rev. Code Ann. § 2935.05 (1991); Okla. Stat. Ann. tit. 22, § 181 (1991); Or. Rev. Stat. § 133.787 (1991); Pa. R. Crim. P. 130(a) (1992); S.D. Codified Laws Ann. § 23A-4-1 (1988 & Supp. 1993); Tex. Crim. Proc. Code art. 14.06 (1973 & Supp. 1993); Utah Code Ann. § 77-7-23 (1) (a) (Michie 1990); Vt. R. Crim. P. § 3 (b) (1992); Va. Code Ann. § 19.2-82 (1992 & Supp. 1993); W. Va. Code § 62-1-5 (1992); Wyo. R. Crim. P. 5 (a) (1991).

543 F. Supp. 694, 703, 705 (S.D. Tex. 1982), aff'd, 741 F.2d 1379 (5th Cir. 1984) (construing *Gerstein* and Texas presentment statute to require appearance of arrestee before magistrate no later than twenty-four hours after arrest). Only seven States explicitly authorize detention for more than twenty-four hours: Four States have settled on a forty-eight hour time limit,[27] one State on a thirty-six hour time limit,[28] and, before *County of Riverside* undermined the constitutionality of their statutes or rules, two States authorized detention for up to seventy-two hours.[29] One State authorizes detention "one night or longer."[30] See also Brandes, *supra*.[31]

Most Federal cases decided in the wake of *Gerstein* have concluded that twenty-four hours provides a reasonable amount of time within which to complete arrest procedures. See, e.g., *Bernard* v. *Palo Alto*, 699 F.2d 1023, 1025 (9th Cir. 1983) (affirming District Court's conclusion that no more than twenty-four hours needed to complete such procedures as "eminently reasonable"). See also *McGill* v. *Parsons*, 532 F.2d 484, 485 (5th Cir. 1976); *Sanders*, *supra* at 703; *Dommer* v. *Hatcher*, 427 F.Supp. 1040 (N.D. Ind. 1975), rev'd in part, 653 F.2d 289 (7th Cir. 1981). Accord *Lively* v. *Cullinane*, 451 F. Supp. 1000 (D.D.C. 1978) (holding that one and one-half hours is longest period arrestee can be detained without presentment). This conclusion is in accord with that reached by the American Law Institute. See Model Code of Pre-Arraignment Procedure § 310.1, at 187 (1975) ("Any person who has been arrested and has not been released by the station officer . . . shall be brought before a court at the earliest time after the arrest that a judicial officer . . . is available and in any event within 24 hours after the arrest"). "[T]he American Bar Association in its proposed rules of criminal procedure initially required that presentment simply be made 'without unnecessary delay,' [but] it has recently concluded that no more than six hours should be required, except at night. Uniform Rules of Criminal Procedure, 10 U.L.A. App., Criminal Justice Standard 10-4.1 (Spec. Pamph. 1987)." *County of Riverside*, *supra* at 1677 (Scalia, J., dissenting). Finally, scholarly commentary has uniformly confirmed the proposition that no more than a twenty-four hour period is required to process an arrest and to reach a magistrate. See Comment, *supra* at 413; Brandes, *supra* at 478-485; Settle, *Williams v. Ward*: Compromising the Constitutional Right to Prompt Determination of Probable Cause Upon Arrest, 74 Minn. L. Rev. 196, 223 (1989).

Our review of these authorities leads us to conclude that there is widespread agreement that the Commonwealth needs no more than twenty-four hours to provide such a determination following a warrantless arrest.[32] We have concluded that, under our State Constitution, the sole element bearing on the delay between a processed arrest and such a determi-

[27]See Cal. Penal Code § 825 (West 1985 & Supp. 1993) ("two days," excluding Sundays and holidays); Haw. Rev. Stat. § 803-9(5) (1985); Me. R. Crim. P. 5(a) (1992) (excluding Saturdays, Sundays, and holidays); Wash. Super. Ct. Crim. R. 3.2A(a) (1993).

[28]See Minn. R. Crim. P. 4.02(5) (West 1993) (excluding Sundays and legal holidays).

[29]See Ga. Code Ann. § 17-4-26 (1990); La. Code Crim. Proc. Ann. art. 230.1 (West 1991) (presentment for purpose of appointment of counsel).

[30]See Neb. Rev. Stat. § 29-410 (1989).

[31]Six States, including Massachusetts, have probable cause statutes or rules that do not fall within any of these categories. See Mass. R. Crim. P. 7. See also Conn. Gen. Stat. Ann. § 54-1f (d) (West 1985 & Supp. 1993) ("reasonable promptness"); R.I. Gen. Laws § 12-9-17 (1981); S. C. Code Ann. § 17-13-10 (1985); Tenn. Code Ann. § 40-5-103 (1992); Wis. Stat. Ann. § 970.01 (1) (1992).

[32]Relying on language found in *Aime* v. *Commonwealth*, 414 Mass. 667, 684 (1993), the defendants have argued that the systemic implications of a twenty-four hour rule should preclude us from holding that art. 14 mandates such a rule. The defendants' reliance on *Aime* is misplaced. In that case, we declined to construe the amended bail statute to incorporate by implication the procedures mandated by the United States Constitution. We did so because we left it to the Legislature, which drafted the amended bail statute without referring to such procedures, to decide whether to impose on the criminal justice system the substantial burden which those procedures would have occasioned. Unlike *Aime*, the present case does not require us to decide whether we should "save" a statute by construing it to comport with the Constitution. Rather, the question presented is whether the Constitution itself requires the implementation of additional procedures in the criminal justice system.

nation is the time reasonably needed to reach a magistrate. In light of the data that we have reviewed, we hold that, in the usual circumstance, no more than a twenty-four hour time period is needed to reach the magistrate. In order to accommodate unforeseeable circumstances, we shall treat this time limit as a presumption: Where it is exceeded, the police must bear the burden of demonstrating that an extraordinary circumstance caused the delay. See *County of Riverside*, *supra* at 1670 (opinion of the Court); *id.* at 1677 (Scalia, J., dissenting).[33]

3. *Disposition.*

Our conclusions of constitutional law today have intricate systemic implications. The plaintiffs contend that, under the current practice in this Commonwealth, there is no standard procedure to determine whether a warrantless arrest was supported by probable cause. The plaintiffs have articulated rather specific proposals to remedy this alleged systemic deficiency and the constitutional violations as to the time period within which a probable cause determination must be provided. The defendants have suggested that, regardless of which outermost time limit we place on the delay between arrest and the determination of probable cause, we should allow those who administer our criminal justice system sufficient flexibility to experiment with procedures that would satisfy the constitutional mandate.

We shall chart broadly the bounds within which our decision must be implemented. "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). The use of modern technological means to protect individual rights, see, e.g., 21 Mass. Law. Wkly. No. 42, July 5, 1993, at 1, 32 (describing implementation of a video bail system aimed at easing over-

[33]Examples of such exigency would be a major snow storm or similar weather conditions precluding timely access to a magistrate, or where the defendant is hospitalized or in a physical condition precluding a timely appearance before a magistrate.

crowding in pretrial detention facilities),[34] would be hampered by excessively specific directions by this court based on incomplete data.

In sum, the ensuing discussion sets forth the following guidelines. An arrestee promptly released on bail is not entitled to a prompt postarrest determination of probable cause. Such determination, when constitutionally required, is governed by the same legal standards as apply to the issuance of a warrant. A magistrate who is sufficiently "neutral and detached" may make the probable cause determination; there is no requirement that a judge make such determination. The probable cause determination may be made at an ex parte hearing, at which the arrestee is not entitled to the assistance of counsel. The arresting officer's documentation of probable cause may be oral or written, and must satisfy the explicit "oath" or "affirmation" requirement of art. 14. The determination of probable cause need not be reviewed at arraignment.

a. *The Relationship Between Bail Releases and Postarrest Probable Cause Determinations.*

The Massachusetts bail statute, G. L. c. 276, § 58 (1992 ed.), seeks "to protect the rights of the defendant by establishing a presumption that he or she will be admitted to bail on personal recognizance without surety and by delineating carefully the circumstances under which bail may be denied." *Delaney* v. *Commonwealth*, 415 Mass. 490, 495 (1993). Section 58, first par., provides that an official authorized to admit an arrestee to bail[35] "shall, when a prisoner is held under arrest or committed either with or without a warrant for an offense other than an offense punishable by death . . . hold a hearing in which the defendant and his counsel, if any, may participate and inquire into the case and shall admit such person to bail . . . unless said [official] determines,

[34]Cf. Minn. R. Crim. P. 4.03 (West 1993) (facts establishing probable cause for warrantless arrest may be submitted orally, in writing, or by facsimile transmission, video equipment, or similar device).

[35]General Laws c. 276, § 57 (1992 ed.), defines such officials.

in the exercise of his discretion . . . that such a release will not reasonably assure the appearance of the prisoner before the court."[36] We recently have noted that there are over 100,000 bail releases a year in police stations and county jails. *Aime* v. *Commonwealth*, 414 Mass. 667, 684 (1993).

The plaintiffs have raised two broad issues relating to the relationship between § 58 and the issues in the present case. First, the plaintiffs have suggested that a judicial determination is required even if an arrestee is released on bail before the constitutionally required time limit on detention following a warrantless arrest (twenty-four hours). The plaintiffs contend that the conditions of bail, and the existence of a criminal complaint pending against the defendant, justify such determination.[37] The defendants argue in response that probable cause determinations need be made only in the case of pretrial detention.

We agree with the defendants. In *Gerstein* v. *Pugh*, 420 U.S. 103, 123 (1975), the Supreme Court stated that the "Fourth Amendment probable cause determination is addressed only to pretrial custody." See *County of Riverside* v. *McLaughlin*, 111 S. Ct. 1661, 1669 (1991). Nothing in art. 14 requires us to conclude otherwise. As explained above, art. 14 guarantees that citizens will not be deprived of liberty for a period longer than necessary to obtain judicial review of the grounds for such deprivation. Where an individual is released within the constitutionally acceptable time, the rationale for requiring a probable cause determination vanishes.

[36]General Laws c. 276, § 58 (1992 ed.), directs the official making the bail determination to consider certain enumerated factors.

Section 58 was amended by St. 1992, c. 201. Certain portions of the 1992 amendments to § 58 have been declared unconstitutional under the Federal Constitution. *Aime* v. *Commonwealth*, 414 Mass. 667 (1993).

[37]In their brief, the plaintiffs argue that, because "the conditions of bail and the very fact of a criminal complaint hanging over one's head can be onerous, an initial determination of probable cause should still be available either upon issuance of the complaint or at the arraignment." At oral argument, the plaintiffs appeared to concede that timely release on bail would eliminate the need for a judicial determination of probable cause. We shall, nonetheless, address the argument presented in their brief.

Accord *Bond* v. *United States*, 614 A.2d 892, 900-901 n.18 (D.C. 1992) (no probable cause determination needed where arrestee indicted for other offense prior to arrest because probable cause to detain him exists).

Next, the plaintiffs raise several interrelated issues pertaining to the administration of § 58. The plaintiffs allege that some arrestees "are not notified of their right to bail hearing, under § 58, while for others bail is set without any meaningful hearing." The plaintiffs contend that the Superior Court rules governing the admission of arrestees to bail do not guarantee the proper administration of § 58. The plaintiffs claim that "these rules include no requirement of a bail determination for everyone; no process to decide when or how the bail commissioners are called to the police stations; no process for notifying the detainees about the 'hearing'; no procedure governing the hearing or the determination of bail; no process for notice to the detainee of his/her bail; no record of the proceeding."

In order to solve the problems that they claim to have identified, the plaintiffs urge us to promulgate rules establishing procedures for the administration of § 58. Moreover, the plaintiffs suggest that the bail commissioners and clerk-magistrates authorized to admit arrestees to bail out-of-court should be employed to make the requisite probable cause determination.

The short answer to the plaintiffs' argument that § 58 is not being administered according to its letter and spirit is that the issue is not before us. Aside from the fact that the defendants did not agree to the plaintiffs' characterization of the manner in which bail releases are conducted, this issue is only peripheral to the questions reported by the single justice. As to the plaintiffs' suggestion that officials authorized to admit arrestees to bail out of court should determine also whether probable cause to arrest existed, it falls under the

rubric of proposals that are best left to the consideration of those who will implement our decision today.[38]

b. *The Standards Governing the Probable Cause Determination and the Procedures Required at the Hearing.*

The parties have disagreed as to which legal standards and procedures should govern the judicial determination of probable cause. The plaintiffs argue that the probable cause determination should be based on a written, or electronically preserved, statement made under oath by the arresting officer. Also, the plaintiffs argue that any determination of probable cause made by a magistrate prior to arraignment should be reviewed by the judge conducting the arraignment. Relying on the rule that warrants may be issued pursuant to the oral testimony of an officer, the defendants dispute the plaintiffs' contention that a postarrest probable cause determination must be based on a written statement. The defendants also argue that the probable cause determination need not be reviewed at arraignment.

"Probable cause to arrest exists when, at the moment of arrest, the facts and circumstances known to the police officers were sufficient to warrant a person of reasonable caution in believing that the defendant had committed or was committing a crime." *Commonwealth* v. *Gullick*, 386 Mass. 278, 283 (1982). "We have equated the word 'cause' in art. 14 with the words 'probable cause.' *Commonwealth* v. *Dana*, 2 Met. 329, 336 (1841). In each case, the basic question for the magistrate is whether he has a substantial basis for concluding that any of the articles described in the warrant are probably in the place to be searched . . . . Strong reason to suspect is not adequate." (Citations omitted.) *Commonwealth* v. *Upton*, 394 Mass. 363, 370 (1985). Such familiar probable cause principles essentially require that a set of facts more probably than not indicates criminal activity or evidence thereof.

[38]We intimate no view on the defendants' argument that those officials are not sufficiently "neutral and detached" to make such determination, and that some of them are not schooled in the requirements of probable cause. See *Gerstein* v. *Pugh*, 420 U.S. 103, 112 (1975).

The constitutional requirement that a prompt determination of probable cause be made following arrest is necessary to reestablish the judicial check over the seizure of an individual by the police. It follows that a warrantless arrest will be constitutionally permissible if such arrest was based on facts within the knowledge of the officer which, but for the exigency, would have supported the issuance of an arrest warrant under our relevant case law. Accord *Commonwealth* v. *Pietrass*, 392 Mass. 892, 897-898 (1984), citing *Julian* v. *Randazzo*, 380 Mass. 391, 395 (1980) (same principles governing determination of probable cause apply to arrest warrants and warrantless arrests); *Gerstein*, *supra* at 120 ("The standard is the same as that for arrest"). Accordingly, the familiar principles governing probable cause to support the issuance of a warrant should govern the postarrest determination of probable cause.

The principle that a postarrest determination of probable cause reestablishes a neutral check on government interference with one's physical freedom provides the unifying principle for the remainder of our conclusions. Thus, like the issuance of a warrant, the postarrest determination need not necessarily be made by a judge. See *Commonwealth* v. *Smallwood*, 379 Mass. 878, 885 (1980) ("While District Court judges are authorized to receive complaints and issue warrants, G. L. c. 218, § 32, a clerk or assistant clerk may also receive complaints, administer the required oath, and issue warrants in the name of the court. G. L. c. 218, § 33. *Commonwealth* v. *Penta*, 352 Mass. 271, 273 [1967]").[39] The Supreme Court has held that, under the Fourth Amendment, a determination of probable cause may be made by a "neutral and detached" magistrate, who must be "capable of

[39]General Laws c. 218, § 33 (1992 ed.), provides, in part: "A clerk, assistant clerk, temporary clerk or temporary assistant clerk, may receive complaints, administer to complainants the oath required thereto, and issue warrants, search warrant and summonses . . . ."

The Legislature may of course empower other officials to issue warrants or make postarrest determinations of probable cause, so long as such officials meet the constitutionally required qualifications, described below.

determining whether probable cause exists for the . . . arrest or search." *Shadwick* v. *Tampa*, 407 U.S. 345, 350 (1972). See *Gerstein*, *supra* at 112. Neutral review of the grounds for an arrest is the crux of art. 14. A competent, neutral, and detached magistrate may make the postarrest determination of probable cause.[40]

Like the complaint and arrest procedure, the postarrest determination of probable cause may be made in an ex parte proceeding. See *Commonwealth* v. *Smallwood*, *supra* at 885 (complaint and arrest procedure customarily ex parte). So long as the explicit "oath" or "affirmation" requirement of art. 14 is met, the arresting officer's documentation of probable cause need not be made in writing.[41] See *Commonwealth* v. *Baldassini*, 357 Mass. 670, 676-677 (1970) (art. 14 authorizes issuance of warrant based on oral testimony under oath of arresting officer).[42] A postarrest determination of probable cause may be made at an informal hearing within the guidelines established in *Gerstein* v. *Pugh*, *supra*. This approach accords with the teaching of *Commonwealth* v. *Smallwood*, *supra* at 885-886, that the complaint and warrant procedure is not an adversary one. Accordingly, the arrestee is not entitled to the assistance of counsel during the postarrest probable cause hearing.

[40]We have used throughout our discussion the term "*judicial* determination of probable cause." As the Supreme Court of the United States has explained, the word "judicial" does not imply that the determination need be made by a judge. The word merely connotes the neutral nature of the official making the probable cause determination. See *Shadwick* v. *Tampa*, 407 U.S. 345, 349-350 (1972).

[41]Of course, probable cause may be documented in writing. The plaintiffs' suggestion that the arresting officer include the facts providing probable cause in his or her arrest report, or use a special probable cause form such as those proposed for use by the Los Angeles police department, may provide practically feasible means of implementing our decision.

[42]We disagree with the plaintiffs' argument that the postarrest judicial determination of probable cause need be reviewed at the arraignment of the arrestee. As is the case for the issuance of a warrant where probable cause does not exist, the remedy for an erroneous postarrest determination of probable cause may lie in a motion to suppress any evidence derived from the arrest, or by a challenge to the continued detention of the arrestee.

We also note that the informal nature of the probable cause hearing does not conflict with cases such as *Myers* v. *Commonwealth*, 363 Mass. 843 (1973), which requires fully developed adversary procedures in a hearing on probable cause to bind a defendant over for trial. "[T]here is a 'large difference' between probable cause to arrest [or search] and probable cause to bind over, 'and therefore a like difference in the quanta and modes of proof required to establish them.' . . . A judicial finding of probable cause to arrest validates only the initial decision to arrest the suspect, not the decision made later in the criminal process to hold the defendant for trial." *Id.* at 849, quoting *Brinegar* v. *United States*, 338 U.S. 160, 173 (1949).

Finally, we note that the procedures followed in some of our sister States may provide useful guidance to those who will implement our decision. See, e.g., La. Code Crim. Proc. art. 230.2 (West 1993) (arresting officer shall promptly complete affidavit of probable cause and submit it to magistrate; probable cause determination may be made by magistrate in ex parte and nonadversary proceeding, upon affidavits or other written evidence); Minn. R. Crim. P. 4.03 (West 1993) (facts establishing probable cause shall be submitted upon oath either orally or in writing; oral testimony shall be recorded and retained by judge or judicial officer or by judicial officer's designee; any written or oral facts or other information submitted to establish probable cause may be made by telephone, facsimile transmission, video equipment or similar device).[43]

4. *Conclusion.*

The case is remanded to the Supreme Judicial Court for the county of Suffolk for entry of a declaratory judgment consistent with this opinion. The single justice may, in his or

[43]Some States require that the arrestee be brought to a magistrate for the postarrest determination of probable cause. See, e.g., R.I. Gen. Laws §§ 12-9-16 & 17 (1981); Va. Code Ann. § 19.2-82 (Michie 1992). Our Constitution does not require such appearance.

her discretion, retain jurisdiction to oversee the implementation of our decision. In order to avoid sudden disruption of the current system, a reasonable period of time may be allowed by the single justice for such implementation.

So ordered.

COMMONWEALTH *vs.* JOHN E. DE LA ZERDA.

Middlesex. April 29, 1993. - September 15, 1993.

Present: LIACOS, C.J., WILKINS, ABRAMS, LYNCH, & GREANEY, JJ.

Practice, Criminal, Appeal, New trial. *Supreme Judicial Court*, Further appellate review.

This court treated a criminal defendant's application for further appellate review of a trial judge's order denying the defendant's motion for a new trial as a collateral appeal and vacated the order granting further appellate review in circumstances in which the defendant, who had already served his sentence when he moved for a new trial and had received direct review in the Appeals Court of the denial of his motion for a new trial, died after his application for further appellate review had been granted but before oral argument of the appeal. [248-251]

COMPLAINT received and sworn to in the Somerville Division of the District Court Department on March 20, 1987.

The case was heard by *Joseph A. Grasso, Jr.*, J., and a motion for a new trial was considered by him.

After review by the Appeals Court, the Supreme Judicial Court granted leave to obtain further appellate review.

The case was submitted on briefs.

John J. Barter for the defendant.

Thomas F. Reilly, District Attorney, & *James W. Sahakian*, Assistant District Attorney, for the Commonwealth.

WILKINS, J. We are presented with the question of what to do with an appeal when a defendant dies after we have granted his application for further appellate review of an order denying his motion for a new trial.

In May, 1987, the defendant waived his right to an initial jury trial and admitted to sufficient facts to support a charge of indecent assault and battery on a child. Based on his ad-

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: 91-431

TORRE JENKINS AND OTHERS

vs.

CHIEF JUSTICE OF THE DISTRICT
COURT DEPARTMENT AND ANOTHER

INTERLOCUTORY ORDER

The matter of the entry of judgment following rescript came before the court and was argued by counsel; wherefore, it is adjudged and ordered that within sixty days of the date of this interlocutory order the defendants shall present to this court a plan or plans concerning procedures for the determination of probable cause as to any person arrested without a warrant and not released within twenty-four hours.

It is further adjudged that a declaratory judgment will be entered in this case, the terms of which may include at least the following provisions:

1. A person who is arrested without a warrant is entitled to a probable cause determination as soon as is reasonable following arrest, and, in the absence of extraordinary circumstances, in any event within twenty-four hours of arrest, unless that person is released within that

twenty-four hour period.

2. The determination whether there was probable cause to arrest such a person shall be made by a judge or by a "neutral and detached" magistrate, applying the same standards that apply to the issuance of a warrant to arrest, at a hearing that may be ex parte and at which the arrested person is not entitled to the assistance of counsel.

3. The factual basis for probable cause may be presented orally or in writing, but must be presented under oath or affirmation. A record of the presentation must be kept and made available to defense counsel.

4. The court shall retain jurisdiction of this case until further order of the court.

By the Court. (Wilkins, J.)

Clerk

Entered: October 28, 1993

COMMONWEALTH *vs.* DONALD R. CAMERON, THIRD.

Bristol. September 14, 1993. - November 1, 1993.

Present: LIACOS, C.J., WILKINS, ABRAMS, LYNCH, & GREANEY, JJ.

Motor Vehicle, Citation for violation of motor vehicle law. *Practice, Criminal*, Citation for violation of motor vehicle law.

Dismissal of a complaint charging certain motor vehicle violations was not required, although a police officer who waited several days to issue a traffic citation to the defendant had violated G. L. c. 90C, § 2, in failing to issue the citation at the time and place of the alleged violations, where there was an obvious, life-threatening injury involved; where no purpose of § 2 was being thwarted; and where the police were not seriously deficient or negligent in their handling of the matter. [315-318]

COMPLAINT received and sworn to in the New Bedford Division of the District Court Department on August 23, 1988.

On transfer to the jury session of the Fall River Division, the case was heard by *Robert L. Anderson*, J., on a motion to dismiss.

After review by the Appeals Court, the Supreme Judicial Court granted leave to obtain further appellate review.

Cynthia A. Vincent, Assistant District Attorney, for the Commonwealth.

Lee J. Fortier for the defendant.

WILKINS, J. For the first time in more than a decade, this court deals with the question whether a criminal complaint charging motor vehicle violations should be dismissed on the claimed ground that a police officer did not seasonably issue a citation to the defendant as required by G. L. c. 90C, § 2 (1992 ed.). The issue, which divided a panel of the Appeals Court (*Commonwealth* v. *Cameron*, 34 Mass. App. Ct. 44 [1993]), is here on further appellate review. Because of the seriousness of the injury sustained by a teenage boy whom

the defendant's vehicle struck and because the purposes of § 2 would not be thwarted if the complaint were not dismissed, the principles expressed in *Commonwealth* v. *Babb*, 389 Mass. 275 (1983), control, and we vacate the order of the District Court dismissing the complaint.

We summarize the essential facts which are more fully set forth in the opinion of the Appeals Court. *Commonwealth* v. *Cameron*, *supra* at 45-46. On April 27, 1988, Officer Soares of the Dartmouth police arrived at the scene of an accident in which a motor vehicle operated by the defendant had struck a teenage boy on a bicycle. The vehicle was damaged, and the boy, apparently seriously injured, was lying on the ground. The defendant, who had run behind a house, seemed to be in shock but gave his license and registration to the officer. After the defendant had left the scene with a friend, Soares and another officer worked at the accident scene for the next two hours. Soares learned that evening that the boy's life was in danger. The next day, after further investigation, Soares concluded that the defendant had been speeding and had crossed the solid double line in the road before striking the boy. No further investigation was needed before issuing a citation to the defendant. On April 29 and 30, Soares was not on duty. On May 1, he learned from the boy's mother that the boy's condition had stabilized. He then informed the defendant that a citation would be issued for operating to endanger, speeding, and failure to stay within marked lanes, and such a citation was issued that day.[1]

Section 2 provides that a citation should be given to the violator at the time and place of the violation and that fail-

[1]It appears that Soares believed that, if the boy died, he would have to issue a citation for negligent homicide, and, therefore, he delayed issuing any citation until that matter was resolved. In this, Soares was not wholly correct. A 1986 amendment had added to § 2 a provision that eliminated as a defense the failure of an officer seasonably to have given a citation to an alleged violator of certain motor vehicle laws if the violation caused one or more deaths. St. 1986, c. 620, § 18. The amendment did not eliminate the obligation to issue a citation in the event of a motor vehicle fatality. It only eliminated the defense that such a citation was not issued as required by § 2.

ure to do so "shall constitute a defense in any court proceeding for such violation." There are exceptions, such as when there is a reasonable need for additional time to determine the nature of the violation and "where the court finds that a circumstance, not inconsistent with the purpose of this section to create a uniform, simplified and non-criminal method for disposing of automobile law violations, justifies the failure." G. L. c. 90C, § 2.

One of the purposes of § 2, commonly called the "no-fix" law, "is to afford prompt and definite notice of the nature of the alleged offense to the putative violator." *Commonwealth* v. *Pappas*, 384 Mass. 428, 431 (1981).[2] The objective is "to prevent a situation in which a person cannot establish a defence due to his being charged with a violation long after it occurs." *Commonwealth* v. *Gorman*, 356 Mass. 355, 357-358 (1969). The judge who allowed the motion to dismiss seems to have relied in part on the defendant's state of shock to conclude that the defendant had no notice of the seriousness of the incident. In affirming the motion judge, however, the Appeals Court rightly did not depend on the absence of notice. Justice Dreben's dissent points out the reasons why the notice purposes of § 2 were fully satisfied in the circumstances. See *Commonwealth* v. *Cameron*, *supra* at 48-49 (Dreben, J., dissenting), citing *Commonwealth* v. *Pappas*, *supra* at 431-432. It is not reasonable to conclude that the defendant was not aware of the seriousness of the accident.

The more significant issue, and the one that divided the Appeals Court, concerns the question whether any circumstance, consistent with the purpose of § 2, justified the failure to deliver a citation until four days after the accident. The Appeals Court opinion rejected Officer Soares's mistaken belief that he had to discover whether the boy died before he could issue any citation and also rejected as adequate justification the two days' delay while Soares was off-

[2]The other purpose of the "no-fix" law is not involved in this case. There is no suggestion of manipulation or misuse of the citation process because of any unnecessary or unreasonable delay. See *Commonwealth* v. *Pappas*, 384 Mass. 428, 431 (1981).

duty. *Id.* at 46-47. It concluded that the Commonwealth had presented no justification for the failure to deliver or mail a citation the day after the accident. *Id.* at 47. The Appeals Court opinion does not cite this court's opinion in *Commonwealth* v. *Babb*, 389 Mass. 275 (1983), on which Justice Dreben relied in her dissent. *Commonwealth* v. *Cameron*, *supra* at 48-49 (Dreben, J., dissenting).

The *Babb* case stands for the proposition that, assuming the notice and abuse prevention purposes of § 2 are met, the apparent seriousness of the accident itself may justify a refusal to dismiss a complaint when an officer failed to issue a citation seasonably. In our *Babb* opinion, we said that "this court and the Appeals Court on numerous occasions have held that failure to comply with the statute is not fatal where the purposes of the statute have not been frustrated." *Commonwealth* v. *Babb*, *supra* at 283. "So also the cases make clear that the very seriousness of particular charges tends to minimize the importance of absolute observance of the procedures because, again, 'fix' is virtually excluded, and notice is implicit." *Id.*, quoting *Commonwealth* v. *Perry*, 15 Mass. App. Ct. 281, 284 (1983).[3] Indeed, the 1986 amendment of § 2 (St. 1986, c. 620, § 18, creating an exception for motor vehicle violation causing death) shows that, when the most serious of personal injuries is involved, the purposes of § 2 are made unimportant as against the public interest in the prosecution of such violators.[4]

Because there was an obvious, life-threatening injury in this case and no purpose of § 2 is being thwarted, and because the police were not seriously deficient or negligent in their handling of the matter, we conclude that there was jus-

[3]Our opinion in the *Babb* case does not analyze the issue in terms of the exceptions stated in § 2. It does not even quote them. Only implicitly does that opinion conclude that the justification exception of § 2 applies.

[4]The fact that in 1986 the Legislature amended § 2 (St. 1986, c. 620, § 18), less than four years after our *Babb* opinion, without changing that section to reverse our interpretation of § 2, warrants the conclusion that the Legislature accepted our interpretation. See *Waldman* v. *American Honda Motor Co.*, 413 Mass. 320, 323 (1992); *Crown Shade & Screen Co.* v. *Karlburg*, 332 Mass. 229, 231 (1955).

tification for excusing the three-day delay in issuing the citation. We thus disagree with an analysis of § 2 that measures "justification" in this case simply in terms of the inadequacy of the explanation that Soares took two days off and did not understand that an effective citation for motor vehicle homicide could be issued at any time if the injured boy should die. In deciding this case, we look more broadly at the purposes of § 2. See *Commonwealth* v. *Babb*, *supra* at 283-284; *Commonwealth* v. *Gorman*, 356 Mass. 355, 357-358 (1969) (procedures of § 2 inapplicable when there is an arrest, although § 2 does not say so). The delay of three days in issuing a citation in the circumstances of this case does not justify the dismissal of the complaint. A finding is required as a matter of law that the officer was justified in issuing the citation despite the delay. The order of the District Court dismissing the complaint is vacated, and an order shall be entered denying the motion to dismiss the complaint.

So ordered.

PROVIDENCE AND WORCESTER RAILROAD COMPANY *vs.* CHEVRON U.S.A. INC. & others.[1]

Worcester. September 8, 1993. - November 2, 1993.

Present: LIACOS, C.J., WILKINS, ABRAMS, LYNCH, & GREANEY, JJ.

Massachusetts Oil and Hazardous Material Release Prevention Act. Nuisance. Negligence, Hazardous substance. *Proximate Cause. Restitution. Practice, Civil*, Directed verdict. *Evidence*, Expert opinion. *Contract*, Indemnity.

At the trial of claims based on the Massachusetts Oil and Hazardous Material Release Prevention Act, common law nuisance, negligence, and restitution seeking recovery for costs incurred by the plaintiff in responding to petroleum contamination found on its property, the judge properly allowed motions by the two defendants for directed verdicts where, on the evidence considered most favorably to the plaintiff, and in the absence of expert testimony establishing causation, the jury would not have been warranted in finding that either defendant caused the contaminations. [321-323]

An indemnity provision contained in an agreement by which a petroleum company assigned its lease of a certain premises to another petroleum company did not, in the circumstances, obligate the assignee to reimburse the assignor for the cost of defending an action based on the assignor's alleged wrongdoing in 1972, months before the assignee acquired the lease of the premises from the assignor. [323-324]

CIVIL ACTION commenced in the Superior Court Department on December 29, 1989.

The case was tried before *Elizabeth Butler*, J.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

[1]Pioneer Oil Company, Inc., and Gulf Oil Corporation (Gulf).

We are advised that Chevron U.S.A. Inc. merged with Gulf in July, 1985, under the name Chevron U.S.A. Inc. The events in issue involve the actions of Gulf, and we shall refer to Gulf (and not Chevron), just as was the practice at trial.

II.

OFFICE OF THE ATTORNEY GENERAL PROCEDURES FOR THE INVESTIGATION OF CIVIL RIGHTS COMPLAINTS INVOLVING POLICE OFFICERS

TO: Massachusetts Chiefs of Police

FROM: Diane S. Juliar, Assistant Attorney General

DATE: November 23, 1993

RE: Office of the Attorney General Procedures for the Investigation of Civil Rights Complaints Involving Police Officers

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The attached document, Procedures for the Investigation of Civil Rights Complaints Involving Police Officers, is an evolving document developed to provide guidance to Assistant Attorneys General and investigative staff of the Attorney General's office regarding procedures to be followed in processing complaints alleging civil rights violations by police officers.

COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

PROCEDURES FOR THE INVESTIGATION OF CIVIL RIGHTS COMPLAINTS INVOLVING POLICE OFFICERS

November 10, 1993

A. POLICY

The Attorney General and the Chiefs of Police of the Commonwealth have the legal and moral obligation to conduct inquiries and investigations into allegations of wrong-doing by police officials, to include, but not be limited to, violations of the civil rights laws.

These procedures have been established to advise all concerned parties as to the processes that will be followed in conducting inquiries or investigations into allegations received by the Office of the Attorney General ("Office").

B. PROCEDURES

1. INTAKE OF COMPLAINTS

a. IDENTIFIABLE COMPLAINANT

Initial complaints by individuals, whether they are received via telephone, in writing, or in person, will be received by a staff member of the Civil Rights Division.

The staff member will inform the complainant that the Office requires that a written and signed complaint be filed with the Office prior to consideration of a formal investigation.

Additionally, the complainant will be asked to provide any supporting documentation including:

(1) medical records;
(2) names, addresses and telephone numbers of known witnesses;
(3) a copy of any obtainable police reports;
(4) photographs; and
(5) any other relevant information.

Finally, the complainant will be asked whether a complaint has been filed with the Chief of Police, and if the complainant has not done so, it will be recommended that the complainant do so, even if the complainant desires to do so anonymously.

b. **ANONYMOUS COMPLAINTS**

Although it is the general policy of the Attorney General not to expend valuable investigative and prosecutorial resources in the investigation of anonymous complaints, the Attorney General reserves the right to conduct inquiries and/or investigations into anonymous complaints when the allegations are of a serious nature and/or such an investigation would tend to further public policy interests.

Upon receipt of an anonymous complaint (one in which the complainant does not identify him or herself), the allegation will be forwarded to the Chief of Police in accordance with the guidelines set forth in 3.a. below.

2. PROVIDING LEGAL ADVICE TO COMPLAINANTS

In those instances in which an individual is seeking legal advice beyond the scope of an investigative request being filed with the Office, the complainant generally will be referred to the Massachusetts Bar Association, 20 West Street, Boston, Massachusetts 02111, telephone (617) 542-3602, or another bar association referral service.

3. PRELIMINARY SCREENING OF COMPLAINTS

a. **DETERMINATION THAT AN INVESTIGATION IS NOT WARRANTED**

If, after review of the written complaint and supporting materials conducted by the Chief of the Civil Rights Division, a determination is made that no investigation will be commenced by the Office, the complainant will be notified of the decision in writing. This notification will advise the complainant that it is the determination of the Office that sufficient grounds to warrant an investigation by this office do not exist at that time. As this is not a determination as to whether or not the rules, policies, and procedures of the particular police department were violated, the notification will also include a recommendation that the complainant bring this matter to the attention of the Chief of Police in the community in which the incident or complaint is alleged to have occurred.

Additionally, the complainant will be encouraged to provide the Office with written authorization as required by the Massachusetts Fair Information Practices Act, G.L. c. 66A §§ 1-3 ("FIPA") to provide information regarding the complaint, including the complainant's identity, to the local Chief of Police.

The provision of this information to the local Chief of Police will assist the Chief of Police in fulfilling his/her responsibility to learn about incidents which may have occurred, to determine whether particular officers have been the subject of complaints, and to maintain the general good order of the police department.

If the complainant provides the requested written "FIPA" consent, the Civil Rights Division will forward a written copy of the complaint to the Chief of Police.

If the complainant declines to sign the "FIPA" consent form, the Office will contact the Chief of Police in writing concerning the substance of the complaint. The Chief of Police will be provided with as much information as possible regarding the complaint excepting, as required by "FIPA", the identity of the complainant and other information which reasonably could identify the complainant.

Those cases that are not the subject of an investigation will be maintained by the Office in a separate file system, segregated by department and by individual officer. With the exception of the procedure described above concerning the notification of the Chief of Police, this information will not be made available, except for release of the complaint to the complainant upon request, unless there is an order of a Court of competent jurisdiction.

In certain instances, although a determination has been made after preliminary review that sufficient grounds to warrant an investigation by the Office do not exist, the Chief of the Civil Rights Division will discuss with the Chief of Police those practices and/or policies which were raised by the complaint and which, if true, would have the potential for exposing the Police Department to future liability. When appropriate, the Office will forward to the Chief of Police model policies and procedures, information concerning training, and an offer of the professional, technical and advisory resources of the Office.

b. **DETERMINATION THAT AN INVESTIGATION IS WARRANTED**

If it is determined by the Chief of the Civil Rights Division that an investigation is warranted, she or he will assign an Assistant Attorney General in the Division to the case, and the following actions will be taken:

(1) If a "FIPA" release form has not yet been signed by the complainant, the complainant will be asked to sign such a release at this time as a predicate to commencing an investigation.

(2) When the complainant has signed the "FIPA" release form and the investigation has been authorized, the Assistant Attorney General will contact the Chief of Police of the particular Police Department by telephone and determine whether the Chief of Police has or will initiate an investigation (civil/internal affairs or criminal) into the allegation. If the Chief of Police determines that the Chief and/or his/her Department will not be involved in an investigation into the allegations, the matter will be assigned for investigation by the Office in accordance with section 4, below. Additionally, and in any event, the Attorney General reserves the right to conduct an independent investigation in accordance with paragraph E of these procedures.

(3) When the Chief of Police is contacted, the Assistant Attorney General also will request that the Chief retain the following items pending a formal written request:

(a) relevant radio and telephone transmission tapes;

(b) police officers activity logs;

(c) police incident reports;

(d) booking photographs;

(e) crime scene or other photographs; and

(f) other relevant departmental documents or materials.

(4) If an investigation into the allegations has been conducted and completed by the Chief of

Police, the Assistant Attorney General will request in writing that the Chief forward to the Office a copy of reports of the investigation and any supporting materials which may be subject to release in accordance with the law.

4. INVESTIGATION BY THE OFFICE OF THE ATTORNEY GENERAL

If a formal investigation is commenced by the Office, the Assistant Attorney General and the Investigator(s) assigned to the investigation will interview the complainant and civilian witnesses and will obtain all relevant documents.

The file will then be reviewed to determine whether there is sufficient credible evidence to support continuance of the investigation into the allegation.

If there is insufficient evidence, a letter will be forwarded by the Chief of the Civil Rights Division to the Chief of Police, advising the Chief of Police that the investigation has been closed, and that since there is insufficient credible evidence to warrant proceeding further, it will not be necessary to interview the officer, unless the officer makes a request to be interviewed for the record.

If there is sufficient evidence to warrant further investigation, the Assistant Attorney General will notify the Chief of Police that the Office requests that the involved officer and/or other officers make themselves available to be interviewed by personnel from the Office of the Attorney General. No officer is required to grant this interview, but each is requested to meet voluntarily with staff from the Office so that the officer's account of the events that are the subject of the allegation and, if applicable, the identity of other witnesses can be obtained. The officers may be represented by legal counsel at the interview.

Upon completion of this stage of the investigation, the Assistant Attorney General and the investigator will again review the information and evidence gathered to determine whether the investigation should proceed further.

If a determination is made to proceed with the investigation, the Assistant Attorney General assigned to the investigation will periodically assess the progress of the investigation to determine the appropriateness of further measures.

C. PROCEDURE FOR COMPLETED INVESTIGATIONS

At the completion of any substantiated investigation, and prior to the issuance of any recommendations or related reports, the Chief of the Civil Rights Division will offer to meet personally with the Chief of Police to discuss the findings and conclusions of the investigation.

It shall be the policy of the Office to utilize these meetings, in part, to make the Chief of Police aware of available training for police officials. If the Chief of Police expresses an interest in such training, the Chief of the Civil Rights Division will assist the Chief of Police in facilitating the processes necessary to arrange for this training.

After the meeting between the Chief of the Civil Rights Division and the Chief of Police, the Chief of the Civil Rights Division will provide the Chief of Police with a copy of the final investigative report, including its findings and conclusions, to assist the Chief of Police with his/her responsibilities to maintain the good order of the Police Department and to assist the Chief of Police with internal police administrative processes.

Except when conduct warranting criminal prosecution is identified, or when an apparent pattern of illegal or inappropriate conduct by a police officer or a department is identified, or in those situations described in paragraph D. 2. and E. of these procedures, the Chief of the Civil Rights Division will refer the matter to the Chief of Police with a recommendation that the Chief of Police address the investigative concerns as an internal administrative matter.

Additionally, the Chief of the Civil Rights Division will discuss with the Chief of Police those practices and/or policies which were identified, by or during the investigation, as having the potential for exposing the Police Department to future liability. When appropriate, the Office will forward to the Chief of Police model policies and procedures, information concerning training, and an offer of the professional, technical and advisory resources of the Office.

D. CRIMINAL AND CIVIL PROSECUTIONS FOR VIOLATION OF THE CIVIL RIGHTS LAWS

In accordance with the Massachusetts General Laws, the Attorney General has the authority to commence a criminal and/or civil cause of action against those persons found to be in violation of the civil rights laws, including, but not limited to, police officers acting under the color of law.

1. CRIMINAL PROSECUTIONS

In those instances in which there is probable cause to believe that the civil rights of a person were violated, and the facts indicate that a criminal prosecution is warranted and appropriate, a prosecution will be initiated and directed by staff of the Criminal Bureau. Notice will be given to the appropriate District Attorney's Office.

2. CIVIL ACTIONS

It is the policy of the Attorney General that the use of civil actions will be necessary in unusual and/or extraordinary circumstances or in other similarly rare and special situations in which the facts and circumstances require that the Attorney General commence such an action. These civil actions will be commenced to seek injunctive relief to prohibit certain conduct, or to mandate training or policy changes. Civil actions will be commenced in those cases and instances in which the Office of the Attorney General determines that the purposes of the civil rights laws are not being adequately addressed by the actions and determinations of the Police Department or other appropriate authorities. Settlement of these matters generally will be allowed if an appropriate written agreement detailing recommendations and solutions to the complained of issues and concerns is agreed upon by the Attorney General and the other parties to the cause of action.

E. RESERVATION OF RIGHT TO CONDUCT INDEPENDENT INVESTIGATIONS

Although it is the policy of the Attorney General to work jointly and cooperatively with the Chiefs of Police of the Commonwealth, in certain instances the facts and circumstances of particular allegations and/or the responsibilities of the Attorney General may require that the Office conduct an immediate investigation, independent of the involved Police Department and Chief of Police, and contrary to the procedures above. Some examples of these circumstances include lack of cooperation on the part of the Chief, the agency, or the municipality; involvement of the Chief as a subject of the allegation; the apparent existence of a conflict of interest; and allegations of serious criminal conduct. In those circumstances in which this provision is invoked, the Chief of the Civil Rights Division will contact the Chief of Police as soon as it is appropriate to do so, to make due notification and to discuss the basis for the determination to conduct an immediate independent investigation, unless the Chief of Police is the subject of the investigation.

III.

EMERGING TECHNOLOGIES IN LAW ENFORCEMENT

By Peter Sacks

VIDEOTAPING OF PUBLIC DEMONSTRATIONS BY LAW ENFORCEMENT PERSONNEL

The Attorney General has recently received several inquiries regarding the extent to which law enforcement personnel may make videotapes, with or without audio rercording, of demonstrations in public places. The short answer is that videotaping is appropriate under certain limited circumstances; that audiotaping is appropriate in the same circumstances so long as it is not done "secretly"; and that the use of good judgment and common sense will go a long way toward determining when these information-gathering and evidence-preserving techniques should and should not be used. Some of the governing legal principles are set forth below.

There do not appear to be any significant issues under the search and seizure provisions of the federal and state constitutions or under the privacy protections set forth in G.L. c. 214, § 1B. Generally, persons demonstrating in a public place do not enjoy a reasonable expectation of privacy.

So long as no audio recording is made, such videotaping would not violate the Commonwealth's eavesdropping and wiretapping statute, which restricts interceptions of "wire communications" and "oral communications" but not communications made by means of visible images. G.L. c. 272, § 99. Even an audio recording would not violate the statute if it were made openly, in light of the statutory definition of "interception" as a communication heard or recorded "secretly." Id. § 99 B.4. A recording made "secretly," unless otherwise authorized by the statute, is a criminal offense, id. § 99 C.1, and may be the basis for monetary damages. Id. § 99 Q.

Whether a recording is being made "secretly" will depend in part on individual facts and circumstances. For example, a large boom microphone might put a reasonable person on notice that an audio recording was being made, but a small camcorder may be less noticeable in a crowd. Also, depending on the relative prominence of the microphone on the particular model of camcorder, even a person who saw the camcorder being operated might not necessarily be aware that an audio recording was also being made. A court might also consider such factors as whether the recording was being made in the open, or instead from within a building or an unmarked vehicle, and whether the officer making the recording was in uniform or plainclothes.

District attorneys, State Police personnel, and law enforcement personnel employed elsewhere in the executive branch of state government or by independent authorities must consider certain issues under the Fair Information Practices Act (FIPA), G.L. c. 66A, §§ 1-3. FIPA provides that a "holder" maintaining "personal data" must "not collect or maintain more personal data than are reasonably necessary for the performance

of the holder's statutory functions." G.L. c. 66A, § 2(1). Any holder violating this or any other provision of FIPA may be liable for damages and subject to injunctive relief under G.L. c. 214, § 3B. Whether FIPA is applicable here depends on whether the office or law enforcement agency involved is a "holder," whether the information captured on videotape or audiotape constitutes "personal data," and whether that information is "reasonably necessary for the performance of the holder's statutory functions."

The term "holder" is defined by using the term "agency," which in turn is defined as including "any agency of the executive branch of government . . . or any authority created by the general court to serve a public purpose, having either statewide or local jurisdiction." G.L. c. 66A, § 1. Although no reported case has addressed the issue, a district attorney could be held to fall within this definition. Cf. Lodge v. District Attorney for the Suffolk District, 21 Mass. App. Ct. 277, 281 (concluding that office of district attorney is a state agency for purposes of presentment of tort claims under G.L. c. 258, § 4), rev. denied, 396 Mass. 1106 (1985). The State Police, other state law enforcement agencies, and independent authorities would also appear to constitute "holders."

The term "personal data" is defined, see G.L. c. 66A, § 1, so as to exclude "intelligence information" as defined in G.L. c. 6, § 176; "intelligence information" is defined as including records and data compiled for the purpose of "criminal investigation" or "investigating a substantial threat of harm to an individual, or to the order or security of a correctional facility." G.L. c. 6, § 176. Accordingly, information could be "personal data" for FIPA purposes if it were gathered for purposes other than a criminal investigation or the investigation of a substantial threat of harm to an individual or correctional facility.

The phrase "reasonably necessary for the performance of the holder's statutory functions" is not one that is susceptible to any single, precise definition. Law enforcement personnel have numerous statutory functions, and in each instance a judgment would have to be made, based on all of the facts and circumstances, as to whether particular data was "reasonably necessary" to the performance of one or more of those functions. It seems likely that a court would allow law enforcement personnel a range of discretion in determining what kinds of data are "reasonably necessary" to gather, but such discretion would not be unlimited.

The result of the foregoing is that, although certain legal questions remain to be resolved by the courts, law enforcement officials subject to FIPA should make videotapes of public

demonstrations only where such videotapes are either (a) for purposes of a criminal investigation or the investigation of a substantial threat of harm to an individual or correctional facility, or (b) are "reasonably necessary for the performance of [the law enforcement agency's] statutory functions." G.L. c. 66A, § 2. The making of videotapes for other purposes could be grounds for monetary and injunctive relief under G.L. c. 214, § 3B, although such relief would operate only against the "holder," i.e., the agency or authority, rather than against law enforcement personnel individually. See Torres v. Attorney General, 391 Mass. 1, 14 (1984) (noting that relief under FIPA should operate against agency that is "holder," rather than any individual employee).

All law enforcement personnel should consider issues under the Massachusetts Civil Rights Act (MCRA), G.L. c. 12, §§ 11H, 11I. The MCRA makes any "person" who interferes or attempts to interfere with the protected rights of another person "by threats, intimidation or coercion" subject to civil liability and injunctive relief. The holding of a peaceful demonstration in a public place, in compliance with any lawful time, place and manner restrictions, is a right protected by the federal and state constitutions. The videotaping of such a demonstration in a threatening, intimidating, or coercive manner, or in circumstances where the act of videotaping was inherently threatening, intimidating, or coercive, could constitute grounds for liability under the MCRA.

One factor that a court might consider in evaluating any claim of an MCRA violation is whether there was a videotaping policy that was even-handedly applied to all demonstrations regardless of the content of the messages being conveyed at the demonstration, or instead whether the decision to tape a particular demonstration took the subject of the demonstration into account. It may be, of course, that some demonstrations dealing with particular issues might present a relatively greater or lesser threat of illegal conduct than the typical demonstration. If there were some objective evidence for such a correlation, then such evidence could be taken into account in deciding whether to videotape the demonstration. But the subject matter of the demonstration, standing alone, should not be a factor in the decision.

Also, there is an unanswered question as to whether it would be more appropriate for the officer making the recording to be in uniform or plainclothes. Conceivably, this could bear on the issue whether the officer's activities would constitute an interference with the demonstration by means of "threats, intimidation, or coercion." In particular, some members of the public might view videotaping by a uniformed officer as expressive of particular governmental concern about the demonstration and therefore more intimidating. Others might

view videotaping by a plainclothes officer as more intimidating because participants in the demonstration are left to wonder who is videotaping the demonstration and why.

These decisions must be made based on the facts and circumstances of each particular situation. The courts would likely give reasonable deference to such decisions, however, so long as such decisions were based on appropriate criteria such as those identified in this discussion. More generally, the exigencies of law enforcement and crime prevention, and the circumstances of a particular demonstration, would have to be taken into account before any videotaping of a demonstration could be characterized as constituting "threats, intimidation, or coercion."

In addition, various immunities protect law enforcement agencies and officials from official and personal liability under the MCRA. First, state agencies, and state officials sued in their official capacities, are not "persons" subject to liability under the MCRA. See Commonwealth v. Elm Medical Laboratories, 33 Mass. App. Ct. 71 (1992). Second, law enforcement personnel at the state and local levels would enjoy a qualified immunity from personal liability under the MCRA for discretionary acts that did not violate the "clearly established" rights of participants in the demonstration being videotaped. See Duarte v. Healy, 405 Mass. 43 (1989); Elm Medical Laboratories, 33 Mass. App. Ct. at 81-82 n.15. Third, district attorneys enjoy absolute immunity from suit under the MCRA for acts that are "sufficiently related to the prosecutorial function . . . ." Chicopee Lions Club v. District Attorney for the Hampden District, 396 Mass. 244, 252 (1985). There is, however, some question as to whether a prosecutor's videotaping of potential illegal activity would be sufficiently closely associated with the judicial process as to warrant absolute immunity. Cf. Burns v. Reed, 111 S. Ct. 1934, 1943 (1991) ("We do not believe . . . that [an assistant district attorney's] advising the police in the investigative phase of a criminal case is so 'intimately associated with the judicial phase of the criminal process' . . . that it qualifies for absolute immunity.").

In sum, videotaping would not violate the MCRA, and should present no appreciable risk of personal liability for law enforcement personnel, so long as it were (1) undertaken for a legitimate purpose related to the duties of the law enforcement agency; (2) conducted on a content-neutral basis, i.e., without discrimination based solely on the subject matter of the demonstration (as opposed to the activities expected to occur at the demonstration); and (3) conducted in a manner that did not unnecessarily interfere with the demonstration being videotaped.

There are, of course, situations where videotaping is clearly warranted. Where illegal activity is actually occurring or is reasonably likely to occur, and particularly where persons involved in such activity may be attempting to conceal their identities, videotaping can serve as a valuable and even essential law enforcement tool for gathering evidence for a potential prosecution. The foregoing discussion of FIPA and the MCRA should illustrate that a careful evaluation of these circumstances, including consideration of the necessity of videotaping and its potential effect on the exercise of protected rights, ought to be sufficient to ensure that the videotaping complies with applicable law.

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02108

COMPUTER SEARCHES of MSDOS SYSTEMS

by
Sgt. Andrew Palombo

When conducting a search for computer related evidence there are several steps that must be followed. In order to ensure a successful retrieval of information and subsequent prosecution. A computer "Crime Scene" is subject to being inadvertently tainted if the proper procedure is not followed.

The following is a compilation of procedures that should be utilized any time a search or seizure of a computer is contemplated. These procedures should ultimately be followed by an investigator with expertise or at the very least a good working knowledge of DOS, (Disk Operating System), and the ability to articulate his findings for a judge and jury. Additionally, there are certain tools that an investigator will need if he is to conduct an on-site search of the computer. These tools are going to be necessary whether or not the search is done on location or back at the office, and should be a kit ready to go at any time.

TOOLS

1. Tools needed for a P.C. search and data retrieval vary depending on the type of system, (Apple, Macintosh, I.B.M. compatible etc.), for these purposes, most reference is to I.B.M. compatibles, the most commonly found system.

A. Mechanical tools:

Evidence camera and or video.
Small screwdriver set/Pocket tool kit
Tape recorder

B. Evidence supplies:
Evidence tags
Evidence stickers
Self stick labels
Re-usable tape
Felt tip markers and pens

C. Computer equipment:
Lap Top with large hard drive
Small portable printer.
Portable "pocket modem"
Blank Diskettes, (unformatted) in 5 1/4 " and 3 1/2" sizes.
Serial and parallel cables, (both standard and point to point wired)
Serial and parallel port adapters.
DOS. "boot" disk, (one for each version)
Several DOS. Utility programs, i.e.,PC Tools, Norton Utilities etc.
Disk labels and Write protect tabs.

BEGINNING THE SEARCH

1. Procedure for initiating a search in an on-site location:

A. Remove everybody from the vicinity of the computer, and telephones.

B. Leave the computer in its current operating condition, do not allow anyone access to the keyboard or power source.

C. Identify and additional network users, (if any), and secure the terminal

D. Photograph, (or video), the system, peripherals, and all connections made to the computer, (cables, phone lines or other wiring).

E. Disconnect any modem connections from the source.

2. Conducting the search:

A. Back out of the program currently running, (if any). **save the file.**

B. Exit to DOS. If you are in a familiar program and can do so without corrupting files or experimenting.

C. Reboot the computer using YOUR DOS. Disk.

D. Use DOS. commands to read the directory and all sub-directories to familiarize yourself with this system and files.

E. Use utility programs to view Autoexec. Bat and Config.Sys in the root directory to determine if any hidden commands are in existence to destroy files not accessed properly.

F. Repeat E in each program directory looking for start up files with hidden commands.

G. Identify the files you wish to search.

THE SEARCH

3. Searching the files:

A. If you are satisfied that the computer is "clean" of any operator induced viruses or hidden destruction commands, utilize the software in the computer to access and read it's own files.

B. Copy all targeted files to your disks using DOS. Commands. Or a disk cloning program , i.e. Laplink, PC Tools or similar utility. (compare files after copy)

C. Copy the existing software to your disks, as in B above use DOS. Backup or Copy commands, (this is to avoid accusations that different software versions will misinterpret file commands).

D. Using the utility programs, look for deleted , hidden or damaged files. Recover these, examine and copy if applicable. (DOS. delete commands do not erase a file from the computer, they only change a segment to make unrecognizable to most programs. These are usually recoverable with various utility programs).

E. Using the software print commands, and the DOS. print commands, print out on the system printer all of the documents that you have copied, (if time allows), also print out the directory and tree listings that you obtained through the DOS. commands.

It is important for the investigator to closely examine all files in all directories. A common and simple method for computer aficionados to hide and disguise incriminating documents is to simply re-name the files and extensions and place them innocuously in directories other than where expected. For example, a Word Perfect document called "Murder.Doc" could be renamed Apple.Exe and placed in any directory. This would appear, at first glance to be a program file and not a storage file for a word processing program. Therefore you need to examine all files to determine if in fact they are what they appear.

The above procedures are time consuming and sometimes delicate operations. If time and location is a serious problem, the warrant to search should be written so as to allow the search and/or seizure of the computer, including all peripherals, data disks, manuals and storage equipment. This will enable your investigators to bring all of the data in its original format back to their facility and conduct a thorough search and retrieval of the data. Furthermore, there are many commercially available software programs with password protection to access the program.. Most of these are easily circumvented allowing the experienced computer user , "Back door Access" to the program. However, some programs have password protection on the individual files. (Word Perfect for example). This protection, if used by the author actually encrypts the entire file making it impossible to read through any DOS or utility command including Word Perfect itself, without the password. The only remedy for this is through purchase of a commercially available decryption program specifically designed for these purposes and for that particular program.

For these reasons, the better practice, if conducting a search on a P.C. based computer would be to remove the computer. If this is not possible, because of legitimate third party or business use, the computer should be "Cloned" into a laptop at the site using a Laplink type program which in effect gives you an exact duplicate on your own computer of the entire operating system, files, and programs exactly as they appear on the target computer.

It is important to remember that whatever method is used to extract the information from the computer, that the rules of evidence must be followed. Also the integrity of the information contained in your copies must be above reproach. The methods of reproduction and extraction of files should be as simplistic as possible, and done in a manner that does not allow the changing or editing of the original file. Any challenges to your procedures should be addressed in court by an expert witness with hypothetical questions that directly parallel the methods used by your investigator.

There are many other pitfalls to retrieving and maintaining computer generated evidence. Storage of the computer and disks are extremely important, access to electrical surges, magnetic fields, dirt, water, extreme temperature changes, and adverse handling of the equipment can all lead to fatal errors in the retrieval, storage and integrity of data. Removal of the P.C. computer itself requires more than unplugging same and carrying it out. There are programs based within DOS and other utility programs that "park" the hard disk prior to moving, this coupled with placing blank disks in the floppy drives makes it safe to remove and transport the P.C. Any notations made on floppy disks should be done with felt tipped pens while carefully avoiding the shiny portions of the disk inside the jacket.

During the planning of a search and/or seizure of a computer consideration must be given to the vast amounts of information that may be stored on the internal hard drive and "floppy" disks. The time needed to retrieve, view and analyze this data could well be in excess of what the courts view as "Reasonable", for an on-site search. In order to better understand this statement , it is important to understand the storage capabilities of computer disks.

MEGABYTES

1. A Byte is the nomenclature used to measure the storage capacity of computer disks. Simply stated:
   A. One byte equals one character on the keyboard
   B. One Megabyte equals one million bytes
   C. "Floppy" discs have a storage capability of between 360,000 to 1,400,000 bytes
   D. Commonly used "Hard" disks range in size from 40,000,000 to 250,000,000 bytes

FLOPPY DISCS

1. A "Floppy" disc is a magnetic media used for program loading and storage.

   A. The 5 1/4 " Disk is a flexible recordable storage media that is inserted into a drive on the computers C.P.U., (Central Processing Unit)
   B. The most common of these disks have a storage capacity of 1,200,000 Bytes.
   C. This disk is covered with a cardboard type material and the actual disk inside is exposed in several areas. The examiner must be careful not to touch the exposed area as this could destroy data.
   D. The 3 1/2" Disk is a physically smaller version of the 5 1/4", but with a larger storage capacity. The most common of these can store 1,400,000 Bytes of information.
   E. The 3 1/2 " disk jacket is comprised of a hard non-flexible jacket with a sliding "door" that covers the recording disk and does not have any exposed areas.
   F. Both of these storage media's have what is known as a "Write Protect tab" on them. These tabs allow full reading access to the disk but will not allow any alteration or new information to be written on the disk. However, these "tabs" are physical devices that may be removed at any time.

HARD DRIVES

1. A " Hard Drive", is a permanent internal disk that usually contains all of the operating system files along with individual program and storage files in "Directories".

   A. Hard drive storage capabilities range from 10,000,000 bytes to over 200,000,000 bytes (200 Megabytes) in P.C.s, (network systems usually contain much larger storage systems).
   B. Hard drives are usually non-removable and not visible without dismantling the computer.
   C. Hard drives do not have mechanical "Write protection" on them and therefore are susceptible to operator induced damage to the files if not accessed properly.

To put the storage capabilities of computer disks in the proper perspective, consider the following analogy: (F.B.I. statistics)

A. An average paperback book contains approximately 300 pages.
36 lines per page
60 Characters per line
648,000 characters per book

B. Capacity of most common computer disks.
5 1/4 " Floppy disk
360,000 to 1,200,000 characters (1/2 to almost 2 paperback books).
3 1/2 " Floppy disk
720,000 to 2,000,000 characters (1 to 3 paperback books)
80 megabyte Hard Drive
80,000,000 characters (Almost 125 paperback books).

As is apparent, computers and disks are able to store an incredible amount of information in a very small area. When you plan your search, this must be taken into consideration and should also be incorporated into the affidavit for the warrant as a justification to seize the computer in order to facilitate a thorough and detailed search.

IV.

CONFRONTING GANGS IN YOUR COMMUNITY

About the National Institute of Justice

The National Institute of Justice, a component of the Office of Justice Programs, is the research and development agency of the U.S. Department of Justice. NIJ was established to prevent and reduce crime and to improve the criminal justice system. Specific mandates established by Congress in the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Anti-Drug Abuse Act of 1988 direct the National Institute of Justice to:

- *Sponsor special projects and research and development programs* that will improve and strengthen the criminal justice system and reduce or prevent crime.
- *Conduct national demonstration projects* that employ innovative or promising approaches for improving criminal justice.
- *Develop new technologies* to fight crime and improve criminal justice.
- *Evaluate the effectiveness of criminal justice programs* and identify programs that promise to be successful if continued or repeated.
- *Recommend actions* that can be taken by Federal, State, and local governments as well as private organizations to improve criminal justice.
- *Carry out research on criminal behavior.*
- *Develop new methods of crime prevention* and reduction of crime and delinquency.

The National Institute of Justice has a long history of accomplishments, including the following:

- Basic research on career criminals that led to development of special police and prosecutor units to deal with repeat offenders.
- Research that confirmed the link between drugs and crime.
- The research and development program that resulted in the creation of police body armor that has meant the difference between life and death to hundreds of police officers.
- Pioneering scientific advances such as the research and development of DNA analysis to positively identify suspects and eliminate the innocent from suspicion.
- The evaluation of innovative justice programs to determine what works, including drug enforcement, community policing, community anti-drug initiatives, prosecution of complex drug cases, drug testing throughout the criminal justice system, and user accountability programs.
- Creation of a corrections information-sharing system that enables State and local officials to exchange more efficient and cost-effective concepts and techniques for planning, financing, and constructing new prisons and jails.
- Operation of the world's largest criminal justice information clearinghouse, a resource used by State and local officials across the Nation and by criminal justice agencies in foreign countries.

The Institute Director, who is appointed by the President and confirmed by the Senate, establishes the Institute's objectives, guided by the priorities of the Office of Justice Programs, the Department of Justice and the needs of the criminal justice field. The Institute actively solicits the views of criminal justice professionals to identify their most critical problems. Dedicated to the priorities of Federal, State, and local criminal justice agencies, research and development at the National Institute of Justice continues to search for answers to what works and why in the Nation's war on drugs and crime.

U.S. Department of Justice
Office of Justice Programs
National Institute of Justice

Street Gangs:
Current Knowledge and Strategies

by
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with
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Issues and Practices in Criminal Justice is a publication series of the National Institute of Justice. Each report presents the program options and management issues in a topic area, based on a review of research and evaluation findings, operational experience, and expert opinion on the subject. The intent is to provide information to make informed choices in planning, implementing and improving programs and practice.

National Institute of Justice

Michael J. Russell
Acting Director

John Thomas
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The National Institute of Justice is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

Foreword

In many urban, suburban, and even rural communities in the United States, there is growing concern about street gangs. Victims of the serious and often random violence that is an increasingly common feature of gang-related crime, law abiding residents in some of these communities have retreated in fear—afraid to let their children walk to school, go to a corner store for a loaf of bread, or even play outside.

Nevertheless, finding an appropriate solution to the gang problem is a complex issue. Across communities, there is considerable variation in gang membership and gang behavior. Some gangs are primarily social groups while others are deeply committed to criminal activity. Some members are heavily engaged in illicit activity; others participate in crime only occasionally.

Experts who have studied and worked with gangs often consider them to be a symptom of community ills as well as a cause. Law enforcement officials, social service providers, and other community-based groups are beginning to set a new course for combining their expertise and developing community-centered strategies that take into account the complex nature of street gangs.

This *Issues and Practices* report is one of the most recent responses to that need. It summarizes research and professional criminal justice perspectives on gangs; describes some current gang prevention, intervention, and suppression strategies; and presents recommendations for dealing with street gangs at the community level.

To advance the effort to forge new links between the community and criminal justice in steering young people away from gang membership, NIJ has initiated a comprehensive evaluation of early intervention strategies that emphasize participation by social service agencies, schools, families, youth, and community organizations. This project is part of NIJ's structured research and evaluation program to learn more about gangs and effective strategies to control them.

NIJ-sponsored projects now underway are studying the involvement of gangs in drug sales and other types of criminal activity, their migration from city to city, and their internal structures and links to organized crime. The presence of gangs in correctional facilities and the roles of probation and parole in gang prevention and control are other topics being explored. Nationwide assessments are reviewing the resources available to law enforcement and the strategies that have been

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effective in prosecuting gang-related crime. Finally, the effectiveness of a multiagency approach in combating gangs is being evaluated in San Diego.

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We would like to thank the many talented and concerned practitioners and researchers who have dedicated much professional energy to understanding and helping young people in this country. Without their support we could not have written this report. We hope that by sharing their knowledge we will contribute to improving conditions in communities where there are gangs.

Chapter 1
Introduction

Street gangs have been documented in cities in the United States throughout most of the country's history, but accounts by the media, practitioners, and some researchers suggest that gangs are now posing a more serious crime problem than in the past.[1] In some cities gangs are credited with an alarming share of violent crime, especially homicides. And while reports conflict about the extent to which gangs play an organized role in drug trafficking, recent research suggests that gang members are highly visible in the drug trade.[2]

Policymakers require information on street gangs and ways to address them. This report gives an overview of current knowledge, it discusses efforts to define gangs and measure gang activity, and describes current prevention, intervention, and control strategies. The report also synthesizes the views of experts from an array of disciplines.

The information is drawn from a variety of sources:

- A review of research literature and news articles on street and prison gangs;
- Telephone interviews during the winter and spring of 1991 with more than 50 gang researchers, criminal and juvenile justice officials who specialize in correctional programming and gang control, and a group of researchers and practitioners with expertise in researching or developing programs in the areas of education, family counseling, community mental health, substance-abuse prevention, employment, and policing;
- Testimony from public hearings on gang violence conducted in Texas and Illinois in June and October 1991, respectively;
- A review of program materials and research reports on programs that may have applications for gang prevention, intervention, and suppression efforts.

To survey all people currently studying or working with gangs was beyond the scope of this project. Rather, a small number of individuals around the country were interviewed who, according to research and/or peer opinion, are among the experts on gangs. (Appendix A lists the individuals interviewed.)

Programs in three sites—southern California (especially Los Angeles), Chicago, and Miami—received special attention. The first two sites are of particular

interest because of their long-standing experience with street gangs. Miami has a more recent history of gang activity. All three cities also have large immigrant populations and a considerable number of drug arrests. In addition, interviews have shed light on gang situations in Tacoma and Seattle, Washington; Portland, Oregon; Reno, Nevada; Wisconsin; Philadelphia, Pennsylvania; New Mexico; Arizona; and Columbus and Cleveland, Ohio.

Telephone interviews concentrated on these topics:

- Definitions of gangs and gang-related crime;
- Characteristics of gangs and their activities, including drug use, drug trafficking, weapon use, involvement with organized crime, recruitment processes, and patterns of movement;
- Problems that street gangs create in their communities;
- Program options;
- State-of-the-art programming.

The interviews varied somewhat according to the expertise of the interviewees. Prison officials and persons dealing with street gangs were asked slightly different questions. Interviewees outside the field were asked to describe their research and/or program models and to assess applications in a gang context.

The report is organized to address three major questions about street gangs:

1. What are gangs and what do they do?
2. What are the characteristics of current gang prevention, intervention, and suppression efforts?
3. What other strategies might be useful?

Chapter 2 combines information from the research literature and public hearings with data from telephone interviews. It describes the activities, structure, and membership of today's street gangs and discusses the characteristics of the communities in which street gangs exist, suggesting that gangs are as much a symptom as a cause of community problems.

Chapter 3 describes a sample of current programs whose scope includes gang members: efforts to intervene in the lives of high-risk youth through education, job skills development, and family training and counseling; programs aimed at organizing communities to resist gangs; and law enforcement, prosecution, and corrections strategies to reduce gang-related crime. The programs were selected because they were recommended as prototypes in the research literature or by experts during the telephone interviews. This does not mean, however, that they have been rated *successful* programs, since none has passed the test of rigorous evaluation. When appropriate, the discussion also centers on developments in related fields that may apply to a gang context.

Chapter 4 highlights the need to develop community-based and multifaceted gang programs that in some cases may change the fundamental structure of the key institutions serving communities with gangs. It calls for continued research to answer questions about who are gang members, how they differ from their non-gang counterparts, why they join, how they behave, and why they cease to participate.

Endnotes

1. Irving Spergel, "Youth Gangs: Continuity and Change," in Norval Morris and Michael Tonry (eds.), *Crime and Justice: A Review of Research* (Vol. 12), (Chicago: University of Chicago Press, 1990): 188-191; Carl S. Taylor, "Gang Imperialism," Chapter 4 in C. Ronald Huff (ed.), *Gangs in America*, (Newbury Park: Sage Publications, 1990):104.

2. Taylor, *supra*, note 1, at 103-115. Klein, *et al.* discovered in a study of Los Angeles arrests that although "the proportion of cocaine sales arrests with at least one arrestee identified as a gang member" increased 213 percent from 1983 to 1985, there was no evidence to conclude that gangs as organizations were dominating the cocaine marketplace. Malcolm Klein, *et al.*, *Gang Involvement in Cocaine "Rock" Trafficking*, draft (Washington, D.C.: National Institute of Justice, April 1988):6.

Chapter 2
What Are Gangs and What Do They Do?

Gangs have been identified by officials nationwide and are universally credited with disrupting life in the areas where they gather—causing problems for their communities and for themselves. Nonetheless, there is no simple solution to gang problems. Considerable variation exists in gang membership, organization, involvement in crime, and the social contexts in which gangs thrive.

This chapter explores what researchers and practitioners have observed about gangs, their membership, their activities, and their communities. Although many theories remain to be tested and important debates continue, the following conclusions emerged as consensus in the research literature and among the experts interviewed. First, gangs cannot be stereotyped. Some are simply a source of social support and entertainment for their members; others serve largely as economic organizations; still others accomplish both. Depending on the nature of the gang, members may commit a significant number of crimes, but crime is often not their primary, and certainly not their only, focus. Second, youths and young adults are likely to join gangs in order to accomplish goals that are perceived as difficult or impossible to achieve without gang support, but members differ in terms of their specific motivations for joining and their degree of commitment to gang activities. Third, research suggests that it is rare for entire gangs to organize their activities exclusively around the sale of drugs, though increasing economic pressures may make trafficking a means of survival for a growing number of gang members and/or cliques in the future. Finally, communities with gangs differ in some respects, but in most ways they are the same—struggling with problems produced by poverty, racism, and demographic changes. No one knows why some communities with these conditions develop gangs and others do not, but most experts contend that the opportunity structure (for employment, family support, educational achievement, access to services) in certain communities plays a role in the formation and evolution of gangs.

Definitions

Despite unanimous agreement that gangs exist, there is little consensus about how they should be defined.[1] For law enforcement professionals, criminal behavior is a key defining feature, whereas some researchers view gang delinquency and criminal activity as issues whose origins must be explained.[2]

The following definitions offered during the telephone interviews demonstrate the diversity of thinking on defining gangs.

- One researcher defined gangs as groups of youths and young adults with varying degrees of cohesion and structure, who have regular contact with each other, ways of identifying their group (e.g., a name), and rules of behavior for the group.
- A youth worker says that he prefers to think of "gang" as a verb, not a noun. It is a process through which young people participate in the gang experience. To see a gang only as a criminal group is not valid. Gang activity involves doing things with friends, which sometimes includes criminal activity. Criminal activity is usually something that a gang member participates in for selfish reasons, not for the good of the gang.
- Another researcher offered the following: A gang is "a collectivity whose members range in age from their early teens to their mid-twenties, who are frequently and deliberately involved in criminal acts, who have a group identification (typically a name and perhaps a territory or turf), for which leadership is better defined than in an informal group."[3]
- A youth worker contended that "'Gang' is a term of the adult community; you would never find youths defining their group as a gang. Within the gang framework, there are good ones and bad ones. The latter are groups of two or more youths who come together to commit delinquent acts."[4]
- A law enforcement officer relied on a statutory definition: A gang is an ongoing, organized association of three or more persons, whether formal or informal, who have a common name or common signs, colors, or symbols, *and* members or associates who individually or collectively engage in or have engaged in criminal activity.
- Finally, one frequently cited definition of a gang includes the following characteristics: a denotable group comprised primarily of males who are committed to delinquent (including criminal) behavior or values and call forth a consistent negative response from the community such that the community comes to see them as qualitatively different from other groups.[5]

The debate over definitions is not trivial, since definitions inevitably affect programmatic responses. Definitions serve as the foundation for a community's response and influence the types and extent of resources applied.[6] Indeed the success or failure of communitywide attempts to address gangs is likely to rest in part on the consensus that participants reach about the nature of the situation and the best ways to address it.[7]

This report focuses on street gangs that can be defined as groups of youths and young adults who have engaged in a sufficient amount of antisocial activity to warrant attention by the criminal justice system.

Where Are Gangs Located?

Currently, street gangs are most often located in lower-class, ghetto, or barrio communities[8] in certain western, midwestern, and southeastern states.[9] Although they are most prevalent in urban settings, gangs also exist in suburban and rural areas.

No one has developed a satisfactory count of the number of gangs or gang members nationwide. Attempts to do so have been hampered by variation in the way gangs are defined from one site to another, the special foci of the organizations that have conducted the counts (e.g., police agencies or schools), and the fluid nature of gang membership itself, which in many locations swells and ebbs unpredictably. In mid-1991, in the sites contacted for this report, law enforcement estimates of street gang membership ranged from roughly 200 in Reno, Nevada, to between 80,000 and 90,000 in Los Angeles.

What Do Gang Communities Look Like?

Researchers have suggested that the nature of a community plays a significant role in determining whether it will have gangs. Frederic Thrasher, one of the earliest gang theorists, described Chicago's gang communities as "interstitial areas"—regions "characterized by deteriorating neighborhoods, shifting populations, and the mobility and disorganization of the slum"—where gangs emerged to fill in the gaps.[10] A more recent study of violent gangs in Chicago posited the following about the relationship between gang formation and community and social institutions:

> The violent gang is a natural, lower-class interstitial institution, resulting mainly from the weakness of secondary institutions, such as schools, local communities, and ethnic organizations, and to some extent from the weakness of primary institutions such as the family, to provide adequate mechanisms of opportunity and social control, particularly in the transition of males from youth to adulthood.[11]

During the past decade, research on the relationship between gangs and community conditions has highlighted that increasing economic hardship for certain groups, which has contributed to the social isolation of a growing underclass in many urban areas, may have led to the re-emergence of gangs in some communi-

ties and greatly diminished the possibility that gang members can "mature out" of the gang life-style by finding employment in "factory jobs that take little education, few skills, and only hard work."[12]

A composite of the communities in which gangs thrive has emerged from the research literature and the interviews for this project. In a gang community, residents are isolated from traditional institutions such as schools and law enforcement and are stressed by economic disenfranchisement. As possible causes of the disenfranchisement, social scientists have cited the migration of businesses from the community, the shift of the job market from industrial to service-oriented jobs, and institutional racism.[13] The social order in gang communities is further disturbed by population movement and the disorganization created when there are rapid ethnic or racial changes in an area.[14] Such changes are often followed by an increase in gang activity.

Individual communities where gangs exist differ from this image in some specific respects. In Reno, for instance, the gaming industry serves as a ready source of employment, but there is still marked segregation of the population and continual, significant growth in the Hispanic population.[15] In Tacoma, Washington, housing developments segregated by race or ethnicity are not typical, but residents of communities with gangs suffer from poverty and low educational achievement.[16]

Even the notion of a gang "neighborhood" does not apply universally. John Hagedorn, who has studied Milwaukee's gangs since the early 1980s, notes that largely as a result of the desegregation of the Milwaukee public schools, "the 'neighborhood' has ceased to be a common place for gang members to live, nor is it particularly valued."[17] He acknowledges, though, that while neighborhood boundaries are loose, gang members do not wander into areas where it is "off limits" for minorities to travel.[18] Finally, Joan Moore, who has studied Chicano gangs in Los Angeles for several decades, has commented on the structural differences in gang communities:

> Neighborhood institutions in Chicano communities—church, family, and even the small neighborhood businesses—have remained vital. And in most of our gang communities census data show that the majority of residents are working-class. By contrast, according to [William Julius] Wilson, neighborhood institutions have been vitiated in black inner city communities by a combination of economic blight and the exodus of stable middle and working class residents.[19]

Gang communities also differ in the extent to which they have experienced gang problems. Some cities such as Los Angeles and Chicago are chronic gang sites, having had gangs for much of this century.[20] Others such as Miami, Portland, Columbus, Dallas, and Milwaukee have only recently (within the last decade) had what they term a gang problem.

Gang/Community Relations

The social balance between a gang and its community is a delicate one. In communities where gang members are the family members and neighbors of community residents, gangs may be afforded a certain amount of community tolerance. Gang members may also be tolerated because community residents identify with the economic and social challenges that gang youths face.[21] In addition, a gang may help establish some degree of order in its community, if, for instance, the gang protects local businesses from attacks from rival gangs.[22] Tolerance, or at least ambivalence toward gangs, by community residents can be sufficient to allow gangs to survive or flourish.

Some gangs are reportedly very sensitive about maintaining good community relations,[23] but are not always successful. Hagedorn has observed that increased gang-related violence in many communities, the trend in Milwaukee and other cities for gangs to include members from outside the neighborhood (e.g., as a result of school busing), and intra-community tensions resulting from increasing economic hardship have produced considerable strain between residents and gangs.[24] One consequence, he maintains, has been the imposition of order through "police patrols, vigilante justice, and prisons."[25]

How Are Gangs Structured?

Most researchers and practitioners agree that gangs consist of a set of leaders, peripheral members, and recruits.[26] A juvenile corrections official who works with gangs in the Portland, Oregon, area described gang structure:

> The "hard-core gang member," or "O.G." ("Original Gangster"), is heavily involved in the gang. He/she is the violent criminal, very active in gang activities; the gang is central to his or her life. This "O.G." is not necessarily old, however; just committed. The "associate" knows people in the gang, but is not deeply involved in gang activities and is therefore not likely to engage in negative behavior. The "wannabe" is infatuated with the gang. He or she has some association with the gang but is not necessarily committed. Mostly wannabes are young—they may be in middle school or slightly older.[27]

Malcolm Klein, who has studied gangs in California, suggests that core members actually make up about 50 percent of most gangs, with the core separated into about five denotable cliques and many diads and triads not large enough to be considered cliques. Core members "hang around the gang a lot."[28]

Each gang is comprised of a number of cliques. Researchers have generally described these cliques as age-graded,[29] although some cliques have mixed-age membership.[30] Moore reports that the cliques in Chicano gangs in Los Angeles

generally have between 30 and 40 members, with entire gang membership averaging between 100 and 125. According to Moore, the longevity of a clique depends on the extent to which its members leave it, for prison and employment for example. Cliques in East Los Angeles rarely mix except when there is a gang fight and it is unusual for a gang member to move from one clique to another while involved with the gang.[31] In Milwaukee, each age-graded clique has its own set of leaders and wannabes. These cliques have a fluid membership and some connection to the other cliques in the gang.[32]

In an investigation of gangs in New York, Boston, and Los Angeles, Martín Sánchez Jankowski observed three different types of gang organization: the vertical/hierarchical, in which leadership is divided hierarchically into three or four different categories or offices; the horizontal/commission, in which officers share roughly equal authority over the members; and the influential, in which two to four members are informally recognized as the leaders of the organization.[33] Jankowski notes that over its life, a gang can adopt one or all of these organizational forms.

Hagedorn contends that criminal justice agencies often underestimate the subtlety of gang structure by depicting it exclusively as a traditional military pyramid with leaders at the top and recruits at the bottom.[34] Using this model, law enforcement officers miss the variety and complexity of gang organization and may mistakenly expect that targeting the leaders will disrupt the entire gang. In fact, gangs have a variety of organizational structures and consist of multiple leaders and multiple cliques each with a slightly different interest and responsibility in the gang.

What Do Gangs Do?

Gang members generally represent only a small portion of the youths in their neighborhoods.[35] Indeed, as Spergel writes, "delinquent youth groups, other than gangs, far exceed the number of gangs, perhaps by fifty times."[36] Nonetheless, gang delinquents pose a more serious problem than non-gang delinquents. Relative to their non-gang counterparts, gang delinquents are reported to engage in a higher proportion of violent behavior as well as more non-violent crime, truancy, and alcohol and drug abuse.[37] Moreover, despite the general tendency for girls to participate less frequently in crime than boys, female gang members have higher rates of participation in delinquency and substance abuse than male non-gang members.[38]

However, there is considerable variation in gang activity. Jeffrey Fagan who has studied gangs in Los Angeles, San Diego, and Chicago, has identified four gang types:

- "Social gangs," which are involved in few delinquent activities and little drug use, represented 28 percent of the gangs studied;
- A small percentage (7 percent) of the gangs studied were termed "party gangs" because of their extensive involvement in drug use and drug sales, mostly to support their own habits;
- A large set (37 percent) of gangs was comprised of "serious delinquents," who engage extensively in both violent and property offenses, but for whom drug use and sales are relatively unimportant;
- Another set (28 percent of the total) are involved extensively in serious drug use, have significantly higher rates of drug sales than the other groups, and are at greater risk for becoming formal criminal organizations.[39]

Some researchers have also depicted gangs as either heavily invested in issues of fighting and turf or focused primarily on making money, with little interest in territory except as it is tied to their financial interests.[40] Others have emphasized the overlap in focus for some gangs. Hagedorn notes:

> All gangs we studied in Milwaukee were "fighting gangs," but the fighting period was generally when the gang members were "juniors" or in their early teens. As the gang matured, their interests turned more to the fundamental problems of survival.[41]

Do Drugs Change the Focus of Fighting Gangs?

Most of those interviewed agreed that while drug use is a considerable problem for a majority of gang members, drug trafficking is far less pervasive. In their preliminary report for 1991, members of the Los Angeles Interagency Gang Task Force discussed the relationship between Los Angeles gangs and drug trafficking:

> There is no question that a large number of gang members continue to deal drugs. There is also no question that there are a large number of drug dealers who are gang members or who have emerged from gangs. Additionally, the profits from drug sales have enabled gang members access to better weaponry, and have provided financial support for their criminal activities. However, the primary problem with gangs in the Los Angeles County area still seems to be at the "cultural" gang level, with gangs fighting other gangs over contested "turf." "Instrumental" gangs, gangs that exist for the sole purpose of dealing drugs, have not emerged to any great degree. Although there is some structuring of the gang-drug process, it must be recognized that street gangs did not emerge for the purpose of selling drugs. Needless to say, the out-of-state gang-drug connection still exists, but it appears to be at the small-group or individual entrepreneurial level.[42]

The research literature supports the view that although gang members participate in drug dealing, most gangs are not making a universal shift to entrepreneurial activities in the drug marketplace. Fifty percent of the Milwaukee gang members Hagedorn interviewed admitted to selling drugs occasionally.[43] He places drug sales in the following context:

> As gang members age, the sales of drugs and other petty crime becomes one means of securing their survival. As one of the Black Gangster Disciples put it: "Its all about survival now." But it is not much more than survival. Drug sales for most gang members are just another low-paying job—one that might guarantee "survival," but not much else.[44]

As noted earlier, Fagan observed variable commitment to drug sales according to the four gang types: drug trafficking activity was a priority for members of the "party gang," (though mostly to support their own drug consumption), and the more predatory criminal group, but was far less important for the "social gang members" and of moderate importance to the "serious delinquents."[45] Others note that while individual members engage in drug dealing, there does not appear to be an organized commitment to drug trafficking among gangs.[46] Moore commented in her interview that drug trafficking varies according to the clique. In her observation of Chicano gangs, trafficking generally involves small groups, but is not usually related to the whole gang. The thoughts of a Los Angeles probation officer support this view:

> Gang members deal drugs for fun and profit. Occasionally a few members within a gang will partner to deal drugs, but it is usually not a whole-gang activity. Sometimes the main movers will get some other members to push for them. The dealers might use the name of the gang to invoke fear in the people they are dealing with, but it is a rarity that a whole gang will go to war over dealing. As the gang members who deal get better at what they do, they lose affiliation with the gang. They have outstripped its usefulness to them, just like members who get back into school, or who go on to do other things like join the probation department.[47]

Are Gang Members Getting More Violent?

Another concern frequently expressed during the interviews is that gang activity is becoming more violent. In a comparison of 1950s and 1970s Chicano gangs, Moore observed:

> Even though we found considerable variation in the levels of lethal violence from one clique to another, younger cliques are significantly more violent than older ones....In recent years, gangs have acquired "serious" guns, and the weapons are often used impersonally—in the infamous drive-by shootings, rather than in hand-to-hand inter-gang fights. The escalation of violence also seems to have something to do with intergenerational dynamics. Younger members often want to match or outdo the reputations of their predecessors. There is also a significant correlation between the level of violence in a clique and the proportion who define themselves as "*loco*" or "*muy loco.*" "*Locura,*" or wildness, is a value in the gang subculture which focuses on drug use in some cliques and violence in others. Obviously, it is how *locura* is defined at the clique level that counts in explaining variations in violence.[48]

In his review of research literature, Spergel points to several non-behavioral reasons for the apparent increase in violence (especially homicides) by gang members in some cities during the past decade: gangs have more weapons; the weapons may be more sophisticated; gang members are able to "hit and run" because of increased mobility; and gang membership may have grown.[49]

One set of factors frequently mentioned in connection with gang violence is access to, ownership of, and use of lethal weapons. The assistant state's attorney in Chicago who heads the gang crimes unit noted that though it is not clear that guns are more accessible to gang members than in the past, it appears that gangs are more willing to use them. Weapons seem more sophisticated; some are gang signature weapons (e.g., Uzis); and gangs use weapons as signs of power.[50]

Results of a recent school-based survey of Seattle high school youths showed that gang members were nearly three times as likely as non-gang members to report that obtaining a gun was easy. Indeed more than half the gang members reported owning a gun, while just four percent of non-gang members offered the same response.[51]

A former gang member who testified on gangs in the Dallas hearings noted that it is easy for gang members to obtain weapons. Private residences are a key source of supply.

> It's real easy (for teenagers to get guns). You just have to have the money, and know somebody who can get one. Most gang members have...it's probably related to a drug dealer. They contact the drug dealer and tell him, "I pay so much for a gun.'" He'll say "OK, I'll sell it to you." A .12 gauge sawed-off would run, like, about 50 to 90 bucks. Nobody really ever buys a gun over 50 unless it's a fully-automatic....One of the main interests when someone (a gang member) breaks into a house [is] to look for guns or money. Really the guns they want to look for.[52]

Characteristics of Gang Members

Theorists posit that many lower-class youths lack the skills to succeed in middle-class settings[53] or are otherwise prevented from engaging in the legitimate opportunity structure,[54] which propels some of them to turn to gangs as a means to achieve status and/or develop opportunities.[55] Jankowski argues that the gang members he observed in Boston, New York, and Los Angeles made rational decisions to join gangs as a means to accomplish personal goals.[56] He describes gang members as "defiant individualists" who are "competitive, mistrustful, self-reliant, socially isolated, and defiant," among other things.[57]

Gender

Although research and statistics show that gangs are made up predominately of adolescent and young adult males,[58] many contend that female gang members, while small in numbers, represent a serious concern.[59] Moore reports the following about Chicano gang members in East Los Angeles:

> Even though there are not very many women in the gangs, our data make it clear that gang women are generally much more problematic than men. They come from homes that are even more troubled than those of the men. Even among the older women their families are more likely to have a tradition of gang membership. Women are more likely to join the gang because of friendship—usually with other gang girls—and are more likely to be "gang-bound" in their friendships with boys and girls. It is not surprising, then, that a majority of the younger women married a man from the gang. Most of the women did rear their own children, and in most of their homes there were addiction and arrests. Women members have been neglected in the literature on gangs, but when gang researchers consider questions about perpetuation of an underclass life-style, it is clear that such neglect cannot continue.[60]

Age

Although most gang members, like non-gang delinquents, mature and leave their gangs,[61] Spergel notes that there is a "growing recognition that gang membership extends at least into young adulthood, certainly to the early- and perhaps mid-twenties."[62] Some members may remain involved simply as a means of survival in communities that offer few opportunities outside the gang.[63] James Vigil, an anthropologist who has studied gangs in Southern California, offers a sobering portrait of the Chicano gang members who retain gang membership into adulthood:

> Only a small minority of any barrio's youths have joined gangs, and most of those have matured out of the gang by adulthood. Nonetheless, each generation has produced a small number of *veteranos* who retain an active gang identity and affiliation well into their 20s and 30s. Many of these have established what Moore and Vigil (1987) have termed a "*cholo* family" household. In such households, one or both parents continue to participate more or less overtly in illicit activities while raising their children. Their children are thus virtually preselected to associate and unite with other troubled and disaffected barrio youths in emergent cliques, often at far younger than typical ages.[64]

Despite awareness that some portion of gang members are older than 18, there are no accurate estimates of adult membership. Calculations of the proportion of gang members over the age of 18 are sometimes hampered by the measuring devices used. In some law enforcement databases, for instance, any gang member ever arrested is allowed to "age" in the data base, thereby distorting the age distribution in favor of older offenders.[65] Sometimes calculations are affected by the function of the agency taking the counts. For example, schools and youth agencies do not typically count adults.[66] Those persons whom we interviewed on the question of the age of gang members were frequently uncertain how to respond, but their estimates of the proportion of members over age 18 ranged between 20 percent and 80 percent. Responses varied according to location of the respondent (i.e., researchers of sites with chronic gang problems reported a higher proportion of older gang members) and the role of the respondent in relation to the gang. Estimates by prosecutors, corrections officials, and law enforcement officers were generally higher than those offered by youth workers.

Criminal justice officials often assume that older gang members are also core members and therefore worthy targets for arrest and prosecution. Although it is true that gang-related homicides are most often committed by older adolescents and young adults,[67] being an older gang member does not necessarily translate into an increased commitment to crime or to the gang. When asked in an interview whether gangs actually serve to prolong group crime into adulthood because the gang offers a ready pool of partners in crime,[68] Moore said, "If anything older gang members are more like delayed adolescents than career criminals—they will be the first to fight over who gets to do the graffiti in a neighborhood."[69] Several other accounts suggest that the higher age of a gang member does not mean he or she is deeply committed to the gang. Hagedorn notes:

> Milwaukee gangs are in fact a combination or coalition of age-graded groups, each with their own "main groups" and "wannabes." The makeup of each of these age groups varies between gangs and over time within each gang. A "wannabe" this week may be in the "main group" next week.[70]

A community organizer in Los Angeles concurs with Hagedorn's observation that there are wannabes of all ages. In his opinion, core members are not necessarily old, rather, they are committed to the gang. Also, some individuals join gangs at a later age and may stay longer.[71]

Race, Ethnicity, and Culture

Gangs exist in all ethnic categories. Although African American and Hispanic members predominate,[72] there are also gangs with white and Asian members. In Tacoma, Washington, for instance, gang members are reportedly distributed almost evenly across Asian, African American, and Hispanic groups.[73]

In some cities, such as Los Angeles and Chicago, gangs are usually racially or ethnically segregated, possibly reflecting the ghetto nature of their origins, and gang offenses are predominately intraethnic.[74] In other locations, such as Miami, gangs are racially mixed.

To some extent gang behavior depends on the members' cultural heritage. The differences between Chinese gangs affiliated with the *tongs*[75] and gangs with predominately Vietnamese membership are illustrative. Ko-lin Chin, a researcher who has studied Chinese gangs, reports that tong-related groups are involved in profit-making activities. They provide protection for tong businesses such as massage parlors and gambling organizations. They also provide "protection,"[76] for a fee, to local businesses as well as extort money from local businesses. Senior gang members are frequently involved in heroin trafficking. The gangs are organized, territorial, and connected with an existing adult community group.[77] In contrast, although Vietnamese gangs are typically portrayed as largely entrepreneurial, they are not tied to any particular group or territory and tend to victimize families as well as businesses.[78]

Chin has observed that Chinese gangs also differ from other types of gangs, especially "fighting" gangs. Chinese gangs are closely associated with an adult community organization; they invest in legitimate businesses; they form national or international networks; they are influenced by Chinese secret societies; they generally develop from delinquents to serious criminals; and they victimize the business community in ways that most street gangs could not do.[79]

Social Characteristics of Gang Members

Research conducted nearly 30 years ago indicated the following marked differences between gang and non-gang members:

> Gang members were more isolated from the conventional adult world, more embedded in the lower-class milieu, and less likely to receive assistance from adults than were non-gang members from the same communities. Black gang members were especially disadvantaged, and white middle-class boys were the most favored in each respect. These data...suggest that gang members, compared to the other boys, had little reason to perceive adults as willing or able to help them in substantial ways.[80]

Recent accounts suggest that gang members continue to face considerable challenges in the 1990s. Describing Chinese gangs, Chin comments:

> Usually gang members recruit youths who are vulnerable—those who are not doing well in school or who have already dropped out. Young newcomers who have little or no command of English, poor academic records, and few job prospects are the most likely to find gang life attractive and exciting.[81]

Many of these characteristics are universal to today's gang members, which is made clear in a portrait of Milwaukee's black gangs:

> While half of their parents had a high school diploma, all of the founders had dropped out of school, most kicked out for "fighting." Only five had subsequently entered an alternative education program and received a General Equivalency Diploma (G.E.D.) or high school diploma, and four more reported they were currently enrolled in some education program. None attended post high school classes. None of the founders held a job three months before and three months after our interviews with them.[82]

Statistics from a gang prevention program in Seattle (where most gang members are African American but where there are also Samoan and Vietnamese members) show that while only 10 percent of the gang members in the program[83] are actual dropouts, 8 percent have been expelled, 5 percent have been suspended, and 15 percent are in alternative schools. Others attend school only intermittently. The dropout rates for Samoans is even higher—approaching 60 percent.[84] The director of ASPIRA of Florida, Inc., a Hispanic youth services organization with a gang program, estimated in an interview that between 50 percent and 60 percent of the gang members in the program are dropouts.[85]

The family situations of many gang members are also bleak. David Fattah, cofounder of the House of Umoja, a residential facility for gang members in Philadelphia, said that family problems are the primary reasons for gang affiliation.[86] The assistant state's attorney responsible for gang prosecutions in Chicago stated his view that gang youths are not exposed to positive influences. Many have witnessed substance abuse and experienced physical abuse in their families and neighborhoods. Few have received adequate structured supervision early in their lives. Most public-housing developments in Chicago are predominately single-parent locations, where there are few male role models, few people who work, and many adults grappling with survival.[87] The head of the youth-gang

prevention program operated by Seattle's Department of Health and Human Services reports that 34 percent of the youths served during the first program year had been in some sort of out-of-home placement.[88]

Spergel and others note that family disorganization is not sufficient to predict gang membership.[89] These researchers contend that family stresses combine with other factors, such as a peer group that opposes traditional, normative institutions (including family), to produce a gang youth.

Although interviewees frequently cited lack of parental supervision, parental neglect, and substance abuse among family members as characteristics of gang members' families, basic family structures vary across gang types, location, and cultural context. Jose Morales, director of the Chicago Commons Association, a gang prevention program, described the differences in families in the city's predominately African American Henry Horner housing development and the predominately Hispanic Westtown area. In Henry Horner, Morales estimates that most families receive public assistance and 75 percent of the families are single-parent households. In the Westtown area there is a higher proportion of two-parent households and households in which at least one parent is working.[90] Nonetheless, both sites have gangs.

Of particular interest in sites where there have been long-standing gang problems is the finding that gang members frequently come from families in which relatives were also gang members. About half of the Chicano gang members in East Los Angeles have been reported to have at least one relative in the gang; one third of them had three or more relatives in the gang. Typically gang members had cousins, brothers, and/or uncles in a gang.[91] This suggests that in some communities gangs are embedded so deeply in the social structure that recruitment has become less a process than a tradition.

Why Join a Gang?

Reasons for joining a gang may range from wanting to have a good time to pursuing entrepreneurial ventures that may require a considerable commitment to delinquent or criminal activity.

A police sergeant in Miami commented during an interview that gangs fulfill members' needs for identity, recognition, protection, love and understanding (perhaps missing at home), status, money, and opportunity.[92] Malcolm Klein concurred, saying that at an individual level, the factors responsible for gang formation are the needs for identity, status, and belonging.[93] A juvenile corrections counselor listed these reasons for gang membership: the hopelessness of urban life; violence in gang youths' lives; growing up with values counter to the mainstream; dysfunctional families; dropout/school failure; previous involvement in crime; and the need for money and acceptance.[94] Barbara Wade, the director of Positive, Inc., a gang intervention program endorsed by Miami's mayor's office, listed these reasons for gang membership: acceptance, recognition, a sense of belonging, status, power, discipline (or consistency), structure, unconditional love, shelter, food, clothing, nurturing, activities, economic support, and respect.[95] She commented that gang members report that their families fulfill only between four and six of these functions in their lives. Finally, gangs are also perceived as a means to build self-esteem, engage in structured activities, and receive protection. A former gang member who was 13 years old when he joined a Dallas gang commented during the Dallas hearings "When I joined the gang, I joined it to have a thrill, have fun on the street, also for protection, and just to gain a reputation on the street."[96]

Nonetheless, the decision to join a gang is not one-sided: the gang plays a significant role in determining who will join its ranks and how members will behave. As Jankowski describes them, gangs have very utilitarian reasons for recruiting and enrolling members (e.g., the prospective members have the necessary interests, skills, and/or experience to match the gang's needs and expectations). Jankowski observed that gangs allow members a certain amount of latitude in pursuing individual interests as long as those interests do not conflict with the group's goals and rules of order. As he depicts them, gangs provide organizational structure so that members may pursue individual goals, but also set limits on personal ventures, placing the gang and its members in an "uneasy" relationship.[97]

What Is the Process of Joining a Gang?

Interviewees reported a variety of gang recruitment scenarios, but acknowledged gaps in what is known about recruitment. Many perceive that it is rare for gangs to seek new members. Some gangs appear to have initiation ("jumping in") rituals and some may be so intimidating that for non-members to fail to claim membership is perceived as dangerous.[98] The following are some of the responses to a question about recruitment processes.

> In Chicago, 80 percent of the recruitment into gangs is informal occurring through family members, friendship groups, and drug-dealing activities. Intimidation probably plays a role in only 20 percent of gang recruitment. (Jack Hynes, Cook County State's Attorney's Office)

> Recruitment is actually a courtship. The degree of formality varies across gangs, depending on how well organized the gang is. Factors that play a part include the degree of ethnic solidarity in a community, which can serve as a facilitator, and the degree of opposition from the larger society. (Jeffrey Fagan, Ph.D., Rutgers University)

> Most people who join [Chicano gangs in East Los Angeles] want to join. Sometimes there is a question about whether the person has the right stuff—that is, is game enough to fight. Also there is a gang connection already established in the family—a cousin, older brother, or uncle is already or has been in the gang. (Joan Moore, Ph.D., University of Wisconsin)

> There is not a lot of intelligence on recruitment activities. Gangs in Miami recruit actively in the schools, although the degree to which the recruitment is "active" varies with the gang. They also recruit in neighborhoods. Generally there is a cadre of wannabes who follow the gangs. Busing has played very little role in the process, but it has brought gang members together. (Andy Hague, Dade County State's Attorney's Office)

Summary

Gangs differ in their membership, activities, relationships to their communities, and social contexts. Members differ in their reasons for joining. This diversity suggests that prevention, intervention, and suppression efforts must be sensitive to the unique needs of the communities and gang populations they serve.

Endnotes

1. For a thorough review of the current research debate over definitions, see Irving Spergel, "Youth Gangs: Continuity and Change," in Norval Morris and Michael Tonry (eds.), *Crime and Justice A Review of Research* (Vol. 12), (Chicago: University of Chicago Press, 1990):177-179.
2. James F. Short, "New Wine in Old Bottles? Change and Continuity in American Gangs," Chapter 10 in C. Ronald Huff (ed.), *Gangs in America*, (Newbury Park: Sage 1990): 239. In telephone interviews, Joan Moore (University of Wisconsin, March 13, 1991) and Jeffrey Fagan (Rutgers University, February 28, 1991) also expressed concern about including crime and delinquency in the definition of gangs. Others would remove the gang label altogether to "better reveal the group circumstances, processes, and other characteristics that explain violence regardless of the imposition of the label," and to determine the effects of labeling itself. See Merry Morash, "Gangs and Violence," prepared for the Panel on the Understanding and Control of Violent Behavior, National Academy of Sciences, 1990:4.
3. Interview with C. Ronald Huff, professor at Ohio State University, April 24, 1991.
4. Interview with Raúl Martínez, Executive Director of ASPIRA of Florida, Inc., April 10, 1991.
5. This definition is a distillation of Malcolm Klein's telephone interview response (February 28, 1991). An early definition with most of the characteristics noted here may be found in Malcolm Klein, *Street Gangs and Street Workers* (Englewood Cliffs, N.J.: Prentice Hall, 1971):13.
6. John Hagedorn (University of Wisconsin-Milwaukee) suggests this when he notes that "the reporting of a gang problem varies with the needs for city officials to promote a respectable image of their city, for police officials to make a case for hiring more officers, for community agencies to lobby for funds for 'outreach' and for other reasons." John Hagedorn, "Back in the Field Again: Gang Research in the Nineties," Chapter 11 in Huff (ed.), *supra*, note 2, at 246. Maxson and Klein highlighted this point when they compared definitions of gang-related homicide employed in two different cities and discovered that "a motive-based definition of gang-related homicides yields about half as many gang homicides as does a member-based definition," although the substance of the two types of homicides is very similar. They conclude that the prevalence of gang violence is in some measure a political problem, resting on definitions and their implications. Cheryl Maxson and Malcolm Klein, "Street Gang Violence: Twice as Great, or Half as Great?" Chapter 3 in Huff (ed.), *supra*, note 2, at 90-100.
7. Spergel, et al., observed that consensus on definitions was one characteristic associated with a reduction in the youth gang problem: Irving Spergel, et al., *National Youth Gang Suppression and Intervention Research and Development Program: Youth Gangs: Problem and Response*, Executive Summary (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 1990): 35.
8. Spergel, *supra*, note 1, at 211. Some interviewees note, however, that there are reports of gang problems in traditionally middle-class communities as well.
9. Spergel, *supra*, note 1, at 182. The National Institute of Justice is also sponsoring two studies whose results are forthcoming: G. David Curry, et al., "National Assessment of Law Enforcement Anti-Gang Information Resources," and Cheryl Maxson and Malcolm Klein, "National Assessment of Gang Migration." These two studies will provide new information regarding the geographical distribution of gangs as reported by law enforcement agencies. They will also include information about the dimensions of the gang problem in the United States, including numbers of gangs, gang members, and gang-related crimes.
10. Frederic M. Thrasher, *The Gang: A Study of 1,313 Gangs in Chicago*, abridged (Chicago: University of Chicago Press, 1963):20-21.
11. Irving A. Spergel, "Violent Gangs in Chicago: In Search of Social Policy," *Social Service Review* (June 1984):201-202.
12. John Hagedorn, "Gangs, Neighborhoods, and Public Policy," unpublished paper, (University of Wisconsin-Milwaukee, Urban Research Center):3-5.
13. For a discussion of the general condition of the cities that has contributed to the formation of an underclass, see William Julius Wilson, "Cycles of Deprivation and the Underclass Debate," *Social Service Review* (December 1985): 541-559; and William Julius Wilson, "The Black Underclass," *The Wilson Quarterly* (Spring 1984):88-103. For discussions of gangs and the underclass see John H. Hagedorn, *People and Folks: Gangs, Crime, and the Underclass in a Rustbelt City* (Chicago: Lakeview Press, 1988). For a discussion of the role that economics and racism have played in the "marginalization" of Chicano groups and in the creation and perpetuation of gangs, see James Diego Vigil, "Cholos and Gangs: Culture Change and Street Youth in Los Angeles," Chapter 5 in Huff (ed.), *supra*, note 2.
14. Irving Spergel (University of Chicago) contended in an interview on March 25, 1991, that migration is the single most persuasive predictor of gang activity.
15. Interview with Lt. Ondra Berry, Reno Police Department, April 11, 1991.
16. Interview with Henry Mincey, director of Safe Streets, a gang program in Pierce County (Tacoma), Washington, April 5, 1991.
17. Hagedorn, *supra*, note 13, at 135.
18. Ibid.
19. Joan Moore, "Changing Chicano Gangs: Acculturation, Generational Change, Evolution of Deviance or Emerging Underclass?" in James H. Johnson, Jr., and Melvin L. Oliver, *Proceedings of the Conference on Comparative Ethnicity*, (Los Angeles: UCLA Institute for Social Science Research, June 1-3, 1988):19.
20. Irving Spergel, et al., *Survey of Youth Gang Problems and Programs in 45 Cities and 6 Sites*, (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, May 1990).

21. Martín Sánchez Jankowski, *Islands in the Street, Gangs and American Urban Society*, (Berkeley: University of California Press, 1991):182.

22. See Jankowski, *supra*, note 21, at 180-192 for a discussion of the beneficial role that gangs have played in their communities. Ko-lin Chin also observed during an interview that the Chinese gangs he studied served as both predators on and protectors of the businesses in their communities. (Interview with Ko-lin Chin, February 28, 1991.)

23. Jankowski, *supra*, note 21, at 193-201.

24. Hagedorn, *supra*, note 12, at 8-14.

25. Ibid., p. 14.

26. Spergel, *supra*, note 1, at 205.

27. Interview with Lonnie Jackson, director of the gang program at the Maclaren School, Woodburn, Oregon, March 22, 1991.

28. From an interview with Malcolm Klein, professor at the University of Southern California, February 28, 1991.

29. Hagedorn reports his findings in Milwaukee along with research findings from studies conducted by Joan Moore, Frederic Thrasher, and Gerald Suttles and notes that "One must analyze each age-graded group, not merely look at the gang as a criminal structure with older 'leaders' on the top and younger 'fringe' on the bottom." Hagedorn, *supra*, note 13, at 86.

30. Spergel, *supra*, note 1, at 200, in reference to horizontally organized groups.

31. Information reported during a telephone interview with Joan Moore, March 13, 1991.

32. Hagedorn, *supra*, note 13, at 86-92.

33. Jankowski, *supra*, note 21, at 64-67.

34. Hagedorn, *supra*, note 13, at 86.

35. For example, in 1988 the Chicago Police Department estimated that gang members accounted for four percent of Chicago's total population. See Lawrence J. Bobrowski, *Collecting, Organizing, and Reporting Street Gang Crime*, prepared for the 40th Annual Meeting of the American Society of Criminology (Chicago: Chicago Police Department, November 1988): 7. In a 1991 report from the Texas Attorney General's office, researchers estimated that in eight large Texas cities, gang members represented just nine percent of the total seventh to twelfth grade male enrollment plus dropouts. See Elizabeth T. Buhmann and Roberto San Miguel, *Gangs in Texas Cities* (Office of the Attorney General, State of Texas: Austin, June 1991):17.

36. Spergel, *supra*, note 1, at 183.

37. Ibid., p. 192. See also Jeffrey Fagan, "Social Processes of Delinquency," Chapter 9 in Huff (ed.), *supra*, note 2, at 195.

38. Fagan, *supra*, note 37, at 197.

39. Jeffrey Fagan, "The Social Organization of Drug Use and Drug Dealing Among Urban Gangs," *Criminology*, 27/4 (1989):649-652.

40. Merry Morash reviews the history of fighting gangs and entrepreneurial gangs, *supra*, note 2. Carl S. Taylor depicts Detroit gangs as scavenger, territorial, or organized/corporate gangs, Chapter 4 in Huff (ed.), *supra*, note 2, at 105-110. See also Ko-lin Chin "Chinese Gangs and Extortion," Chapter 6 in Huff (ed.), *supra*, note 2, at 143-144.

41. Hagedorn, *supra*, note 13, at 100.

42. Los Angeles Interagency Gang Task Force, *Preliminary Report on the State of Los Angeles Street Gangs*, October 1991, p.4.

43. Hagedorn, *supra*, note 13, at 142.

44. Ibid, p. 103.

45. Fagan, *supra*, note 39, at 651.

46. Malcolm Klein, et al., *Gang Involvement in Cocaine Rock Trafficking, draft*, (Washington, D.C.: National Institute of Justice, April 1988).

47. Interview with Miguel Duran, Los Angeles Probation Department, April 2, 1991.

48. Joan Moore (March 13, 1991) and Miguel Duran (Los Angeles Probation Department, April 2, 1991) concurred in their interviews. See also Moore, *supra*, note 17, at 10-11.

49. Spergel, *supra*, note 1, at 190-191.

50. Interview with Jack Hynes, assistant state's attorney, Chicago State's Attorney's office, March 27, 1991.

51. Charles M. Callahan and Frederick P. Rivara, "Urban High School Youth and Handguns: A School-Based Survey," *Journal of the American Medical Association* 267/22 (June 10, 1992): 3041.

52. Catherine H. Conly, *Hearing Summary of the National Field Study on Gangs and Gang Violence in Dallas, Texas*, Revised Draft Report (Washington, D.C.: National Institute of Justice, December 1991):11.

53. James F. Short, Jr., and Fred L. Strodtbeck, *Group Process and Gang Delinquency* (Chicago: University of Chicago Press, 1965):271.

54. Richard A. Cloward and Lloyd B. Ohlin, *Delinquency and Opportunity: A Theory of Delinquent Gangs* (New York: Free Press, 1960).

55. See Short and Strodtbeck, *supra*, note 53, at 1-7 for a brief review of theories pertaining to individual involvement in gang delinquency.

56. Jankowski, *supra*, note 21, at 23-28.

57. Ibid., 24-26.

58. Spergel, *supra*, note 1, at 219.

59. Moore, *supra*, note 19, at 10-11.

60. Ibid., 18-19.

61. See for example, James Diego Vigil and John M. Long, "Emic and Etic Perspectives on Gang Culture: The Chicano Case," Chapter 2 Huff (ed.), *supra*, note 2, at 67.

62. Spergel, *supra*, note 1, at 217.

63. Hagedorn, *supra*, note 13, at 125.

64. Vigil, *supra*, note 61, at 67. Vigil defines the term "cholo" to mean "the poorest of the poor" Mexican immigrants; see Vigil, "Cholos and Gangs: Culture Change and Street Youth in Los Angeles," Chapter 5 in Huff (ed.), *supra*, note 2, at 116. The reference to Moore and Vigil corresponds to Joan Moore and James Diego Vigil, "Chicano Gangs: Group Norms and Individual Factors Related to Adult Criminality," *Aztlan*, 18(2).

65. Telephone interview, March 25, 1991, Irving Spergel, University of Chicago.

66. Information reported during an interview with Irving Spergel, March 25, 1991.

67. Spergel, *supra*, note 1, at 218. Spergel cites homicide data from Los Angeles, where the mean age of a gang homicide offender was between 19 and 20, and his own data from Chicago, which showed that the modal age for a gang member was between 17 and 18, with more than 47 percent of the offenders over age 18.

68. Albert Reiss, a sociologist at Yale University, has observed that while most juvenile crime is group crime, the rate of solo offending increases with age. He notes on the basis of earlier research that desistance from criminal activity in groups stems from both mobility and a shift to more conven-

tional roles. This raises the question of whether gangs serve to prolong group offending in the absence of conventional opportunities. Albert Reiss, "Co-offender Influences on Criminal Careers," Chapter 4 in Alfred Blumstein, et al. (eds.) *Criminal Careers and "Career Criminals," Volume II*, (Washington, D.C.: National Academy Press, 1986):145, 149-152.

69. Reported in an interview with Joan Moore, March 13, 1991.
70. Hagedorn, *supra*, note 13, at 90.
71. Reported during a phone interview with Steve Valdivia, director of Community Youth Gang Services in Los Angeles, on November 27, 1990.
72. Spergel, *supra*, note 1, at 212.
73. Information from an interview with Henry Mincey, Youth Program Director, Pierce County (Washington) Safe Streets, on April 5, 1991.
74. Spergel, *supra*, note 1, at 214.
75. Ko-lin Chin describes tongs as self-help groups established in the United States during mid-nineteenth century by the first wave of Chinese immigrants. Today, tongs are groups of adults who engage in organized crime, among other activities. Interview, February 28, 1991.
76. Protection nets a fixed amount of money from the same businesses each month, whereas extortion has no territorial bounds (i.e., an array of different businesses may be involved) and the amount taken is negotiated each time. Interview with Ko-lin Chin on February 28, 1991.
77. For a detailed description of these Chinese gangs, see Ko-lin Chin, *Chinese Subculture and Criminality: Non-Traditional Crime Groups in America* (Westport, CT: Greenwood Publishing Group, Inc., 1990).
78. James Diego Vigil and Steve Chong Yun, "Vietnamese Youth Gangs in Southern California," Chapter 7 in Huff (ed.), *supra*, note 2, at 156-161.
79. Ko-lin Chin, "Chinese Gangs and Extortion," Chapter 6 in Huff (ed.), *supra*, note 2, at 137.
80. See James F. Short, *Delinquency and Society* (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1990): 146, citing work from earlier publications.
81. Chin, *supra*, note 79, at 134.
82. Hagedorn, *supra*, note 13, at 116.
83. The program operated by Seattle's Department of Human Resources focuses on youths between the ages of 12 and 18. Two-thirds of the participants are gang members or at high risk for involvement. Interview with Eric Anderson, program director, on April 11, 1991.
84. Interview with Eric Anderson on April 11, 1991.
85. Interview with Raúl Martínez on April 10, 1991.
86. Interview with David Fattah, House of Umoja, Philadelphia, Pennsylvania, March 22, 1991.
87. Notes from an interview with Assistant State's Attorney Jack Hynes, head of the gang crimes unit in the Cook County State's Attorney's office, March 27, 1991.
88. Reported in a telephone interview with Eric Anderson on April 11, 1991. About two-thirds of the program participants are involved in or in danger of becoming involved with gangs. Most referrals to the program are from law enforcement and probation, which may affect the proportion of out-of-home placements.
89. Irving Spergel, et al., *Youth Gangs: Problem and Response*, Executive Summary, Stage 1: Assessment, (Washington, D.C.. Office of Juvenile Justice and Delinquency Prevention, May 1990):8.
90. Comments based on notes of an interview with Jose Morales, director of the Chicago Commons Association, April 18, 1991.

91. Moore, *supra*, note 19, at 8.
92. Notes from an interview with Sgt. Joseph Rimondi, Miami Police Department's Gang Unit, March 13, 1991.
93. Based on notes from an interview with Malcolm Klein, February 28, 1991.
94. Notes from an interview with Lonnie Jackson, director of the gang program at Oregon's Maclaren School, March 22, 1991.
95. Notes from an interview with Barbara Wade, director of Positive, Inc., March 7, 1991.
96. Conly, *supra*, note 52, at 13.
97. Jankowski, *supra*, note 21, at 100.
98. Jose Morales reports that in the Henry Horner housing development in Chicago, where gang youth control high-rise buildings in the same way that gangs in other areas control neighborhoods, youths are afraid to say they are not a part of a gang. Closer inspection suggests that many youths are peripheral members at best. Notes from a telephone interview with Jose Morales, Director of the Chicago Commons Association, April 18, 1991.

Chapter 3
Strategies to Target Gangs

Concern about gangs is not new. But during the last decade the marked increase in the number of immigrants in some communities, changes in the labor markets in urban areas, and the increased involvement of gang members in violent crime have apparently altered the character of gang problems in some areas of the country and fostered new ones in others. These changes in gang activity have renewed interest in identifying strategies effective in dealing with gangs.

Since the 1920s a number of different gang programs have been tried. Irving Spergel and his colleagues at the University of Chicago have separated these strategies into four categories: community organization/neighborhood mobilization, social intervention, opportunities provision, and suppression.[1] The last has been the favored approach during the past two decades; this emphasis has apparently had several consequences. Some contend that the restricted focus on controlling gang crime has limited both the development of gang theory and research[2] by diverting attention away from *understanding* gangs and concentrating almost exclusively on crime control. Others note that suppression (at least as manifested in street sweeps[3]) has sealed the commitment of many peripheral gang members by targeting them haphazardly for criminal justice processing, thereby labeling them as members and solidifying their gang commitment.[4] Sweeping the streets may also have had the effect of increasing citizen alienation from law enforcement authorities in communities where there are gangs. In any case, when it has served as the sole strategy for addressing gangs, suppression has failed to control either gang participation or criminal activity.

Although there are still many unanswered questions about gang formation, the research described in Chapter 2 suggests strongly that gangs emerge in communities where residents are excluded from traditional institutions of social support and where young people have few prospects for successful participation in conventional educational and economic activities. The relationship between individual and community factors suggests that the most viable gang strategies are those aimed at keeping community residents safe while improving the skills of individuals who are vulnerable to gang membership, expanding opportunities for residents for financial and social rewards through noncriminal activities, and reinforcing social networks such as families and schools.

The results of a recent survey of gang-related strategies in 45 cities conducted for the Federal Office of Juvenile Justice and Delinquency Prevention supports this perspective. Researchers concluded that suppression strategies in combination

with the provision of opportunities (e.g., remedial education, employment training) and community organization (i.e., coordinating neighborhood groups to address the problem) are the most promising approaches to gang control.[5] In its broadest sense, this means that communities concerned about gangs need to coordinate a range of social services and criminal justice approaches at the community level. The specific goals of these strategies will vary according to community needs, but programs should aim to make fundamental differences in the way services are provided, gangs are controlled, and communities are organized.

Most existing efforts attempt to achieve at least a portion of this goal. Some approaches combine the provision of opportunities and community organization (or at least the coordination of services at the community level) with suppression programs. None has yet been evaluated formally.

The following sections describe current efforts to prevent and control problems in communities with gangs. Programs have been separated into two types: those aimed primarily at prevention and/or intervention and those operated within the criminal and juvenile justice systems and aimed primarily at suppression and control. Where there is overlap, it is noted in each section.

Prevention and Intervention

Although some gang members are viewed by law enforcement officials and treatment professionals as highly committed to their gangs and therefore appropriate targets for arrest and sanctioning, a considerable number of youths in communities where there are gangs are believed to be peripheral gang members or wannabes who are amenable to prevention and intervention strategies.

The goal of these types of programs is to reduce the appeal of gangs as a vehicle for enhancing self-esteem, finding recognition, achieving financial independence, and receiving protection by addressing the needs of at-risk youth, their families, and their communities. Prevention programs generally aim to prevent gang involvement and negative behavior by providing opportunities for youths to develop skills to resist involvement in the first place. Intervention strategies are targeted at redirecting gang members and aspirants away from gang participation by providing alternatives and a positive support structure. Both types of programs are focused in some measure on what are perceived by program directors to be the key correlates of gang participation and other antisocial behavior:

- lack of education or educational opportunities;
- lack of job opportunities and skills;
- absence of sufficient positive adult role models;
- lack of family and family support;
- low self-esteem and the absence of a feeling of empowerment;
- drug and alcohol abuse; and
- lack of opportunities for prosocial interactions (e.g., supervised recreation).

Unfortunately, limited resources, lack of cooperation between agencies, and inefficient bureaucratic procedures often stand as barriers to providing services in communities with the greatest needs. Nevertheless, teams of social service professionals, educators, and interested business people are striving to meet these challenges by 1) coordinating their efforts, 2) targeting their programs on the most needy communities, 3) involving the private sector, and 4) including community residents in the planning and delivery of services.

The following discussion provides an overview of current strategies to target high-risk youth and organize communities where gangs are prevalent.[6] Because those interviewed consistently mentioned education, family counseling, and employment as components of state-of-the-art programs, developments in those fields are discussed separately. Approaches that show promise for adaptation in communities where there are gangs, but may not have been tried in those contexts, are highlighted where appropriate.

High-Risk Youth Programs with a Gang Component

Several community-based prevention and intervention programs for high-risk youth were contacted for this project.[7] Most are structured to include gang members among those served. (Program summaries are included in Appendix B.) The following discussion synthesizes the key program components and some lessons learned from these projects. None of the programs has been rigorously evaluated, although evaluation results for some programs should be available in 1993.[8]

The specifics of program goals vary, but most are aimed at providing youths with positive experiences and skills to avoid commitment to negative behavior and coordinating community resources in a way to facilitate the first goal. At times the coordination efforts serve also to bolster the community (e.g., when local residents serve as outreach workers; when programs raise public awareness of the gang problem and teach residents how to respond; or when coordination improves service delivery), but that is not their primary focus.

In some cases, the criteria for determining whether a youth is at risk and therefore eligible for the programs are quite broad, and include such factors as vulnerability to gang involvement, likelihood of school failure, and/or exposure to abuse and neglect in the home. Programs aimed exclusively at gang members employ a more restricted definition based on gang membership or affiliation. School officials, law enforcement officers, probation counselors, corrections officials, or

community outreach workers identify youths in need of assistance. Program participants include youths and young adults up to age 25, but most programs restrict participation to youths (age 18 or younger).

There is an array of program sponsors: agencies of state or local government (e.g., a mayor's office, a department of health and human services), community organizations (e.g., recreational centers), or private groups. The programs are funded largely with a combination of Federal, local, and private monies and their financial futures are usually uncertain.

Program directors determine the best combination of local talent to accomplish the program mission and balance the competing interests of the service providers in order to maximize service. Usually the consortia include some combination of school officials, members of the criminal justice community—generally the police—community organizations (churches, victims advocacy groups, youth workers, volunteers), private industry, labor unions, and non-profit service agencies (e.g., mental-health workers, substance abuse counselors). Many programs have formal agreements with the private agencies that provide support services and at least informal agreements with public-sector participants. Some programs are structured with regular meetings to ensure a consensus on program goals and implementation and to facilitate information sharing.

Although program components vary with the site, they are generally a mix of the following:

- youth outreach;
- establishment of community centers;
- employment assistance, including social skills development, job training, job placement (including community jobs such as graffiti and trash removal);
- dropout services;
- volunteer services, including mentoring and tutorial programs;
- recreational activities;
- family intervention and training;
- school programs, such as school-based clubs, seminars, after-school programs;
- conflict mediation programs;
- rites of passage programs; and
- substance abuse counseling.

A few are residential programs (i.e., the House of Umoja and the Minority Youth Concerns Action Program). Project Positive in Miami also offers a 24-hour hotline to assist in crisis intervention and to provide support to its participants. All programs are aimed at improving participants' self-esteem through skills development. Most hope to raise community awareness by improving communication among service providers and between the providers and those served.

Law enforcement agencies are involved in many of the programs. In some cases, police officers act only as a primary source of referrals or serve as monitors of participants' behavior on the street; in other instances, they are also actively involved in prevention activities such as making family visits, assisting with finding jobs, and organizing recreation activities.

Schools generally serve as referral sources and in some cases offer a site for program functions.

Program directors are generally confident about their effectiveness. They point to lower rates of dropping out, reduced involvement in crime, continued job placements, and improved satisfaction with life as measures of participants' success. Most also give high marks to their program's ability to coordinate client services.

To the extent that these programs for high-risk youth provide opportunities, coordinate community groups to provide services to youths, and work cooperatively with local members of the criminal justice community, they blend components of the strategies that Spergel and his colleagues have advocated. But some researchers have expressed concern about prevention programs that identify youths in trouble and single them out for programming.[9] For them, a preferred method is to consider prevention as a means to assist at-risk communities and provide broad-based support for all of the children in those communities regardless of their gang affiliation.[10] A model for this sort of community development "Communities that Care," will be discussed in the next section.

Organizing a Community Response

Some prevention and intervention programs focus on enabling entire communities to control gangs. The primary emphasis is on organizing the community, but providing services is a natural by-product of the problem-solving efforts. The directors of three different community mobilization programs were interviewed for this report. Two manage existing programs—The Community Reclamation Project and the Community Youth Gang Services Program—in the greater Los Angeles area. (Appendix C describes these in detail.) The other directed the now-defunct Crisis Intervention Network[11] in Philadelphia for 21 years.

Although the program models vary in certain ways, they have several features in common. Both active programs focus on raising community awareness about

gangs in their areas. (Often communities are afraid to acknowledge their gang problems or feel intimidated about taking action.) Each emphasizes the need to organize community leaders (e.g., schools, businesses, local politicians, ministers, educators, parents, youths, park and recreation officials, and law enforcement officials) to take action against the gangs. Each includes a team of street workers to identify community problems and to track program success. The goal of each is to strengthen the community in order to eliminate or at least control gang problems.

Several specific program features are also of interest:

- The Community Reclamation Project serves as a referral service helping residents of communities with gang problems. Although it does not provide direct services, the program conducts community training sessions on ways to address the gang problem and refers youths to special programs on job skills development, "rites of passage," and money management, among others.
- The Community Youth Gang Services program helps community residents develop creative and safe ways to reclaim their neighborhoods from gangs, provides opportunities for youths to build self-esteem, and supports the parents of gang-affiliated youth.
- The Crisis Intervention Network coordinated its services with members of the law enforcement and probation communities. It offered a 24-hour hotline that community members could use to call if they anticipated a gang emergency. The hotline was supported by mobile street teams of indigenous workers trained in crisis intervention. The program also placed gang members in local public works jobs.

Organizing communities to fight back and supporting them with the services necessary to control gang problems are strategies consistent with the current call for community-based programs to supplement suppression efforts. Evaluation of the development, implementation, and long-term effects of these types of programs remains to be done. The experience of the program directors involved in community mobilization efforts suggests that community organizing is most easily tackled in sites where the gang problems have not become entrenched and where residents have not become hopelessly pessimistic about their ability to act. Experience also shows that one of the biggest strains for programs of this sort is getting them institutionalized in the communities they serve. Most efforts to mobilize communities that are inexperienced with the concept of taking charge require time to succeed, which also requires a steady funding source and ingenuity for dealing with changing needs. The problems that a program faces at its outset are likely to change with time.

In addition, communities with gangs may need to consider making more wide-ranging changes than the programs described above have addressed. A community-based prevention model, "Communities that Care,"[12] has considerable appeal as a framework for the development of comprehensive community-based prevention strategies. Designed by Developmental Research and Programs, Inc., in Seattle, Washington, the program focuses on reducing drug abuse and delinquency by making fundamental changes in key social institutions (e.g., families and schools). Based on a considerable body of research, the program developers have identified a set of risk factors in a number of important areas: the family, the school, the community, peer groups, and the individual. They have also developed a model—the Social Development Strategy[13]—for cultivating protective factors in youths' lives. (Many of these factors are also advocated for youths in communities where there are gangs.) The Social Development Strategy is based on the assumption that prevention programs should 1) build opportunities for youths to bond with positive role models; 2) set clear norms or standards of behavior; and 3) develop skills to uphold those norms and standards in the face of adversity. Finally, recognizing that risk and protective factors are lodged in all aspects of the community (including schools, families, and individuals), the program's designers have outlined a strategy for comprehensive community-based empowerment. The program consists of several phases: organizing community leaders; identifying problems; identifying high-risk individuals and groups; providing training and technical assistance seminars; and evaluating the results. The program is currently being tested in Washington and Oregon. Given its emphasis on organizing communities with a large proportion of high-risk youth and its focus on prevention through strategies that bolster families and schools, the Communities That Care model may prove a useful tool for developing programs in communities where there are gangs.

School-Based Strategies

Almost all of those contacted for this project mentioned the need to improve educational services in communities where there are gangs. In general, they did not recommend restricting programs to gang members, nor did they suggest that the programs focus on gang problems. Instead, they recommended education programs that would improve the quality of life for all youths in communities where gangs exist. The following summaries of their recommendations for programs demonstrate the range of ideas for education programming.

- The most significant programming investment should be in prevention. Primary prevention (not aimed exclusively at children vulnerable to gang involvement) can probably best be accomplished through the schools, given the difficulties of direct intervention with families.

Educational prevention efforts should include Head Start, innovative programs at the elementary school level (e.g., Drug Abuse Resistance Education, which reduces the social distance between children and the police) that may involve parents, and middle-school programs aimed at peer-oriented counseling and conflict resolution. Throughout the school experience, significant attention should be paid to values and ethics. Finally, during their schooling, teachers should be better prepared to expand their understanding of the needs of the whole child and not focus exclusively on the child's educational needs. (C. Ronald Huff, Ohio State University)

- Multicultural training for teachers is critical. Minority children need more minority teacher role models; in lieu of that they need teachers who are sensitive to who they are. (Lt. Ondra Berry, Reno Police Department)

- Gang programs should start in the schools and target the brothers and sisters of gang members, focusing first on the girls. (Moore's research has shown that a significant proportion of girl gang members have been sexually abused and tend to be more entrenched in gang life than their male counterparts.)

  The aim of a program should be to "de-marginalize" potential gang recruits. The school should provide family counseling, tutoring, nutritional supplements, and testing for learning disabilities. It should offer positive activities such as sports and music that should help the youths establish a stake in their education. Programs should be structured for all levels: Head Start, elementary school, especially fourth through sixth grades, junior- and senior-high schools and correctional institutions, especially youth correctional institutions.

  This approach would require considerable coordination between the schools and law enforcement agencies. (Joan Moore, University of Wisconsin-Milwaukee)

- *A Curriculum for Education* (David Fattah, House of Umoja, Philadelphia):

Elementary School	Gang conflict resolution, Academic program to develop commitment to school and inspire students to hope for the future,
Junior High School	Junior business achievement, Educational enrichment, Computer games/training, Physical education, After-school programs, Food—breakfast and lunch,
High School	Career and skills development, Job experience.

- Curricula must include acculturation and socialization skills for immigrants. Teachers should receive training for dealing with new citizens. All education should be tied to parenting, since there is a tremendous need for improving parenting skills.

  It is important to develop new citizen commissions, so that people emigrating to this country are not exploited. If we teach people about the responsibilities and privileges that accompany citizenship, then maybe we will not lose so many of them. If people feel like second-class citizens, they're treated like second-class citizens. (Miguel Duran, Los Angeles Probation Department)

Current Efforts. Education plays a role in the lives of gang members and potential members in a number of ways. Several programs are either part of schools or routinely employ school settings in gang communities. One type of program aims to prevent gang involvement. The Paramount School in Paramount, California, is a good example of this. Another type focuses on keeping students invested in school. Two of these—Cities In Schools and 10-Schools[14]—are located or have branches in southern California. Another—ASPIRA of Florida, Inc.—is in Miami and was discussed earlier with other programs targeted at high-risk youth. All three are aimed at keeping minority youths committed to education. Because they are located in schools where there is considerable gang activity, these programs have experience working with gang members. (ASPIRA is described in Appendix B. Cities In Schools, 10-Schools, and the Paramount School Program are described in Appendix D.)

The goal of Cities In Schools and 10-Schools is to improve services to school children by increasing the range of services available and improving the ratios between students and service providers. The 10-Schools program is located in elementary schools; Cities In Schools in middle and high schools. In essence, these two programs establish social service support teams and make them available to participating schools. Cities In Schools is funded with Federal and private monies and coordinated by staff outside the school, while 10-Schools is part of the school system and funded largely with Federal funds. Both are focused on dropout prevention and improving students' academic standing by providing

an array of services from social workers, medical personnel, psychologists, attendance counselors, dropout prevention specialists, and community mentors. Both encourage community involvement. In fact, Cities In Schools' personnel are repositioned from local government and private organizations, which donate their employees' time on either a part- or full-time basis. As part of their intensive supervision of program youth, both programs also work with families to ensure family involvement in children's schooling.

ASPIRA of Florida, Inc., operates a school-based program in which ASPIRA employees 1) conduct early awareness education and dropout prevention programs in 15 middle and high schools in the Miami area; 2) establish youth clubs in schools that meet twice per week with a facilitator to focus on building self-esteem, developing leadership skills, and expanding career awareness; and 3) provide case management and family intervention (with home visitation). The program makes a concerted effort to include gang youth who are referred to the program by the juvenile courts and police gang details.

Discussion. The central educational issue for youths in communities where there are gangs is to stay in school. Without an education, their chances of finding employment are drastically reduced and the chance of gang involvement may increase. The need to stay in school may be more acute for gang members and those at risk for joining gangs, if their inability to find employment perpetuates their gang involvement into young adulthood.

Education programs in communities where there are gangs may focus solely on gang members, although by doing so such programs run the risks (noted earlier in the discussion of high-risk youth strategies) of 1) overlabeling youths as gang members and 2) increasing delinquency. Alternatively, programs can be aimed at making broad changes in the way education is provided in communities with gangs. The latter is the method advocated most frequently by the researchers and practitioners interviewed.

Often schools in communities where there are gangs do not captivate the students' attention.[15] To do so, teachers must be trained to work with minority students and schools must be committed to responding to the child's entire life. In this regard, the Institute for Educational Leadership has observed:

> The first step for elementary schools is to develop a comprehensive assessment of each child's social and economic condition outside of school. This will involve extensive consultation with parents, periodic home visits, and joint planning with parent groups, community organizations, and youth-serving agencies.
>
> Educators are understandably reluctant to assume the responsibilities of social workers and health care providers. However, in inner-city and poor rural communities, where environmental problems sabotage a child's development and progress, the schools have no choice but to provide leadership in identifying these problems and acting as catalytic institutions to resolve them. In this process, however, teachers must make a discerning effort to involve and engage parents in their youngsters' education and development.[16]

Programs such as those described above bolster the school's ability to address the needs of the child. They provide social and psychological support to youths whose performance or life situations suggest that they are at risk for school failure. It is encouraging that these programs have been implemented in communities with gangs and that initial reactions are favorable, but evaluation of their success will assist greatly in determining the full extent of their applicability.

Educational programs have also been more broadly defined with the intention of creating structural changes for entire schools or school districts. Two program models show promise in this regard, although their application in communities with gangs has not been examined. One is the School Development Program, developed by James Comer and his colleagues at the Yale Child Study Center, which has been implemented in more than 100 elementary and middle schools in several sites nationwide. The other is the Program Development Evaluation (PDE) method, developed by Gary Gottfredson and Denise Gottfredson in connection with the Center for Social Organization of Schools at Johns Hopkins University. PDE has been implemented at all grade levels and throughout entire school districts in Maryland, South Carolina, California, Illinois, Michigan, and New York.

Both programs aim to improve youths' attachment to school, increase the responsiveness of schools to the range of student needs, and improve the relationship between schools and their communities. The PDE model has been evaluated extensively with strong positive results: a study of its implementation in Baltimore schools showed significant improvement in the areas of teacher morale and innovation and a decrease in rebellious behavior and negative attitudes among students. In an evaluation of PDE in Charleston, South Carolina, experimental schools showed improvement in classroom order, classroom organization, and clarity of rules.[17] The School Development Program as applied in New Haven, Connecticut has also been evaluated and results show significant increases in academic achievement.[18]

The School Development model was initially focused on improving school and community integration in predominantly minority communities where schools are often viewed as alien territory and the gulf between a child's home and school life can contribute to school failure.

> A child from a poor, marginal family...is likely to enter school without adequate preparation. The child may arrive without ever having learned such social skills as negotiation and compromise. A

> child who is expected to read at school may come from a home where no one reads and may never have heard a parent read bedtime stories. The child's language skills may be underdeveloped or non-standard. Expectations at home and at school may be radically at odds. For example, in some families a child who does not fight back will be punished. And yet the same behavior will get the child in trouble in school.[19]

In order to improve the integration of the school and the community, the School Development model aims to expand the range of individuals participating in the school. There are three team components to the program: a planning and management team (composed of the principal, teachers, parents, teachers' aides, counselors, and support staff), which reviews the goals of the school and its role in meeting community needs and develops a comprehensive school improvement plan; a mental-health team (composed of a psychologist, teachers, the principal, a nurse, social workers, and counselors), which takes a team approach to handling the problems of individual children and coordinating and integrating mental-health capabilities schoolwide; and a parent's group (e.g., the PTA). The team approach encourages the sharing of information and ideas among the essential actors in a school and the community it serves.

The School Development model requires considerable parent outreach and involvement. Parents are involved in school planning through their participation in the management team and the PTA; they participate in workshops to learn how to develop their children's skills and are encouraged to participate in all activities that support the academic and social activities of their children.

Teachers and school administrators arrange their schedules to accommodate those of working parents, engage in training (e.g., multicultural awareness training), and help to achieve consensus between parents and school staff. The program is a dynamic one that requires constant evaluation of the needs of children and their communities. It emphasizes problem solving, collaboration, and consensus.

Evaluators have observed that the School Development Program as implemented in New Haven is expensive; but subsequent implementations (e.g., in Prince George's County, Maryland) have not proven excessively costly.[20] Rather, the program's coordinator in Maryland is concerned about having a sufficient number of participants to facilitate the process. Others have commented that the program's success depends heavily on the principal's support, commitment, and understanding of the process.[21] Busing may also diminish the concept of a community school by making it difficult or impossible to involve parents who live far from the school grounds, and may be a central issue for the teams to address.

The PDE approach is a school management strategy aimed at identifying school problems and developing a program for managing them. A School Improvement Team of teachers, parents, school administrators, and district-level staff follow predetermined steps to identify school problems, establish goals and objectives, develop programs, and monitor the implementation process. The process is continually evaluated and adjusted to meet changing needs. The PDE program is guided by a trained coordinator.[22]

Both programs require several years to implement and seem to work best with top-level support. Both have been designed with evaluation as a key component.

Family Interventions

Although families are often viewed as central to solving the problems of youths who live in neighborhoods with gangs, none of the gang programs surveyed focuses exclusively on families, although many include family outreach among their program components. There are considerable challenges to integrating parents into gang prevention strategies. In this regard, the director of the El Monte (California) Boys' and Girls' Club observed the following:

> Working with parents has not been successful and is not seen as a practical approach. By the time their sons are involved with a gang, the parents have lost control. While some parents might have good intentions and want to be involved, they usually are not going to be part of the solution.[23]

This perspective is echoed in the research literature, which suggests that parents are a negligible influence in the lives of gang members.[24]

Nevertheless, the difficulty associated with involving the families of adolescents in prevention and intervention efforts does not discount the need to address in some way the families in gang communities. Most researchers would agree on the need to support the bonds between parents and their children early in the children's lives in order to help prevent them from engaging in delinquent behavior.[25]

In view of the difficulty associated with intervening with the parents of older gang members, and consistent with the perspective that the entire community must be involved in primary prevention, what may make the most sense in the context of gang prevention is to concentrate attention on families with young children. Doing so would also result in targeting teenage parents (who are at high risk for dropping out of school) and families with young children in which a sibling or more are involved with a gang. Focusing on families with young children also improves the chance for positive intervention, since parental influence is at its peak when children are young. Moreover, childhood antisocial behavior is an

early predictor of antisocial behavior in elementary school,[26] so intervention with families with young children may help prevent future antisocial conduct.

Parent Training. Parent training is a strategy with promise. Researchers have observed that parent training programs can have "positive effects on oppositional and delinquent children."[27] (Parent training is also a significant part of the Communities That Care model described in the section on community mobilization.) J. David Hawkins, a professor at the University of Washington, is currently testing the long-term effects of a parent training model based on social learning theory.[28] Results suggest that parent training is associated both with better parenting skills and with lower rates of child aggressiveness as reported by parents at the end of their child's third grade year. Study participants are residents of a mixed-ethnic urban school district that serves children from high-crime neighborhoods. Parents and their children, initially contacted when the children were in first grade, have been assigned to both experimental and control groups and are being tracked longitudinally. Parents whose children were at high risk for failure were mixed in school-based training sessions with parents whose children were at reduced risk, in part so that the "higher-risk" parents could benefit from peer interaction. The experimental group was offered a twofold curriculum. The first component taught parents 1) to observe desirable and undesirable behavior in their children, 2) to teach expectations for behavior, and 3) to provide positive reinforcement for desired behaviors and to moderate negative responses for undesired behavior. The second component was aimed at building parents' abilities to support their children's school achievement through establishing home study routines, reading aloud, and playing learning games.

The researchers offered a number of incentives to the parents to encourage participation: personal invitation by classroom teachers; free childcare and transportation; and financial incentives for continued participation. Although it is too early to determine the effects of the training on delinquency, the authors have learned some things about recruiting the parents of youths at high risk for delinquency. Researchers were very successful in recruiting a significant proportion of high-risk families, but were appreciably more successful at recruiting white than African American parents. Among the issues that remain to be resolved are the following:

- What is the best location (e.g., school, church, clinic) in which to maximize parent participation and conduct parent training?
- How can parent networks be used to increase parent participation?
- What is the optimal developmental stage at which to conduct parent training?

Crisis Intervention. In addition to parent training, some families in neighborhoods where there are gangs are likely to require more intensive case management services. As noted in Chapter 2, it is not uncommon for the high-risk youths included in gang prevention programs to have a history of out-of-home placements.

The Edna McConnell Clark Foundation has supported the development of a family preservation program that may help these situations.[29] The model—variously called Families First or Homebuilders—is designed for families at imminent risk of out-of-home placements. The program has the following goals: 1) to keep children safe, 2) to keep families together, 3) to improve the capacity of families to function, and 4) to control the use of funding resources. The model has been studied extensively and implemented (with State and local funding) in 10 states. Though the research findings are mixed, with the debate centering on the accuracy with which authorities select at-risk families, the reported success of the program is high.[30]

The model departs from traditional service-provision models by establishing a short-term, intensive case management relationship with the families served. The model is based on the notion that families that are unlikely to seek services (e.g., because of a lack of transportation, depression, or negative experience with the social service system) are often best served in their homes and communities rather than in office settings.

Clients are accepted in the program within 24 hours of referral. Services center on problem-solving—from the mundane (e.g., repairing broken locks) to the serious (e.g., finding treatment for serious substance abuse). The intention is to connect families with their communities by integrating them into the social service network and teaching them how to manage their lives. Counselors are available 24 hours per day for a period of four to six weeks. Each counselor sees only two to four families in this time period. Follow-up services with providers in the community are arranged during the case management period.

The family preservation model is considerably less expensive than traditional foster care arrangements, though short-term costs are high ($3,500 to $4,000 per family). Research suggests that, compared with families not served by the program (because of full caseloads), the families served are significantly more likely to avoid out-of-home placements for their children for up to one year.

Some people are skeptical about the long-term effects of the program for most urban families, but family preservation is one concept that is now receiving considerable attention from Congress.[31]

Employment and Training Strategies

Building job skills and finding employment for youths and young adults at risk of joining gangs is a component of many programs and often one of few options offered to young adults. But it is not likely to be a panacea. For one thing, many

youths who are employed continue to commit crimes.[32] In addition, recent evaluation of employment and training programs funded under Title II-A of the Job Training Partnership Act, which is targeted to serve economically disadvantaged Americans, indicates that some groups benefit more than others from the classroom training, on-the-job training, job search assistance, and other job-related services that the JTPA Title II-A programs offer. Although the programs "had generally positive effects on the earnings and employment of adults (age 22 and older)," they actually reduced the earnings of male youths and had no significant effects on the employment rates of either female or male youths.[33] The JTPA's youth-related programs were most successful in assisting youths who were school dropouts (50 percent of the sample) to achieve "a training-related high school credential."[34]

The issue of employment as a gang intervention strategy goes beyond simply finding jobs. Spergel and his colleagues have outlined a comprehensive network of employment development and maintenance programs that are required in communities with gangs.[35] Fagan commented in an interview that the best gang-prevention strategy in the absence of models solidly grounded in theory would be to make significant changes in the labor market, making employment both accessible to groups currently excluded from jobs and lucrative enough to make employment a viable alternative to illegal economic ventures. Fagan noted that this strategy would require changing the structure of communities and approaching the problem of gangs more globally, as one of delinquency treatment rather than gang eradication. In this vein, some of those interviewed suggested that the development of indigenous businesses should be a long-range goal of improving the labor market conditions in communities where gangs exist. The effort could begin with assisting youths in developing their own entrepreneurial ventures.

To date, most gang-related programs have focused on skills development and job placement. Many of the programs reviewed in the section on high-risk youth include a jobs component. Most focus on improving employability by keeping youths in school or developing skills through remedial education. Some, like Project Positive in Miami, have forged partnerships with private industry and local labor unions to find jobs for their clients. Others, like the House of Umoja and the Crisis Intervention Network (both in Philadelphia), have used Federal funding incentives to find jobs in the private sector and municipal governments.

Two Federal initiatives may have promise for communities with gangs: the Job Corps and a demonstration project sponsored by the Department of Labor called Youth Opportunities Unlimited (YOU). Both aim to address multiple dimensions of the lives of disadvantaged youth; both operate in areas where there are large gang populations, and both are the focus of large-scale evaluations.

Job Corps. Job Corps is an employment program renowned for serving severely disadvantaged youths as described in the Corps' program guide:

> The 'typical' Job Corps student is an economically disadvantaged 18-year old high school dropout who reads at the seventh grade level, is a minority group member, has never held a regular job, and was living in an environment characterized by a disruptive home life, or other disorienting conditions which impair his or her ability to successfully participate in other educational or training programs.[36]

The program has also been thoroughly evaluated and generally deemed a success.[37]

Ninety percent of Job Corps participants are removed from their neighborhoods and placed in residential facilities where they receive academic and vocational instruction, opportunities for participation in recreational activities, counseling, and an array of medical, dental, and mental-health services. In addition, youths are provided with social-skills training so they may function comfortably in various situations. The program's goal is to place youths in either a school program or a job. The Corps hires placement contractors to assist youths in locating jobs and tries to equip participants with the necessary skills and confidence to find their own jobs. Most graduates who are employed are in entry-level positions with construction firms, offices, and restaurants, among others.

Although not designed as a gang-prevention program, Job Corps accepts gang-affiliated youths; in 1991 the national office developed a technical assistance manual to assist Job Corps centers in identifying gang members. Nonetheless, the Corps' regulations prohibit it from accepting youths who are on parole or under probation supervision when they apply or whose court records reveal involvement in violent offenses.

Job Corps' Region 9, which includes centers in Hawaii, California, Arizona, and Nevada, has the greatest experience with gang members. Two types of gang members tend to join the program: gang affiliates without serious records, most of whom have decided to move away from the gang, and gang wannabes. Experience suggests that only about 10 percent of gang affiliates remain actively involved with their gangs after joining the Job Corps program. Eventually, those who refuse to abandon gang ties are released from the program after going through the Corps' standard disciplinary system. Job Corps' rules prohibit any overt display of gang-related symbols or signs, but generally gang membership is viewed by Center staff as one of the many issues that some individuals must address when they join the Corps. There are no statistics that disaggregate the performance of gang members, but the regional director reports that the centers in

the region have been successful working with gang members. In part, he attributes the success to good staff training: Center staff have received training from the Los Angeles Police Department (LAPD) to enhance staff understanding of the characteristics and behavior of gang youth.

The Job Corps has 106 centers nationwide, with more than 40,000 slots filled at any one time. The lengths of stay range from 30 days to two years. About 30 percent of the residents complete vocational training; some complete their GEDs. The ratio of one staff member to every three participants is achieved at an annual cost of approximately $20,000 per participant.

The Corps boasts an impressive track record: 84 percent of its graduates are placed either in jobs (67 percent) or in school (17 percent). Moreover, initial cost/benefit analysis of the program revealed that Job Corps' strongest benefits were the increased productivity of its participants and their reduced criminal activity while in the Corps; the greatest costs were associated with operating the Job Corps centers.[38] In a four-year post-program follow-up, however, the program's effect on crime-reduction varied from crime to crime. Although arrest rates for murder, robbery, and larceny or motor vehicle theft were lower for participants than for a matched sample of non-participants, arrest rates for burglary and drug violations were higher.[39]

Youth Opportunities Unlimited (YOU). The YOU demonstration is a multimillion-dollar program funded by the Department of Labor's Job Training Partnership Act. Seven U.S. communities of fewer than 25,000 people, with poverty rates of 30 percent or higher, are receiving $19 million between 1991 and 1994. Communities in San Diego and Los Angeles are among those chosen for this program.

The program rationale is to "saturate an area with positive programs, and eventually a critical mass will be reached,"[40] at which point the entire community will have undergone significant change and improvement. The program is grounded in the assumption that many social problems—gangs, drug addiction, juvenile delinquency—have a common source: poverty and a lack of economic and educational opportunities. YOU funding not only provides employment and job-training opportunities for young people, it also attempts to facilitate provision of a constellation of support programs in health care, housing, recreation, and family services.

In San Diego, the following efforts are being developed through the YOU demonstration project:

- An alternative school will serve 50 "at-risk" ninth and tenth graders.
- Local Boys' and Girls' Clubs will provide expanded sports and recreational activities, giving young people an alternative to gangs.

- An Hispanic organization will operate a family learning center.
- Local labor unions will sponsor a pre-apprenticeship program to help youth learn about possible careers.
- A teen parenting center is being established.
- Two social workers will provide case management to youths.
- Various community and city agencies will open offices at the YOU center to serve the needs of youths and families in the target area.[41]

At the end of the five-year development and implementation period, the program will be formally evaluated, measuring improvement in key indicators such as high school dropout rates, teenage pregnancy, juvenile crime and delinquency, and college entrance. YOU is not a gang initiative, but it operates in gang-ridden areas. There are currently no YOU programs directed specifically at gangs. However, organizations may submit proposals for work with gangs

Assessing Job-Based Strategies. Although employment is not likely to be the sole solution in areas with gangs, there is a significant need to improve the employment conditions in many inner city areas, including improving the employability of residents. Consistent with the advice of researchers and practitioners with experience working in communities where there are gangs, efforts to improve employment opportunities must complement job training and job placement. In this regard, models such as the ones described above may be useful components of a community-based model of prevention and intervention.

More needs to be done, though, to provide services that will lead to the eventual employment of the growing number of young adults who may remain in gangs partly because they are unskilled to work in today's urban economy. As it now stands, people over the age of 22 are at a serious disadvantage for receiving training and employment placements. Many gang members are also likely to have been incarcerated, which highlights the need to make more accessible programs such as the ones described here to incarcerated and previously incarcerated individuals.

Suppression

Spergel and his colleagues at the University of Chicago have reviewed existing gang-suppression models, covering the range of criminal and juvenile justice professions.[42] No attempt has been made here to duplicate their work. Instead, we contacted law enforcement officials, prosecutors, corrections officials, and one probation officer to review suppression models currently employed. Their responses and relevant comments by researchers and other practitioners are sum-

marized below. Considerable attention is given to law enforcement activities, since law enforcement officers are on the front line in communities where gangs exist and are perhaps in the best position among their criminal justice peers to help appreciably with a gang program focused on gang control through community improvement.[43]

Background

Historically, juvenile and criminal justice professionals engaged in controlling the delinquent and criminal activity of gangs have tried to accomplish the traditional goals of punishment: incapacitating "hard-core" gang members; deterring involvement in gangs and gang crime by increasing the severity and certainty of punishment for gang-related offenses; and rehabilitating those who are sanctioned. But, as noted in the introduction to this chapter, when such efforts have been implemented without community support or initiatives that improve opportunities for gang youth and prospective gang members to participate in noncriminal ventures, they have largely fallen short of their goals.

In his research on gangs in Boston, New York, and Los Angeles, Jankowski observed that a number of issues affect the success of gang-suppression efforts:

- The nature and effectiveness of law enforcement initiatives depend partially on the degree of cooperation and trust between community residents and law enforcement. Where the relationship is strained, law enforcement officers often fail to receive information vital to intelligence gathering and making arrests. Officers may even be prompted to use tactics (e.g., inappropriate force) that further alienate the community.[44]
- Incapacitation of individual gang members is not sufficient to control gang crime because removing individuals does not eliminate the influence of the gang on the streets.[45]
- Most gangs have learned how to use the procedural differences between the juvenile and adult systems to their advantage. Consisting of both juvenile and adult members, gangs have learned to make extensive use of juveniles in the commission of gang-related crimes in order to capitalize on the more lenient penalties available in the juvenile justice system.[46]
- The vast majority of gang members have resisted traditional forms of rehabilitation, viewing them as "government brainwashing." Moreover, in some prisons sufficient numbers of gang members are incarcerated simultaneously that there is little incentive for them to consider alternatives to gang activity.[47]

In recent years many criminal and juvenile justice agencies have begun to realize that they must expand the scope of their response to gangs by improving their understanding of the communities where gangs exist and by becoming more involved in prevention and intervention initiatives. The deputy chief of the Dallas Police Department, who heads the department's gang unit, observed the following in this regard:

> Obviously specific gang or geographic issues must be dealt with specifically, but not to the exclusion of the greater issue, that of dealing with the whole child. There is a pool of youth service resources available in most communities eager to join us. We are convinced that only through this broad-based community approach will law enforcement expand its traditional boundaries of responsibility and work in concert with youth service agencies in a holistic coalition where we begin to find real and lasting solutions to the problems of our youth.[48]

Although those who testified during the hearings on gangs and gang violence in Chicago recommended that suppression efforts continue to include vigorous street-level enforcement, they also advocated the following:

- Coordination and information sharing between Federal, State, and local officials;
- Use of mobile gang prevention and intervention units;
- Continued use of law-enforcement-sponsored prevention programs such as Drug Abuse Resistance Education (DARE);
- Expansion of block clubs and neighborhood watches;
- Development of community-sponsored victim/witness services, such as court escort services, to minimize the effect of gang intimidation;
- Development of integrated, automated information systems with information on gang members and their movements in and out of the criminal justice system;
- Continued efforts to improve police-community relations (e.g., increasing the use of community policing, improving the cultural awareness of officers and community residents, increasing opportunities for law enforcement and community residents to interact in non-threatening settings).

In addition, they called for correctional options at the State and local level that would:

- Increase prison and jail capacity;
- Expand the use of intermediate sanctions (e.g., periodic imprisonment, electronic detention, work release, house arrest, and graduated-release plans);
- Provide better reentry programs and aftercare and parole follow-up for gang members released from juvenile detention and adult correctional facilities;
- Decentralize the location of probation and parole offices so they may be located in neighborhoods with the greatest need.[49]

Law Enforcement Strategies

In many urban communities there are tensions between police forces and the communities they serve. Law enforcement departments often feel hard pressed to find the staff time to meet the challenges in these communities, while residents are anxious for increased attention to their needs by law enforcement. Added to this problem is racial tension between members of law enforcement departments and minority communities.

In communities where gangs exist, residents have often retreated in fear, leaving the police and the gangs to battle each other. Nevertheless, the residents are not disinterested: they want the police to understand their problems while keeping the streets safe. In this regard, David Fattah, co-director of the House of Umoja in Philadelphia, observed that the role of the police in communities where there are gangs should be to show dignity and firmness without abuse.[50] In his view, many law enforcement departments appear as military outposts in the community. If they were more approachable, "kids would go to them instead of some other group, like a gang."[51]

What is being requested is more law enforcement attention to the problems in the community, which may be best accomplished by community-based and/or problem-oriented policing. (See Appendix E for a discussion of community-based and problem-oriented policing.) Those models are also consistent with the current thinking that solutions to gang problems lie in making fundamental changes in the community structure. Ideally, community-based policing could make important changes in communities by restructuring policing and helping residents solve their problems. Although community-based policing is not the norm in communities where there are gangs, it shows considerable promise in the neighborhoods where it is operational. Indeed, the Los Angeles County Interagency Gang Task Force has recommended that the County Board of Supervisors "urge all law enforcement agencies in the County of Los Angeles to adopt, when feasible, community-based policing strategies within their jurisdiction."[52] Community-based policing is described in conjunction with other efforts in the discussion that follows.

Typical Law Enforcement Approaches to Gangs. Most law enforcement efforts are aimed primarily at crime control: gathering information; developing information systems; making arrests; and sharing information with others in the law enforcement community. Increasingly, they also include prevention activities:

- Participating in community awareness campaigns (e.g., developing public service announcements and poster campaigns);
- Contacting parents of peripheral gang members (through the mail or in personal visits) to alert them that their children are involved with a gang;
- Sponsoring gang hotlines to gather information and facilitate a quick response to gang-related issues;
- Organizing athletic events with teams of law enforcement officers and gang members;
- Establishing working relationships with local social service agencies;
- Making presentations on gangs in schools and community groups as a combined effort at prevention and information gathering;
- Sponsoring school-based gang and drug prevention programs (e.g., DARE);
- Serving as a referral for jobs and other community services.

Departments in larger jurisdictions, which also have dedicated gang units, participate in local, regional, or State gang task forces, whose primary goal is to share information and ideas. They also develop legislation and assist with the development of criminal justice and social service programs.

Overlabeling Gang Members. One of the concerns raised by the researchers interviewed is that traditional law enforcement efforts sometimes exacerbate gang problems by overlabeling people as gang members. For example, Ronald Huff commented in an interview that the typical policy response to an emerging gang problem is often inappropriate. First is a period of denial, during which the membership can expand. This period is usually followed by an overreaction, largely by law enforcement, that tends to overlabel participants as committed to a gang. In other words, overlabeling captures more of the peripheral members

than is reasonable or necessary and may serve to solidify what would otherwise have been a transitory identification with the group.[53]

Some police departments have recognized this problem and improved their ability to identify gang members. The deputy chief of police in Oxnard, California, described the department's approach to targeting gang members and controlling overlabeling. The key to the approach is to establish a set of restrictive definitions. According to the department's definition, a group is considered a gang only if it meets *all* of the following criteria:

- It has a name and/or identified leadership;
- It claims a geographic, economic, or criminal enterprise (e.g. drug trafficking) turf;
- It associates on a continual or regular basis; and
- It engages in delinquent or criminal activity.

Based on these criteria, he estimates that there were 10 gangs in the community in 1991.[54]

Gang members are further distinguished according to their level of activity and commitment to the gang. Of the 300 to 350 estimated gang members, the deputy chief figured that about 200 are hard-core members.

The department uses these definitions to support their gang program, which is targeted on serious gang members and aimed at collecting, maintaining, and sharing with all officers information that will lead to the arrest and conviction of the most serious gang members. The program also aims for stiffer penalties, including longer terms of confinement or strict probation penalties if a convict is found associating with known gang members.

The Columbus, Ohio, Police Department has reportedly followed a similar pattern. According to Huff, the department responded to its emerging gang problem by 1) identifying the gang leaders and dedicated members on the basis of self-admission by the members or observation of frequent and routine contact with the gang; and 2) targeting those leaders for aggressive monitoring. To achieve this goal, the department established a gang unit in which intelligence, investigation, enforcement, and prevention were housed in one division. The focus on gang leadership avoided the overlabeling problems.[55]

To ensure coordination with patrol officers and to foster a sense of *esprit de corps*, the gang unit in Columbus also published a newsletter on gang activities that was available at roll call and was a ready source of backup support when a gang-related incident occurred on the street.

Understanding the Nature of the Problem. Law enforcement members have been criticized for failing to understand gangs. Hagedorn summarizes the concern based on the experience in Milwaukee:

> The law enforcement paradigm defines gangs in a narrow and unchanging manner, which neglects the process of development which different age groups within gangs undergo and ignores or undervalues variations of all sorts. Gangs are not seen as young people struggling to adapt, often destructively, to a specific economic and social environment. Rather, gangs are treated as a major criminal problem and their members dehumanized as no more than aspiring "career criminals."...The fact that gangs today are overwhelmingly minority and most police departments overwhelmingly white, allows for racism to contribute to these stereotypes and results in even greater hostility on the street.[56]

Many departments recognize the need to develop a better rapport with the communities they serve and the gangs they monitor, which is a prime motivation for them to engage in prevention activities. Some departments have also tried community-oriented policing strategies to address gang problems.[57] The Los Angeles Police Department, for example, instituted Operation Cul de Sac in the Newton area of the city. A State-funded demonstration program operated in partnership with Community Youth Gang Services, Operation Cul de Sac employs highly visible bicycle patrols to monitor the community for drug and gang activity, to interact with residents, and to assist with community programs such as ventures in which community residents paint over gang graffiti. Between January and May 1991 the community witnessed a number of dramatic improvements: compared with the same period in 1990, drive-by shootings decreased 67 percent, the number of serious felonies dropped 12 percent, and school absenteeism decreased 9 percent. There were no homicides reported during the period.[58]

Community-Oriented Policing and Gangs in Reno, Nevada.[59] In Reno the police department has made a full-scale commitment to community- and problem-oriented policing, which they believe has had such a positive effect on the community that the gang problem has diminished markedly. In 1987 the police department in Reno instituted Community Oriented Policing Plus (COPS+), a program aimed at making law enforcement officers available to solve problems in the community. Consistent with many community policing strategies, the Reno police department divided the community into beats, with a set of officers on foot or bicycle patrol available to address community problems.

Early in the development of the COPS+ strategy, law enforcement officers began meeting with citizens in their communities to discuss the community's problems and to map out solutions. Officers went door to door introducing themselves. The

department instituted two-person community action teams and neighborhood advisory groups in each beat. Each strategy was intended to make the department available to community leaders 24 hours a day. Over time and with compromise on both sides, the officers were able to encourage citizen support for addressing the problems in their communities, which itself helped to foster in the residents a sense of community ownership. At the same time, officers were more available to observe the daily activities in the neighborhoods they were serving and to develop an awareness of the community's problems.

One of the problems involved youth gangs. The year that the department instituted its community policing strategy, Reno was struggling with African American and Hispanic gangs. In particular, the African American gang members were becoming increasingly involved in drug trafficking, as Los Angeles gangs migrated to Nevada in search of a more favorable marketplace. There was also considerable tension between the police department and the citizens in the minority communities where gangs were prevalent. Historically, those communities had experienced marked increases in violence during the summer months followed by a flood of charges of police harassment.

Consistent with the philosophy of community-oriented policing, the department approached the solution to youth gangs as an issue of rapport-building as well as enforcement. The department formed a Community Action Team of 10 officers to focus exclusively on gang control. All team officers received training in cultural sensitivity and gang awareness.

Today the department's primary gang emphasis is on the peripheral gang members, or wannabes, and their parents. Whenever an officer spots an unfamiliar youth associating with a known gang, the officer takes the youth home and meets with the parents to inform them that the youth is associating with gang members. The officer offers assistance to the parents by directing them to social services or by offering to be available if the need arises. In return the parents agree to keep the police department informed about gang-related activities. Given the relationship of trust that has already been fostered as a result of COPS+, the meeting with parents and the department's offer of continued support are reportedly enough in many instances to keep a youth out of the gang.

The department has also held three-on-three basketball tournaments, with each team consisting of a representative from the media, a police officer, and a gang member. More generally, the department has ensured that all officers receive minority sensitivity training and requests that officers make a point of visiting the schools at least once during school hours to make contact with the students.

The gang problem in Reno steadily declined from 1989 to 1991. Measured in terms of drive-by shootings, the evidence is remarkable: in 1989, there were 30 drive-by shootings in the spring and summer months alone. In 1990, there were

seven during the entire year; during the first quarter of 1991, there were none. Today one of the most significant gang problems is graffiti. For the most part, African American gangs have disappeared, although there has been a steady increase in Hispanic gang membership paralleling the 50 percent increase in the area's Hispanic population. In response the department has assigned an Hispanic officer to the community troubled by gangs, whose sole function is to serve as a liaison to community residents and to address their problems. The department also holds a monthly meeting with the Hispanic community to address quickly any issue that arises.

At the top of the department's list of reasons for its success with gangs is the increased parent and community support (especially from churches) that has resulted from the department's community policing strategy. In addition, police officers give high marks to minority sensitivity training, which has better prepared them to work in the communities they serve.

Assessment of Law Enforcement Strategies. The primary role of law enforcement is clearly to control the negative behavior of gang members. However, that mission can involve many things beyond gathering and sharing information, and making arrests. In view of the growing consensus that the way to control gangs is to focus considerable attention on the problems of the communities in which they exist, community- and problem-oriented policing models offer much promise for improving the relationship between communities and their police forces and thereby addressing the problem of gangs.

Ronald Huff offered the following caution, however, to those who apply community policing in a gang context: although community- and problem-oriented policing result in officers who know a great deal about what is happening on their own beats, those officers do not necessarily know what is happening communitywide.[60] Gangs today can be very mobile; knowledge of them needs to span a broad area. In many cities (e.g., Miami and Milwaukee), school busing has made the recruitment of gang members a citywide phenomenon. Also, gang members often have cars or access to public transportation, making shopping malls as convenient a gathering place for some gangs as a street corner. In such a context it is necessary to develop innovative strategies for sharing with each beat intelligence about the communitywide gang problem.

Prosecution

In the prosecutors' offices contacted for this report, serious gang-related cases (e.g., violent offenses, leader-related cases) are prosecuted vertically[61] after careful case screening. In Los Angeles and Chicago, special gang units handle the most complicated cases; in Miami, cases are screened by an experienced gang prosecutor and assigned to the senior attorneys in the office, who determine charges and handle each case from filing through sentencing.

Plea bargaining is often limited in gang-related cases. In Los Angeles, for instance, if it is established that a person is a gang member (e.g., through affiliation, clothing, witness testimony), the policy is to seek the maximum penalty. Pursuit of the maximum penalty is guided by the beliefs that:

- Gang members commit a greater variety of crimes than non-gang members.
- Gang members commit crimes over a longer period of time than non-gang members.
- Gang members are more violent than non-gang members.

In view of these beliefs, policy dictates against sentence bargaining in gang-related cases and for seeking the maximum penalty.[62] In some States, conviction for a gang-related crime limits the range of possible sentences and/or warrants additional penalties.

A number of other prosecution activities were reported during the interviews, including:

- Providing special support services to victims of gang-related crimes, including relocating victims;
- Vertical prosecution of juvenile cases involving gang members;
- Conducting training sessions for local law enforcement;
- Participating in local task forces to share information, discuss legislation, and plan programs;
- Contributing information about gang members for use in automated information systems;
- Meeting with local community groups to discuss gang problems and control strategies;
- Working with local law enforcement agencies to target proactively gang members engaged in drug marketing.

Indicted gang members are usually convicted; prosecutors attribute their success primarily to vertical prosecution. Definitions of gang membership and gang-related crime vary across sites, so undoubtedly some variation in punishment occurs across sites as well. Nevertheless, at the sites we contacted, prosecutors attempt to identify gang leaders and serious offenders and to screen them for vertical prosecution and more serious punishment. The extent to which prosecutors accurately distinguish leaders from peripheral members has not been verified empirically, however.

Corrections

Several corrections officials participated in the interviews for this report. In general, those involved in juvenile corrections spend more time on rehabilitating gang members than do their counterparts in adult prison systems.

Juvenile Corrections. The Maclaren School in Portland, Oregon, and the Ethan Allen School in Wales, Wisconsin, have both established rigorous counseling regimens focused on juvenile gang members. The gang intervention program at the Maclaren School mixes straight talk with tough action.[63] Although open to the whole campus, it is targeted to gang members and gang issues. The program is a mix of group and individual counseling aimed at developing positive self-image, cultural pride, job skills, communication skills, and the ability to accept responsibility for one's own actions. The program also makes clear that 1) selling drugs is a short-term venture; 2) the adult prison system lies ahead; and 3) getting involved in gang fights and selling drugs, only hurts one's own community. Another part of the program emphasizes what participants should do when they return to the street to avoid returning to the gang--not to react or respond, to choose to associate with other groups.

Most who participate in the program are involved for a minimum of six months. A group called the Brothers Chilling Positive (BCP) has been in the program for a long time and serves as a team of mentors for the initiates. The BCP also visits local schools and delivers a prevention message.

During the last two years, and using his own money at first, the program's director started a community program, the Minority Youth Concerns Action Program, to provide aftercare support to those released from Maclaren and community outreach to the families and youths vulnerable to gang involvement. The program offers a refuge to parent groups such as Mothers Against Gang Involvement and serves as a place where gang members, regardless of their affiliation, can come and talk. Local law enforcement officers drop by and ensure that peace is maintained.

The gang program at the Ethan Allen School, a facility for chronic juvenile delinquents, is targeted to gang members who have histories of aggressive, gang-related behavior.[64] Members of rival gangs are housed in one cottage on the school's campus and involved in a program to alter their thinking and behavior patterns. Counseling sessions center on improving the ability of youths to react positively to their life situations rather than on attacking gangs *per se*. The program model, developed with a local psychologist whose specialty is working with aggressive youths, is based primarily on correcting fundamental patterns in the way youths think and make decisions.[65] Participants are asked to monitor and record their behavior and related thoughts throughout the day. Through counseling and instruction they learn how to change their "errors in thinking" (as

demonstrated in behavior) into appropriate action. Upon release youths are eligible for traditional State-supervised aftercare. Additional services are coordinated with a community-based, non-profit, inner-city agency that provides counseling, alternative education, substance abuse counseling, and employment assistance, among other things.

The school coordinates with local law enforcement to track the progress of program participants following release. Results of the tracking are encouraging. Of the 41 participants released in 1989, only 17 percent had subsequent police contacts during the year and only nine percent were observed in the company of a gang.[66] (Some releasees were tracked for longer periods than others.) Data for 1988 through 1990 show that only six of the 130 program participants released during this period were subsequently incarcerated in adult correctional facilities.[67]

Adult Prisons. In many prison systems in the United States, prison gangs (e.g., the Mexican Mafia, the Texas Syndicate, La Nuestra Familia, and the Black Guerilla Family) have emerged in response to the exigencies of prison life and to control the illegal economy of the prison, among other reasons. With a few exceptions, the relationship between prison gangs and traditional street gangs has historically been limited or nonexistent.[68] But this fact may be changing for at least two reasons. First, the number of street gang members incarcerated in many correctional systems has increased dramatically during the last decade. Although these street gang convicts do not appear to be joining traditional prison gangs, they are becoming a gang problem in their own right, leading the American Correctional Association to conclude that street gangs are slowly becoming the prison gangs of the future.[69] Second, the members of traditional prison gangs have been known to continue their gang affiliation and gang-related crime following their release from institutions, accepting orders from incarcerated gang leaders and engaging in a range of violent and drug-related crimes.[70]

In general, most prison strategies have little bearing on street gang activities, since those efforts are aimed at controlling gangs in the prison setting. The following is a summary of approaches to prison gangs mentioned by the four prison systems we contacted:[71]

- Accurate determination of gang membership;
- Collection of information—observing gang members, monitoring gang activities, screening mail, collecting gang related materials from inmates' cells—to identify gang members, ascertain their positions in the gang, control their activities, and anticipate problems or conflicts;
- Forbidding display of gang symbols, such as tattoos, hand signs, insignia;
- Minimizing gang member contact by locking down leaders, segregating enemies;
- Maintaining control of basic prison services rather than allowing gang leaders to issue toilet paper, monitor showers, etc.;
- Sharing information among prisons through automated information systems and prison gang task forces;
- Prosecuting gang-related crimes aggressively;
- Using stiff sanctions for gang-related offenses; and
- Sharing information with local, state, and federal law enforcement to determine what is happening on the street that may affect gangs in prisons and to alert law enforcement to upcoming releases.

Discussion. In juvenile correctional settings, gang programs are aimed at preventing continued street gang involvement by helping individuals develop the skills to resist further gang activity. In adult prison settings, where gang members do not necessarily have street gang connections and gangs have traditionally formed in response to racial/ethnic tensions and the stresses of prison life, the main correctional focus is on controlling violence and other illegal activity. Discussions with officials in both systems suggest that resolution of outstanding correctional issues may improve the correctional response to street gangs, including:

- Providing an array of aftercare services (including residential care) for youths released from juvenile facilities;
- Enhancing automated linkages with law enforcement, probation, and parole to track releasees and alert those who work on the street to potential problems;
- Assigning gang members to specialized probation services; and
- Developing counseling programs for detained gang youths.

Summary

The program directors interviewed for this project identified several issues that still require attention:

- *Housing and Aftercare.* Many participants in high-risk youth programs need housing. This is especially true of youths returning from juvenile correctional facilities to the community, who are at considerable risk of returning to their gangs.

- *Private Industry Partnerships.* Private industry could be helpful in supporting social service programs. At present it is difficult to interest businesses in hiring at-risk youths, although some efforts (e.g., the El Monte Boys' and Girls' Club, Project Positive) have apparently been successful. More efforts to involve private industry in job skills development and business development within the youths' communities would be desirable.

- *Drug and Alcohol Services.* In-patient drug and alcohol treatment services sensitive to the needs of minority clients are needed.

- *Cultural Sensitivity Training.* Programming must be culturally sensitive. Teachers and law enforcement officers need cultural sensitivity training. School programs in minority communities must emphasize the heritage and achievements of minority group members.

- *Volunteer Networks.* Minority communities need assistance to develop a cadre of volunteers who will assist with programming efforts. It is often difficult to find volunteers to serve as mentors and tutors.

- *Parent Programs.* Schools and other major institutions must facilitate opportunities where parents and their children may interact positively.

- *Programs for Women.* Females in gangs are often ill-treated by the community and by their male gang counterparts. In addition, since many are mothers, they frequently need assistance developing parenting skills and finding child care. Few, if any, of those services are now available.

- *Strategies for Adult Gang Members.* Many criminal justice efforts are targeted at adult offenders because those offenders are more vulnerable to prosecution and harsh sentencing. But in addition to conventional prosecution and adjudication, the criminal justice strategies might productively include the use of intermediate sanctions (including training and job development programs) for adult offenders who are not centrally involved in gang activities. Many intervention strategies currently ignore adult gang members. It is difficult to find people willing to work with them; funding has been aimed at juvenile gang members; and it is more difficult to assist adult members with their needs (i.e., for employment). To the extent that absence of strategies for older gang members is associated with a perception that they are too entrenched in their gangs and crime to benefit from programming options, those developing criminal justice and social service programs need to consider evaluating gang members on an individual basis, considering commitment to the gang as well as age among the selection criteria.

- *Family Support Services.* Most communities where there are gangs need assistance with:

  - health care for mothers and children;
  - after school care/programming;
  - child care.

  In addition, in some sites, especially where gangs are institutionalized, there is often a family tradition of gang involvement, suggesting the opportunity for targeted interventions with those families.

This list calls attention to the set of larger community issues that program directors have come to see as inextricably linked to solutions in gang communities. Still, most current gang-related programs are reactive and focus primarily on crisis management: intervening with high-risk youth; targeting specific individuals for arrest and incapacitation; helping communities control their gang problems. There is considerable need to make fundamental institutional changes (e.g., changing the educational system, making criminal justice responses more community-centered, providing employment opportunities) in the communities where gangs exist. These are the kinds of changes that most experts interviewed for this project believe should be part of state-of-the-art gang prevention programming.

Most current efforts strive to coordinate with others in the community; such coordination results primarily in improved information sharing and, therefore, more efficient program operation. Few of these alliances have resulted in strategies planned cooperatively by key community leaders (e.g., school superintendents, chiefs of police, heads of departments of labor) to make fundamental changes in the way individual institutions operate in communities where there are gangs, and to coordinate these efforts to address the issues that contribute to gang formation. Huff has observed:

> What is needed is public (and private sector) leadership that acknowledges the problem but keeps it in the proper perspective, recognizing (a) that gangs are essentially dependent variables whose existence is attributable to social structural and sociocultural independent variables; (b) that the amelioration of the gang problem will require an in-depth *understanding* (emphasis in the original) of the social and economic contexts of gangs; and (c) that coordinated community-wide and system-wide strategies will be necessary rather than isolated programmatic efforts, and that sufficient resources will be required to implement those strategies.[72]

This chapter highlights some program models that may be useful to communities interested in making significant structural changes. Many of the models have been or are in the process of being tested. Many show promise for helping to improve the life situations of residents in communities where there are gangs, although considerable thought still needs to be given to adapting these strategies for specific community needs and in the context of a broader gang agenda. Many are receiving attention at the Federal as well as local and State levels of government.

Endnotes

1. Irving Spergel, et al., *Youth Gangs: Problem and Response*, Executive Summary, Stage 1: Assessment (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, May 1990):14-15.
2. Malcolm Klein and Cheryl Maxson, "Street Gang Violence," in Marvin E. Wolfgang and Neil A. Weiner (eds.), *Violent Crime, Violent Criminals* (Newbury Park: Sage, 1989) cited in Jeffrey Fagan, "The Social Organization of Drug Use and Drug Dealing Among Urban Gangs," *Criminology* 27(4), 1989:639.
3. Street sweeps involve mass arrests of persons whom police identify as gang members and observe in the vicinity of a gang-related crime.
4. Many of those interviewed expressed concern about the street-sweeping approach and its potential to overlabel youths. See also C. Ronald Huff, "Denial, Overreaction, and Misidentification: A Postscript on Public Policy," Chapter 14 in C. Ronald Huff (ed.) *Gangs in America* (Newbury Park: Sage, 1990):312-313.
5. Spergel, et al., *supra*, note 1, at 220.
6. Because these programs emphasize prevention, the populations served are not restricted to gang members; they also include youths deemed at high risk for gang membership.
7. We contacted four consortia programs funded with money from the Administration for Children, Youth, and Families (HHS), located in Seattle, Tacoma, Chicago, and Miami. We also contacted programs dedicated exclusively to gang youth: Project Positive (Miami), the House of Umoja (Philadelphia), and Minority Youth Concerns Action Program (Portland), which is a community-based partner to a juvenile-corrections program. The El Monte, California, Boys' and Girls' Club, which emphasizes programs for gang youth, was also contacted.
8. The Youth Gang Drug Prevention consortia programs funded by the Office of Human Development Services, Administration for Children, Youth, and Families (ACYF) in 1989-1990 are being evaluated. The evaluation will include descriptions of the implementation process, discussion of the policy climate in each site at the time of implementation and during the project period, description of the context in which youths and their families live, and an assessment of the programs' prevention outcomes. Preliminary data should be available by 1993.
9. David Huizinga commented in a telephone interview on April 2, 1991, that targeting problem youth is a strategy fraught with problems. Hawkins summarizes some of the problems associated with programs that remove high-risk youth from classrooms: they limit opportunities for interactions with conventional peers; they label targeted youths as failures; and they put them in frequent contact with each other, thereby increasing the risk of delinquency. David Hawkins, "Changing Teaching Practices in Mainstream Classrooms to Improve Bonding and Behavior of Low Achievers," *American Educational Research Journal*, 25/1 (Spring 1988):33. Many of the programs contacted recognized the need to provide an array of positive role models.

Spergel, et al. make a strong recommendation that "the tendency to identify at-risk youth without clear criteria and reliable evidence of potential gang membership should be avoided." Spergel, et al., *supra*, note 1, at 41.

10. Joan Moore, Ph.D. (March 13, 1991), David Huizinga, Ph.D. (April 2, 1992), David Hawkins, Ph.D. (March 21, 1991), and C. Ronald Huff, Ph.D. (April 24, 1991), and a number of the program directors interviewed shared this perspective in telephone interviews.
11. The Philadelphia Anti-Violence Network now coordinates services with other government agencies.
12. Developmental Research and Programs, Inc., *Communities that Care: Action for Drug Abuse Prevention, A Guide for Community Leaders* (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 1991).
13. J. David Hawkins and Joseph G. Weis, "The Social Development Model: An Integrated Approach to Delinquency Prevention," *Journal of Primary Prevention*, 6(2), (Winter 1985):73-97.
14. The "10 Schools" program is currently being evaluated in an investigation of Chapter I programs.
15. For a discussion of the educational experiences of Chicano gang members see Ruth Horowitz, *Honor and the American Dream: Culture and Identity in a Chicano Community* (New Brunswick, New Jersey: Rutgers University Press, 1983):137-159.
16. Andrew Hahn and Jacqueline Danzberger, with Bernard Lefkowitz, *Dropouts in America: Enough Is Known for Action* (Washington, D.C.: Institute for Educational Leadership, March 1987):29.
17. Results reported in *Communities that Care: Action for Drug Abuse Prevention, A Guide for Community Leaders*, Chapter 5, "School Development and Management," prepared by Developmental Research and Programs, Inc., March 5, 1991, p. 101.
18. Developmental Research and Programs, Inc., *supra*, note 17, at 101. During the next two years the program will be evaluated in schools in Prince George's County, Maryland, and in Benton Harbor, Michigan.
19. James P. Comer, "Educating Poor Minority Children," *Scientific American*, 259(5), (November 1988):45.
20. Susan Hlesciak Hall and Anne Henderson, "The Comer Process: Bonding to Family *and* School," *Community Education Journal* (Fall 1990):22.
21. Communicated in an interview with Jan Stocklinski, Comer Process Coordinator for the Prince George's County (Maryland) School District, March 18, 1991.
22. See Gary D. Gottfredson, *A Workbook for Your School Improvement Program* (Baltimore: Johns Hopkins University, 1988).
23. Based on an interview with Clay Hollopeter, El Monte Boys' and Girls' Club, March 12, 1991.
24. Jeffrey Fagan, "The Social Organization of Drug Use and Drug Dealing Among Urban Gangs," *Criminology* 27(4) (1989):657.
25. For example, see Travis Hirschi, *Causes of Delinquency* (Berkeley: University of California Press, 1969) regarding "attachment."
26. J. David Hawkins, "Delinquency Prevention Through Parent Training: Results and Issues from Work in Progress," Chapter 8 in *Children to Citizens: Families, Schools, and Delinquency Prevention*, Vol. 3 (New York: Springer-Verlag, 1987):187.
27. Ibid., p. 192.
28. Ibid., pp. 186-204.
29. The discussion in this section is based on a telephone interview with Peter Forsythe, vice president of the Edna McConnell Clark Foundation, conducted on March 22, 1991. The program is discussed because it has been extensively evaluated. A number of other organizations nationwide address family issues and merit contact to compile a complete package of possible family models.

30. David Haapala, et al., *Homebuilders Evaluation Summary* (Federal Way, Washington: Behavioral Sciences Institute, 1990). See also *Keeping Families Together: Facts on Family Preservation Services*, a package of materials prepared by the Edna McConnell Clark Foundation, 250 Park Avenue, New York, NY 10177-0026.

31. Paul Taylor, "Programs Turn to Home as Children's Best Hope," *The Washington Post*, Sunday, March 31, 1991, pp. A4-5.

32. In a telephone interview on April 2, 1991, David Huizinga offered a strong warning about seeing employment as the answer to gang problems. He commented that "there is a common perception that if these kids just had jobs we would not have any problems. However, the research literature does not support this theory. Actually, delinquency and drug use increase with employment. The data from the National Youth Survey [which he has worked on with Delbert Elliott since 1976] points to this conclusion. A recent Department of Labor report found that kids who are employed are doing much worse in school. All of these things indicate that one would want to look very carefully at a jobs program before deciding it would be a cure-all."

33. Howard S. Bloom, et al. *Executive Summary of the National JTPA Study: Title II-A Impacts on Earnings and Employment at 18 Months*, draft (Bethesda, Maryland: Abt Associates, Inc., May 1992):4-6. Only out-of-school youths between the ages of 16 and 21 were included in the study.

34. Bloom, et al. *supra* note 33, at 23.

35. Spergel, et al., *Youth Employment Model*, revised (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, February, 1991).

36. U. S. Department of Labor, Employment and Training Administration, Job Corps, *Job Corps in Brief*, 1989, p.13.

37. David A. Long, Charles D. Mallar, and Craig V.D. Thornton, "Evaluating the Benefits and Costs of the Job Corps," *Journal of Policy Analysis and Management* 1(1), (1981):55-76.

38. Ibid., p. 68.

39. Blumstein, Alfred, et al. (eds.), "Crime Control Strategies Using Criminal Career Knowledge," Chapter 5 in *Criminal Careers and "Career Criminals,"* Vol. I (Washington, D.C.: National Academy Press, 1986):120-121.

40. Comments from an interview with David Lah, Youth Research and Development Unit, Department of Labor, April 1991.

41. Thus far in San Diego, 40 youths have been served in the alternative school, 30 in the pre-apprenticeship program, 280 in the SER Family Learning Center; 190 youths and families have been served by the referral center and 64 youths are currently served by caseworkers. Additionally, 200 youths have participated in the sports and recreation programs at the Boys' and Girls' Club. (Personal communication from David Lah, program coordinator, October 1991.)

42. See Irving Spergel, et al. *Survey of Youth Gang Problems and Programs in 45 Cities and 6 Sites* (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention), May 1990.

43. Nearly a decade ago, Needle and Stapleton suggested a leadership role for law enforcement in establishing "comprehensive community gang control programs" that would integrate the police with an array of social services. See Jerome Needle and Wm. Vaughan Stapleton, *Reports of the National Juvenile Justice Assessment Centers: Police Handling of Youth Gangs* (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, September 1983):49-50.

44. Martín Sánchez Jankowski, *Islands in the Street: Gangs and American Urban Society* (Berkeley: University of California Press, 1991):255 -258.

45. Ibid., p. 265.

46. Ibid., p. 266.

47. Ibid., pp. 274-275.

48. Testimony of Deputy Chief Lowell Cannaday, Dallas Police Department; see Catherine H. Conly, *Hearing Summary of the National Field Study on Gangs and Gang Violence in Dallas, Texas, revised draft* (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, December 19, 1991):24.

49. Catherine H. Conly, *Summary of the National Field Study Hearing on Gangs and Gang Violence in Chicago, Illinois*, draft (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, May 14, 1992):6-7.

50. Reported in a telephone interview with David Fattah, House of Umoja, March 22, 1991.

51. Ibid.

52. Los Angeles County Interagency Gang Task Force, *Preliminary Report on the State of Los Angeles Street Gangs*, October, 1991, p.11.

53. Based on notes from an interview with C. Ronald Huff, April 24, 1991.

54. Telephone interview with Deputy Chief William Cady, Oxnard (California) Police Department, March 19, 1991.

55. For discussion of the problem in Milwaukee, see John Hagedorn, *People and Folks: Gangs, Crime, and the Underclass in a Rustbelt City* (Lakeview Press: Chicago, 1988):64-65.

56. Ibid., p. 106.

57. A number of police departments (e.g., LAPD's Newton Division, Oxnard, Reno, and Seattle) use foot or bicycle patrols in areas where there are gangs.

58. Los Angeles Interagency Gang Task Force, *supra*, note 52, at 6.

59. The information in this section is based on a telephone interview with Lt. Ondra Berry of the Reno Police Department, April 11, 1991.

60. Based on notes from a telephone interview with C. Ronald Huff, on April 24, 1991.

61. Vertical prosecution means that one attorney is designated to handle a case from its inception. This method is distinguished from horizontal prosecution, in which several different attorneys handle a case, depending on the stage of processing.

62. Notes from interviews with Michael Genelin, head of the Hard-Core Gang Unit in Los Angeles, March 4, 1991, and March 22, 1991.

63. The description of the Maclaren School Program is based on notes from a telephone interview with Lonnie Jackson, director of the school's gang program, March 22, 1991.

64. The description of the Ethan Allen School program is based on an interview with Ken Miller, section manager of the school's gang program, March 28, 1991.

65. Ethan Allen School, *"Be-It" Handbook* (Wales, Wisconsin: State of Wisconsin, 1990).

66. Ethan Allen School, *Program and Operations Review* (Wisconsin: Department of Health and Social Services, Division of Youth Services, April 1990):13.

67. Communicated in a letter dated April 3, 1991, from Kenneth Miller, section manager of the Ethan Allen School, who is responsible for the program.

68. Illinois is a key exception, since there has long been a strong connection between traditional street gangs and gangs in the prison system there.

69. Dennis G. Baugh, "ACA Gang Survey Examines National Control Strategies," *Corrections Today* (July 1992):82.

70. Communicated to the author by Ron Zuniga, Assistant Director of Inspections and Investigations, Arizona Department of Corrections, in a letter dated March 27, 1992. For information on the street activities of the Mexican Mafia in Texas, see Conly, *supra*, note 48, at 42-43.

71. The following prison officials participated in interviews on prison gangs: Ron Zuniga, Arizona Department of Corrections (March 15, 1991); Noreen Blonien, California Department of Corrections (March 19, 1991); Michael O'Leary, Illinois Department of Corrections (March 19, 1991); and Joyce Madrid-Bustos, New Mexico Department of Corrections (March 5, 1991).

72. C. Ronald Huff, *supra*, note 4, at 312.

Chapter 4
Where Do We Go From Here?

Determination of the best course of action for dealing with street gangs is not easy; a number of questions about the origins, activities, and future of gangs are still unanswered. Ideally, gang programs would be based on verified theory, but to wait to take action until one is available is impractical. Many communities are already debilitated by the fear and violence that gangs have created.

Most of what is known suggests a strong nexus between gangs and the contexts in which they evolve. Although gangs are a problem in the communities where they exist, they are also a symptom of greater community ills. That knowledge, combined with the observation that suppression efforts alone have had a limited effect on controlling gang activity, has prompted a number of common sense approaches to addressing the problem. Many of these involve attempts to mobilize and integrate the immediate resources in a community.

A majority of the researchers and practitioners interviewed for this project advocate coordinated prevention, intervention, and suppression strategies aimed at controlling negative gang behavior while generally improving the quality of life in communities where there are gangs. Most experts described state-of-the-art programs in communities with gangs that would include some combination of the following:

- *Fundamental changes in the way schools operate.* Schools should broaden their scope of services and act as community centers involved in teaching, providing services, and serving as locations for activities before and after the school day. This does not mean that the full burden for services should fall on teachers, but it requires a significant change in the current missions of many schools.

- *Job skills development for youths and young adults accompanied by improvements in the labor market.* Changes in the labor market in many communities where there are gangs have left many residents unemployed or underemployed. In addition, many young residents have dropped out of school and do not have the skills to find employment. Attention needs to be focused on ways to expand the labor market, including the development of indigenous businesses in these communities, and provide effective job skills training for those in and out of school.

- *Assistance to families.* A range of family services including parent training, child care, health care, and crisis intervention must be made available in communities with gangs.

- *Changes in the way the criminal justice system—particularly law enforcement—responds generally to problems in these communities and specifically to gang problems.* Law enforcement agencies need to increase their commitment to understanding the communities they serve and to solving problems. This may ultimately require a shift from a strict calls-for-service approach to a proactive community- and/or problem-oriented approach to policing. Also, judges should consider the use of intermediate sanctions, such as diversion and restitution, for some convicted gang members.

- *Intervention and control of known gang members.* Illegal gang activity must be controlled. In some cases, this can be accomplished by diverting peripheral members from gang involvement or at least from criminal activity. In other cases achieving control will mean making a clear statement—by arresting and incapacitating hard-core gang members—that communities will not tolerate intimidating, violent, and/or criminal gang activity. Community groups, law enforcement officers, probation personnel, and parole officers will need to develop coordinated strategies for controlling the crime problems that gangs generate on the street.

The goal of such a state-of-the-art model is to facilitate cooperation between key institutions and community residents in order to bolster the communities served, to help residents (including gang members and their families) address their needs, and ultimately to improve the way residents themselves manage community problems. In this regard, witnesses from Texas and Illinois who testified during 1991 as part of the National Field Study on Gangs and Gang Violence, conducted by the Office of Justice Programs, U.S. Department of Justice, recommended the implementation of comprehensive, community-defined, community-based strategies for controlling crime, intervening in the lives of youths and young adults at high risk for involvement in gangs, drug use, and drug trafficking, and preventing future criminal activity. Their agenda for program development and implementation included the following tasks:[1]

- Promote top-level coordination (e.g., through a mayor's office);
- Assess community needs carefully before initiating program plans;
- Obtain support from an *action-oriented* task force consisting of the leaders of major community organizations who have authority to implement change;

- Involve the community;
- Develop a program agenda to control hard-core criminals, intervene with individuals who are peripherally involved in crime, and prevent future crimes by improving the quality of life for at-risk youths and their families;
- Use strategies to raise community awareness and encourage community participation (e.g., media campaigns, presentations before community groups, distribution of bilingual fliers);
- Promote cooperation among public agencies to improve resource and information sharing;
- Encourage coordination of service providers in the community (e.g., law enforcement, treatment, community leaders) to target resources and minimize service overlaps;
- Expand private-sector involvement to increase funding capabilities, encourage new ideas, and increase business opportunities in the community;
- Promote flexibility to address changing needs;
- Provide adequate funding;
- Ensure a long-term commitment to achieve a sustained impact;
- Evaluate continuously to determine program strengths and weaknesses.

Support for this sort of full-scale strategy, however, is by no means unanimous. Walter Miller, a social scientist who has studied gangs for several decades, has observed that gang programs based on the notion that one can effect changes in gangs by changing the characteristics of lower-class life (e.g., community conditions) have not worked.[2] He contends that the major assumption that gangs arise out of lower class life is confounded by the fact that there are lower-class communities with no gangs. He further argues that such efforts are too time consuming and expensive to be considered reasonable solutions to serious and immediate gang problems. He advocates programs narrowly focused on gang members and those at immediate risk of membership, to be organized at the community level and to involve the provision of educational and employment support to the individuals targeted by the program.

Countering this position, Ronald Huff suggests that certain "ecological areas are generating the highest rates of crime, delinquency, incarceration, mental illness, public assistance, and other indicators of 'social pathology'," which makes it fiscally responsible to invest in prevention and communitywide coordination to

address the broad range of social ills in those communities. James Short, a social scientist who has studied gangs for more than three decades, also sees considerable promise in recent community attempts at delinquency prevention and rehabilitation aimed at creating "a community of values in which institutions and programs are mutually supportive."[4] Irving Spergel concurs with Short's position, but cautions that programs focused too broadly on addressing community ills can result in channeling resources away from gang members toward other disadvantaged individuals with whom it may be easier or more palatable to deal.[5]

One way to resolve the debate is to test both strategies in several different communities with gangs. One program model could target only gang members and those at high risk for membership and include a comprehensive set of prevention, intervention, and suppression strategies. The other model could include a component aimed at gang members, but be more broadly focused on making changes in the way major community institutions relate to each other and to the residents of communities where there are gangs. Both would require coordination of key leaders including educators, members of the criminal justice community—especially those involved directly with the community, such as law enforcement, and probation and parole officers—labor specialists, private industry representatives, housing specialists, community groups, health and mental health professionals, specialists in providing services to immigrants, representatives of the local media, and the residents themselves. The actual combination would depend on the nature of the gang problem, the community structure, and the type of program implemented.

Determining which approach to test would depend on the community and its ability to effect major structural changes. Undoubtedly there are many communities in which it would be impractical to attempt to address gangs by waiting to change major community institutions; but, as described in Chapter 3, some communities with gangs are already planning or implementing innovations in education, policing, and community organizing.

Implementation of either scenario requires careful planning and the development of a set of outcome measures that can be monitored and evaluated. These measures should include ways to assess changes in gang behavior, but should also include measures of prosocial change (e.g., school achievement, job placement) to afford an assessment of related program costs and benefits.[6]

Both program packages will also need to be funded sufficiently to allow some degree of institutionalization. Several people interviewed for this project commented that gang programs often fail because they are not sustained long enough to make a difference. Implementation of both program models will require considerable support from local, State, and Federal government sources in order to make the programs successful. Major change requires the support of leadership and the funding to sustain it.

One way to maximize the impact of funding is to develop a coordinated Federal gang strategy in which the funds now targeted independently on education, substance abuse prevention, gang control, job skills development and employment, and criminal justice reform, among others, are made available in a package to communities with gangs. Existing gang programs frequently have to scramble to combine funding from a number of different Federal sources. The Federal government could improve the situation considerably by developing its own multiagency funding strategy. Indeed, such an approach might also reduce costs by reducing overlap in existing programs.

Testing program models on the basis of what we know now in order to refine and improve the way communities respond to gangs seems a reasonable measure in the face of increasing concerns about street gangs. But program development should not occur in the absence of research aimed at answering questions about who are gang members, why they join, how they behave, how they compare with their non-gang counterparts, why they cease to participate, and what strategies are most effective in preventing gang members' involvement in crime. Answers to these questions will help to refine program models.

Endnotes

1. The list is a synthesis of strategies recommended in the Chicago and Dallas hearings. For more information see Catherine H. Conly, *Hearing Summary of the National Field Study on Gangs and Gang Violence in Dallas, Texas*, revised draft report (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, December 19, 1991) and Catherine H. Conly, *Summary of the National Field Study Hearings on Gangs and Gang Violence in Chicago, Illinois*, draft (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, May 14, 1992).
2. Walter Miller, "Why Has the U.S. Failed to Solve Its Youth Gang Problem?" Chapter 12 in C. Ronald Huff (ed.) *Gangs in America* (Newbury Park: Sage, 1990): 280-281.
3. C. Ronald Huff, "Denial, Overreaction, and Misidentification: A Public Policy," Chapter 14 in Huff (ed.), *supra*, note 2 at 315.
4. James F. Short, "New Wine in Old Bottles? Change and Continuity in American Gangs," Chapter 10 in Huff (ed.), *supra*, note 2, at 231.
5. Reported in an interview with Irving Spergel on March 25, 1991.
6. A number of the existing programs described in Chapter 3 are ready to be evaluated, which would help in specifying future programming strategies.

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Appendix B
Program Summaries: High-Risk Youth

ACYF Youth Gang Drug Prevention Programs (Seattle, Miami, Chicago, Tacoma)

Seattle

The city of Seattle's Department of Human Services has developed a local consortium of law enforcement, juvenile probation and courts, the public school system, and nine privately run social service agencies to intervene in the lives of high-risk youth. With more than 60 percent of its funding coming from the Administration for Children Youth and Families (ACYF) and the balance from local business taxes, the program aims to provide outpatient drug and alcohol treatment, employment services, case management outreach, recreation services, mentoring, and tutoring services to youths between the ages of 12 and 18. Of those served during the first year of program operation, one-third identified themselves as gang members and another third were identified by a referring agency as being at high risk for gang involvement.

Youths are referred to the program following considerable street outreach. A typical referral scenario involves a sequence of events starting with a police referral to the probation department and a probation officer's making an unannounced visit to a youth's home and referring him or her to the program.

Specific Program Initiatives

- The consortium offers recreation activities (music, mural painting, sports) in three locations, including late night activities on Friday and Saturday nights for youths over 16. One surprise has been the number of teen parents who meet the age requirement and bring their children with them. Although there is a meal component to the program, there is no childcare.
- The mentoring program involves individuals who work in fields in which the youths are interested and who volunteer to act as adult mentors for the youths. It is difficult to find volunteers for either the mentoring or tutoring programs, and especially difficult to get volunteers dedicated to working with older youth.

- A Rites of Passage Program aimed at African American youths is held two nights per week at the community center. Discussions focus on changes in levels of responsibilities with the passage into adulthood. Multicultural issues are discussed, a feature that has met with considerable interest from the youths who are hungry for information about their cultural heritage that is not readily available in the school system.

- The employment component of the program is age graded. Eleven to 14-year-olds are trained to develop job skills and assisted with finding jobs in community agencies. Their salaries are subsidized by the program. The program focus for 16- to 18-year-olds is finding a job. It is difficult: often private industry is willing to make donations to the program, but is not interested in hiring persons whose skill levels do not match their needs.

The program director identified several service gaps. First, there is a great need for housing: some youths need a place to live; others need halfway housing or aftercare (if released from a juvenile facility.) Second, the director would like to offer more services to parents, especially ones in which parents can interact with their children. Third, there is a need for summer programs, especially employment programs for youths aged 14 to 15. Fourth, there need to be more women-focused programs. Finally, there is considerable need for in-patient drug and alcohol services, with special emphasis on minority youths.

Consortia members have at least two goals. One is to reduce participation in gangs. The other is to improve cooperation among service providers in the city. It is early to assess their success in reducing gang participation since the program was initiated in the fall of 1989. The program's director is confident, however, that he has been able to hire the best staff members for the job (partly by being able to offer competitive salaries) and cites the following important staff characteristics: comfort with working with youths in their communities, matched to the clients they serve in terms of ethnicity and race, and residence in the communities where they work. With regard to the second goal, the director suggests there have been significant strides and some lessons to be learned. To insure everyone's commitment to the project, all who are now participating were also involved in planning the project. In addition, regular policy discussions occur at the city, county, and supervisory levels. There are still challenges in working together and with law enforcement; often competition exists among non-profit agencies.

Miami

ASPIRA Association, Inc., is a Hispanic youth organization with community-based offices in six sites in the United States and Puerto Rico. In existence for over 30 years, ASPIRA emphasizes educational achievement (as well as dropout prevention) and the development of leadership skills. Although ASPIRA youth are often initially identified as likely candidates for school failure, the ASPIRA philosophy emphasizes the positive: youths are not lacking so much as waiting to be developed.

The ASPIRA process starts with developing awareness through seminars, educational supports (peer counseling, tutoring), and field trips, then focuses on an analysis of each member's life situation, and finally, involves participants in taking action to improve their situations. There are also special support services for single parents and drug education outreach for Hispanic families.

In Miami, ASPIRA of Florida assists gang members who are not hard-core or habitual delinquents. The program model consists of three tiers. The first tier emphasizes early awareness education and prevention in 15 middle and high schools in the area. As part of the program, ASPIRA employees establish youth clubs in the schools. These clubs meet twice a week with a facilitator. Discussions focus on building self-esteem, developing leadership skills, and expanding career awareness. Activities include college field trips, internship placements, and community service projects. Second-tier activities are similar, but are conducted out of community-based clubs. The third tier includes a case management system (with home visits) for gang youth referred to ASPIRA from the juvenile courts and the police gang details.

Overall the program has had an impressive track record: during 1989, of the 712 youths (not all of them gang members) involved in ASPIRA of Florida, 98.9 percent stayed in school throughout the year.

Chicago

The Chicago Commons Association is a community-based program aimed at gang youths between the ages of eight and 18 who live in two geographic areas—a primarily African American community, the Henry Horner Housing development, and a primarily Hispanic community in Westtown. Although estimates of gang membership citywide hover around 7 percent, in the neighborhoods that the Commons Association serves the proportion is closer to 60 percent.

The program is aimed at giving gang youths the confidence to live in their communities, believe in themselves, and aspire to something better. The director believes that those who get out of gangs develop an appreciation of themselves and an awareness of the options available to them, thereby becoming able to resist the gang incursions in their lives. Youths come to the program for the basics: they do traditional activities such as homework and recreation, and they plan and participate in family outings. In addition, there is an emphasis on skills development, substance abuse counseling, mentoring, and job development. Employment is difficult to locate, partly because jobs are scarce and many that exist are

poor quality. Another reason employment is scarce is that it is sometimes difficult to persuade youths to leave their communities. Most have little confidence outside familiar turf partly because of the social setting in which they live. Nevertheless, between 1989 and 1991, 165 youths were placed in summer jobs and another 30 in permanent positions.

The program is operated out of five community centers—three for African American youths and two for Hispanics. Youths enter the program either by dropping in to a center or through outreach by project staff. Each youth sets goals for himself or herself; achievement of these goals is monitored during the youth's participation in the program.

A coalition of church leaders, school personnel, community mental-health workers, drug treatment providers, and others provides consulting or contractual support to the program. Funded with $1,000,000 (a portion of which comes from a grant from the ACYF and the balance from city and State agencies, private foundations, and fund-raising), the program is staffed with 25 workers serving up to 500 youths at any one time.

Tacoma

Safe Streets, in Pierce County, Washington, is a high-risk-youth program that actively recruits gang members and those at risk for membership. Funded by a four-member local coalition including the city of Tacoma, Pierce County, United Way, and Tacoma School District Number Ten, Safe Streets serves as a resource to convene organizational coalitions in nine targeted communities where there are high rates of school dropout and suspension, delinquency, abuse and neglect, and gang membership.

The impetus for the program came from county prosecutors, law enforcement, and community leaders, including representatives of local government and schools, who were concerned about the increase in weapons and drugs in local schools. They concluded that a gang problem was developing in the community. The four-member coalition responded by assigning several focus groups and residents of the targeted communities the responsibility to develop models for a countywide response to high-risk youth. The result was the Safe Streets model, aimed at coordinating resources to assist nine targeted communities to:

- be aware of the problems youths and other community residents were facing;
- train and mobilize citizens to take action;
- foster a dynamic relationship between law enforcement and community residents to improve efforts at prevention and intervention;
- coordinate the services of diverse providers in the community.

Safe Streets is a 25-member consortium including local chapters of the boys' and girls' clubs, YMCA, and Urban League, the Tacoma Metropolitan Park District, Youth for Christ, Pierce County Parks Department, local criminal and juvenile justice agencies, community schools, and other private youth organizations. Consortium members apply for Safe Streets funds to carry out their program plans and then meet monthly to discuss progress and address concerns. The result has been a countywide commitment to improve services in communities with high-risk youths.

The following are included among the program efforts implemented since 1989:

- Several schools in the targeted communities have established after-school programs.
- Youths (two thirds of whom are gang members) are involved in creating video documentaries about the life they experience on the street.
- Some of the targeted communities have opened supervised summer playgrounds.
- A local Hispanic organization is providing a range of services to families with high-risk youths, including parent training and language services.
- Boeing Aircraft employees are serving as mentors and role models for targeted youths.
- The Tacoma Police Department is developing a community-oriented policing program aimed at continuing the rapport established during the implementation phase of the Safe Streets program.

Project Positive, Miami

Project Positive, which has been in existence since 1988, focuses on gang members between the ages of 12 and 25. The program is aimed at reducing gang membership, violence, and drug use by addressing gang members' needs for services. At any one time there are about 50 former gang leaders involved in the program. They represent rival gangs from Dade County and are charged with monitoring gang associates and wannabes. These former gang leaders define the program's action plan according to basic principles of gang group organization (e.g., honor, group decision-making).

Rather than removing gang leaders from the community, which is the traditional law enforcement approach, Positive works with them to make them a positive influence on the gangs to which they once belonged. In that way Positive has the

opportunity to affect not only the leaders, but also the roughly 1,300 other gang members with whom the former leaders come in contact. The aim of the program is not to eliminate the gangs, but to eliminate their negative, especially criminal, behavior.

The program, which is supported directly by the mayor's office although run on a modest budget using a large complement of volunteer staff, is supported by a mentoring program, group counseling, parent counseling, sports activities (in which the mayor himself has reportedly participated), graffiti removal, job training, job development, entrepreneurship, and a 24-hour hotline, among other programs.

Most program participants are referred from the courts. Positive's "Respect Patrol," which operates in the detention center and on the street, identifies active and inactive gang members who meet the program's criteria. Potential candidates who are working or are in school, not "gangbanging," and not involved in drug sales can be diverted into the program. Those who are accepted into the program must show a commitment to adhering to the program's rules and regulations and are monitored by Positive's "Team Leaders." All members are voted in.

Probation and parole authorities assist in the monitoring of drug use in the community and internal mechanisms have been designed by the Positive "team leaders" to ensure that program participants adhere to the group's tenets and obey the law. The Respect Patrol, Positive team leaders who talk with Positive members on the street, also monitors street behavior. Youths in trouble (i.e., who have violated the group's tenets, including getting into trouble with the law) are reprimanded, placed on probation, suspended, or ultimately expelled from the group.

The following are some specific program components:

- A parent's support group, Concerned Active Parents, is targeted at parents of gang members.
- The program has formed partnerships and joint ventures with representatives from the public and private sectors, churches, and other community-based organizations. The Rouse Company initiated the first job training for Positive members and Southern Bell joined Positive in a venture to restore a theater front. Positive members who complete their GEDs participate in apprenticeship programs with local unions.
- Team leaders who were former drug users offer peer substance abuse counseling. The Seymour Gilbert Institute also works with Positive participants with substance problems.

- Positive's Street Intervention Team (SIT) intervenes in crisis situations, speaks at schools on topics related to gangs and drugs, and also teaches youths how to communicate with police officers in a positive manner.

The House of Umoja, Philadelphia

David Fattah has been in the business of intervening in gang members' lives since the late 1960s. For seven years before that he was himself a gang member. Fattah and his wife, Sister Falaka, started the House of Umoja with funding from a Private Industry Council (PIC) performance grant that provided funding contingent on program success. (The current major source of program funding is the city of Philadelphia, which provides money on a *per diem* basis.) A residential program, the House of Umoja was originally conceived to provide a means to remove gang members from the street, involve them in community service activities, educational and job skills development, and ultimately employment. The mission was to bolster the residents' appreciation of themselves and their culture, while keeping them alive and out of jail. At the outset, the employment component of the program involved the local restaurant school, which provided training to house residents. The school was compensated with PIC money, and the Wharton School provided consulting support.

Fattah believes the house has been extremely successful at accomplishing its two primary goals: eliminating gang warfare and helping members achieve their potential—to recognize their options and make good decisions for themselves. Although the program does not maintain statistics on its success, it is evaluated annually by the city of Philadelphia. Fattah is confident in the program's ability to have a lasting impact on the residents' lives and points to the considerable number of graduates who return regularly to report success. (The program has been replicated in a number of sites; most recently, Portland, Oregon, established a House of Umoja.)

The current Umoja program focuses more on youths with drug problems than on gang affiliates. Again the emphasis is on violence reduction and getting the youths jobs once their skills have been developed or improved. In many cases the current participants are also vulnerable to gang involvement, since they are the children and siblings of former gang members.

The Boys' and Girls' Club of El Monte, California

The Boys' and Girls' Club advocates for and sponsors youths who are having problems with school or law enforcement. The Club is a haven where young people, including gang members, can be shielded from danger.

Club staff employ a couple of different methods to facilitate a gang member's breaking with his or her gang. First, one or two gang members are encouraged to participate in scheduled, supervised activities with other non-gang youth. Participation in athletic teams is a key example of this approach: the gang member is kept occupied and involved with people who are not in the gang, and participates in events that are arranged outside of gang territory. Experience suggests that a prerequisite for success is to have a small number of youths who identify themselves as gang members mixed with a larger number of youths who do not.

Another approach, also founded on the belief that it is important to remove the gang member from contact with other members, involves finding employment that entails hours that make it inconvenient to hang out with the gang (e.g., the night shift on weekends). The Club has collaborated successfully with the local police department in locating and monitoring these job placements.

Each program participant has an advocate—a full- or part-time graduate student—assigned to keep him or her out of trouble. These advocates serve many supporting roles, not the least of which is referral to other agencies for specific kinds of services. They are orchestrators who are concerned not with gang membership *per se*, but with the crime that gang membership can engender. As of 1991, the Boys' and Girls' Club had two full-time and two part-time graduate students acting as advocates.

The last several years have seen fewer and fewer gang-related incidents in the El Monte area. The rate of gang-related homicides as of 1991 was reportedly less than one per 100,000. In 1975, the rate was 10 to 12 gang-related homicides per year. Even though the population in the area has increased tremendously, the gang population (and concurrent gang violence) has decreased.

Appendix C
Community Responses to Gangs

Community Youth Gang Services, Los Angeles

Community Youth Gang Services (CYGS) is the "largest non-law enforcement anti-gang program in the country."[1] In operation in Los Angeles since 1981, CYGS works cooperatively with local law enforcement agencies to prevent gang involvement, to intervene in the lives of gang members, and to mobilize citizens to reclaim their communities.

Communities are central in CYGS's Target Area Strategy, which includes these components:

- *Crisis intervention* managed by teams of workers trained in crisis intervention, who are supported with radio communication and a 24-hour hotline;
- *Community mobilization*, which involves the creation of local community teams (residents, churches, and other neighborhood groups), neighborhood watch groups, and Target Area Coordinating Committees that plan anti-gang programs, services, and activities, and coordinate efforts within and across neighborhoods;
- *Prevention*, including work with targeted elementary schools to provide a 15-week course, Career Paths, depicting the negative features of gangs and gang involvement and promoting positive alternatives to at-risk youth;
- *Parent-teacher education* focused on parents and teachers to develop their awareness of gang problems and their ability to prevent gang involvement;
- *Job development* to provide job training and employment opportunities for at-risk youth;
- *Graffiti removal*, which involves local youths in community clean-up campaigns.

[1]Community Youth Gang Services, *General Information Guide*, (Los Angeles: Community Youth Gang Service, 1992).

CYGS workers assist communities to define the level of gang activity and specify a workable process for recovery, which requires community residents to work with an array of service providers, including law enforcement, schools, recreation departments, and local businesses, to recover the community and its youths from gangs.

The prevention arm of CYGS is called Youth 2000, which develops programs to build self-esteem among high-risk youth. Youth 2000 is responsible for the Career Paths Program, which graduates an average of 8,000 fourth- and fifth-graders from the program each year. These graduates are then eligible for the Star Kids Program, which matches adult mentors with the youths to help them cultivate the lessons learned in Career Paths. Both programs are coordinated with and receive cooperation from local schools.

The Star Kids Program includes the following special products and features:

- The *Star Kids Comic Book*, an educational tool for classroom use;
- The Star Quest Tutorial Program for high-risk students;
- Star Kids baseball, football, tennis, and dance programs; and
- Cultural enrichment activities such as concerts, arts, and ethnic celebrations.

Youth 2000 also targets parents for special attention. The Star Parenting Program provides parents with skills to address the complexities of parenting and to aid in preventing children from becoming involved with gangs and drugs.

The Community Reclamation Project, Los Angeles

In early 1989, the Community Reclamation Project was initiated as an anti-gang and anti-drug program in four Los Angeles communities: Carson City, Wilmington, Harbor City, and Lomita. In those areas there are between 60 and 70 gangs, with a diverse membership ranging between 6,000 and 8,000 youths and young adults. While many of the gangs in the target areas are Hispanic, several in Carson City consist of African American members, and some are white. Carson City also has the largest population of Samoans outside of Samoa, and has some Samoan and Philippino gangs.

Originally supported with Federal funds, the Reclamation Project is now funded with a grant from Los Angeles County's Fourth Supervisorial District. The program is designed to establish and support a network of community-based organizations, public agencies, and citizens, so they may address the gang-related activity in each of the targeted communities. Using a combination of community assessment, program development, and program maintenance, the Project's staff

have implemented a multifaceted program: it works with schools to develop programs to steer people away from gang and drug activity; it helps with marketing plans to encourage businesses to return to communities that have reputations for being ravaged by drugs and gangs; it assists local government to see if different pieces of legislation can promote community growth; and it generally serves as a referral source for all of the local community-based agencies dealing with the gang problem.

The Reclamation Project's first step is to assist communities in developing an accurate community description. Project participants use a Gang Assessment Tool developed by project staff to identify the programs available to the community, the demographics of the community, the nature of the gang problem, the crime problem, the businesses that are part of the community, and local law enforcement capabilities, among other things.

The program also documents gangs and their activities. Using a school and community profile, project staff help communities record the activities of local gangs. The profile assists residents and officials in determining gang turf and other regular hangouts. It also helps communities and schools assess whether gangs from outside the immediate area are migrating to the area and the extent of local gang influence.

The project also conducts a variety of training programs. Residents are taught strategies to reclaim their neighborhoods from the gangs and maintain control. As part of the process, they explore ways to form community groups that can get action from public agencies, instead of depending on them.

Other aspects of the program focus on gang youths.

- As part of job placement initiatives, staff have approached youths in the community and provided job skills development seminars "on the street." Members of local businesses have also established workshops for gang members.
- A junior-high-school-level class on the rites of passage from childhood to adulthood has been developed. A 10-week program, with bi-weekly meetings, it serves between 10 and 30 youths at a time. Some of the participants are dropouts, but all are hand picked by project staff. Representatives from the local business community serve as mentors for the class. As part of one "economic rites of passage" lesson, which deals with money management, youths held a car wash to raise money to go out to dinner. One of the mentors offered reduced prices for the class at her restaurant, where restaurant etiquette was also reviewed.

Nineteen agencies in the four target cities are now working together to address the gang and drug problem. There are also several coordinating bodies: three of the four cities have Community Coordinating Councils, with membership that includes residents, business leaders, and school representatives; two cities in the sheriff's jurisdiction have Roundtables, where citizens who are both supportive of the department and representative of the community meet with law enforcement officials; and community-based agencies and drug treatment facilities have a group established to share information, as do the drug treatment facilities.

The activities of the Reclamation Project appear to have been very successful, although they have not been evaluated formally. Some indicators of the Project's success include an increase in the number of neighborhood watches, an increase in some precincts in the number of reported crimes (indicating growing trust in the law enforcement agency), and scholastic improvement—particularly for girls—in the life skills class.

Appendix D
School-Based Programs

"10-Schools" Program

The "10-Schools" Program was started in 1988 in 10 elementary schools in Los Angeles when members of the African American community decided that special efforts were needed to rescue students who were failing in the school system.

Joan Jefferson, director of the program, stated that "10 Schools," which are 10 schools within the existing system that receive additional attention, receives its funding from several different sources: Chapter 1 funds, which are Federal; bilingual education funds from State authorities; "integration" funds, which are also Federal and constitute the largest part of program funding; and district funds. "10 Schools" has a nurse, an attendance counselor, a psychologist, two program coordinators, and several youth relations assistants (who are responsible for gang prevention and act as troubleshooters on gang issues). Program staff divide their time among all the schools.

"10 Schools" is not a gang prevention program. However, since five of its ten institutions are located in gang-infested areas, it works with current and potential gang members. The goal of the program is to improve the academic standing of students in these schools, as measured by standardized test scores. It is hoped that by the end of the funding period (1992) the schools will have reached the fiftieth percentile in national test scores. Some schools have already achieved this goal.

"Hopelessness, negative role models, and poor self-esteem" are viewed by the program's director as the major reasons kids join gangs. The "10 Schools" Program tries to remedy these conditions in several ways. First, the program attempts to help youths develop a sense of pride in their schools (and indirectly themselves) through positive identification. Each school has its own motto and school song. Special pins, T-shirts, and other regalia are often awarded to students for academic excellence or other positive achievements. Gang colors and clothing are not permitted. The program is considering the adoption of school uniforms. The physical environment of the school is also well maintained. Defacement of buildings with graffiti is not permitted; if graffiti goes up one day, it is removed the next.

Second, the program enlists the help of role models from the African American and Hispanic communities as a counterpoint to the negative role models presented by drug dealers and gang members. There is also a Big Brother program

that uses students from the University of Southern California to convince kids that 'success' in the world is possible outside gang membership.

Third, the schools try to involve parents and other members of the community. The level of involvement varies from school to school, but all make an attempt to "build strong communication between the home and the school."

Why '10 Schools' Works

Jefferson said that her program works because it "creates optimum conditions" for youth to succeed. They receive a lot of attention from their teachers and other social workers, and there is an emphasis on building self-esteem. Jefferson conceded that money was the biggest problem, because her program is "very expensive." She believes that ideally the program should start with kindergartners and follow them through grade 12. Jefferson lamented that there were no programs "to pick the kids up at higher grade levels."

Judy Burton of the Martin Luther King Elementary School, one of the "10 Schools" units, offered some insights into that school's success:

> *Experienced staff.* The best teachers are hired and given all the material needed to do a good job. In the three weeks before school starts, they are paid for planning and training time. Teachers work hard to develop teaching plans and activities that will really engage the students' attention. Her school also has a dropout prevention coordinator, an attendance coordinator, and two paid community liaisons who interact with parents.
>
> *One-on-one relationships.* Every student who is at risk of dropping out or joining a gang or who is in some way struggling with serious problems is assigned to an adult who gives the student special attention. This can be a USC student, a prominent African American or Hispanic member of the community, a social worker, or a teacher. It is important that the youths "develop a close and confidential relationship with an adult."

"Cities In Schools"

Bill Milliken founded "Cities In Schools" (CIS) in 1977. After a number of years working with drug-addicted dropouts in Harlem, he decided that it would be better to reach young people before they left school. The basic premise of "Cities In Schools" is that the social services that are available in cities—for drug abuse, teen pregnancy, family relations—should be easily accessible to young people. It is most logical to locate these services in public schools. CIS is the nation's largest non-profit dropout prevention organization. It operates in 22 states, serving 38,000 students and their families.

Sarah DeCamp, who works in the program's Alexandria, Virginia, headquarters, said that the underlying philosophy is that "programs don't change people, relationships do." Students who are considered at special risk of dropping out receive intensive case management by a social worker, counselor, or other professional. Each student is also assigned to a "family" that includes the professional worker and other students in the program. The ratio of students to adults is set at about 10:1.

CIS relies on the human resources available in a given locality. The program asks government and private organizations to "reposition" employees to schools for as much time as possible. Ideally, the person would be available on a full-time basis, but the program accepts part-time commitments.

Gang Programming in Los Angeles

The CIS program in the Long Beach area started at Marshall Junior High School as a pilot program. That program has ended, but three others have been established. The fact that the programs deal with gangs is a function of the environment: Since Long Beach is a "gang-infested area," most CIS students tend to be gang members.

Melanie Alexander, described by the program's regional director for the southwest, as a "90-pound white girl," has been successful in preventing kids from joining gangs and in getting current members to stop "gang banging" (i.e., criminal or violent activity such as robbery, drive-bys, killings, etc.). She works out of Jordan High School and Hamilton Middle School.

According to Alexander, the superintendent of schools chooses the sites for CIS programs. Before a student is accepted into CIS, she or he is interviewed by Alexander and other members of the counseling/treatment team. Alexander said that students who profess a strong hatred of their mothers are not accepted into CIS. This litmus test is also used by gangs, who believe that a person who is not loyal to his or her mother will not be loyal to the gang or anyone else. The team probes the students carefully to evaluate whether the anger, hostility, and rage exhibited toward the youth's mother is greater than normal range.

Students are not forced to renounce gang membership in order to join CIS, although they must not participate in delinquent gang behavior. Alexander said that the program would have no credibility if it had the requirement to renounce gangs. Gang membership is a cultural phenomenon, she said, and for many of these young people it is a replacement for family relationships. In addition, the relatives of many students—older siblings, uncles, and parents—are former gang members. In any case, getting out of a gang ("jumping out") is dangerous and can prove fatal.

CIS provides intensive case management to its students. The counseling team works closely with each student and interacts with others in the student's life: teachers, family members, probation officers, medical personnel, etc. It is very important, Alexander said, to involve the family "without crossing the line" and interfering. Notwithstanding this need for caution, Alexander said that there have been times when she has physically dragged a student out of bed to get the student to school or to an appointment.

CIS believes in "healing the person inside first," and working on educational goals second. "We do not offer band-aids"; instead, CIS professionals show students that they are loved and that CIS staff will do everything in their power to help. CIS is very much "like a family" to the students because it offers them love and makes them feel important. But students are also expected to take responsibility. Some are engaged as peer counselors and are often called on to convince other students not to join gangs. (Alexander said that even older gang members will admit in private that they wish they had never joined.)

CIS tells its students that some of the skills and qualities they learn in the gang are valuable, and can be used constructively.

A 'Typical' CIS Student. A 16-year-old black male who joined the program was a "lippy, hard, obnoxious character." He immediately tried to intimidate Alexander physically and psychologically. He told her that she didn't really care, that her work with CIS was "just a job." Slowly, she and the other members of the CIS program began to break down the barriers with this student. First they talked to him about his family, his home life, and his relationship with the gang. They also talked to him about accountability and responsibility. "We showed him that we cared, and that we would care about him no matter what. We also told him that he would be held accountable for his actions."

The student was using drugs, so CIS arranged for substance abuse counseling. Eventually he agreed to stop gang banging. His GPA went from .63 to 2.5 and he graduated from high school. He is now taking courses at a local college; he wants to be a counselor or probation officer.

CIS Personnel and Funding. CIS treatment professionals come from the community, both the public and private sectors. Some CIS counselors are graduate students from the University of Long Beach who do 15-hour per week internships as tutors to CIS students. McDonnell-Douglas has contributed $25,000 to the program, and there have been donations from Burger King and other companies.

Success Rate. "We don't save them all; we lose a lot of kids," Alexander stated. In her opinion the program's success rate is about 80 percent. The program works because "We have a lot of dedicated people who work with these kids, who listen to them, who believe [the kids'] lives are important, who care. It's an *empowerment*. We empower kids, but we tell them they have to follow the laws of the land, and that if they continue [their gang activities] they'll be locked up."

The Paramount School

Tony Ostos has been working with the city of Paramount, California, to prevent gang involvement for about 10 years. The city funds a gang prevention program, which Ostos manages. Four full-time staff members and materials are covered by a budget of approximately $215,000 a year. About $25,000 of this budget goes to a boxing program that is loosely affiliated with the gang prevention program.

The gang prevention program has three levels: a 15-week program for fifth graders; an eight-week program for seventh graders (considered a follow-up to the fifth-grade program); and in 1991, an eight-week program was piloted in the second grade. The program aims to raise awareness about gangs and to present youths with role models. The second- and fifth-grade programs are conducted in a classroom setting; the seventh-grade program is conducted in an auditorium.

In the fifth grade, the program goes into each classroom once a week, providing 15 detailed lessons about gangs. As part of their message, presenters try to communicate that to join a gang means essentially giving up individual freedom—the gang tells you what to do, who to talk to, where to go. You cannot make decisions on your own. Furthermore, as a gang member, you are guaranteed that the police are going to stop you frequently.

Program staff do not believe in bringing ex-gang members to the elementary schools. Younger children tend to be confused by the presence of gang members and to see them as heroes. Even in the higher level grades the program has to be careful about how ex-gang members are presented: students may be attracted to the youths who come from the Youth Authority. Speakers try to make clear that ex-gang members should not be anybody's heroes; they are murderers.

Outside speakers are invited to address the students, particularly in the seventh-grade component. Speakers from the California Youth Authority (Young Adults Against Crime) talk about why they believe youths should not join gangs; representatives from local colleges promote higher education; and representatives from private industry talk about job opportunities. All speakers serve as role models who communicate the message, "If you join a gang you're limiting your opportunities." The central message is to encourage the youths to stay in school.

The program also includes a parent awareness component. Meetings are held at schools, recreation sites or community facilities for any parent who is interested in attending. The goal is twofold: to increase parents' awareness about the gang problem and the dangers that children face if they join a gang and to provide strategies to keep youths out of gangs or encourage them to get out. The parent programs are effective for those parents who actually attend. However, those attending constitute a very small number of all parents. It takes many parents a long while before they appreciate the situation. Occasionally parents will seek help, but generally Ostos and staff have had to coax parents to attend awareness

evenings. Ostos would like to see more initiative on the part of parents, but he has observed that although they are concerned, parents hesitate to take action.

All events are conducted in English and Spanish to ensure that people understand. All staff are Hispanic, have stayed out of gangs, and graduated from college. Staff talk the youths' language. They also try to remain visible in the community by circulating around town. They do not just appear in the classroom as teachers. The program recently added a family counselor to work with youths who are more prone to gang activity or have a history of gang membership in their families.

Because the program is housed in the recreation department, it has strong ties to other recreation programs. Youths are encouraged to take advantage of these programs and to drop in on staff, who have an open-door policy.

According to feedback from participants, the effort seems to be effective. Students report that the classes help them to decide to stay out of gangs or to pull themselves out if they are already in. One explanation for the program's success is that youths are offered viable alternatives to gang membership.

The gang prevention program does not exist to tackle society's ills. Staff recognize the causes of gang participation but know that they won't change them. Ostos wants youths to know that they are responsible for their own behavior and that they will suffer the consequences of negative behavior toward their family and community.

Appendix E
Community- and Problem-Oriented Policing

Following is a summary based on an interview with David Kennedy of the Case Studies Program at Harvard University's John F. Kennedy School of Government. Kennedy has visited law enforcement offices around the country to study community policing, prepared several case studies on the topic, and co-authored *Beyond 911: A New Era for Policing*, which focuses on community policing.

Community- and Problem-Oriented Policing

Community- and problem-oriented policing strategies focus on helping local law enforcement officials become more responsive to community needs. Foot patrol has become a metaphor for community-oriented policing, which actually assumes a number of forms such as bicycle or motorcycle patrols. But regardless of the form, community-oriented policing means that 1) the same police officers are always assigned to the same geographic area; 2) it is therefore easier to sort out the "bad guys" from the "good guys" in the community; and 3) it is possible to develop a sense of the community's needs as well as the resources that should or could be called on to fill those needs.

Often a police department will start by making a commitment to community-oriented policing and, if it sustains its commitment, end with problem-oriented policing. Although the two strategies are philosophically different, it is almost inevitable that they merge. As departments invest in community-oriented policing and officers make themselves more available to the communities they serve, thereby by building relationships with local leaders and overcoming political barriers, officers are increasingly asked to assist with solving community problems. When this happens, it is not uncommon for the alliance between the police and citizens to fall apart: law enforcement is looking for the community to support traditional police work, but the community wants help solving its problems. Moreover, it is typical that the problems the community perceives as critical to address (e.g., prostitution, vandalism, graffiti) are ones the police have traditionally considered minor. Departments that remain committed usually do so because they consider that addressing the community's concerns has a number of benefits:

- It keeps the community as a partner in crime prevention and control.

- Petty crimes and problems are often related to bigger concerns in the neighborhood.
- Law enforcement is basically a service-oriented profession and problem solving solidifies the commitment to community service.

As soon as a police department adopts the mission of problem solving, it quickly becomes apparent that arrest is not the best solution for a majority of the requests for law enforcement assistance. In the long run, public partnerships develop in which a part of the job of law enforcement is to identify problems and refer citizens to services.

Some efforts at developing community policing struggle and may perish because the demands for community policing and rapid response policing are not compatible. Generally it is difficult to run rapid response and community policing strategies out of the same department. Because only 2 percent of the caseload in most departments requires a rapid response, one solution has been to commit to a community-oriented strategy that also has a rapid response capability. Generally that means that department management is based locally, with smaller, more familiar turf to oversee. The typical translation is to divide the department into beats with a supervisor who monitors activities in his or her area and makes job assignments accordingly. The officer in charge also is able to prioritize the requests for service in order to provide the greatest benefit to the community.

For additional information, see:

Perspectives on Policing, Vols. 1-13, a series of articles on community- and problem-oriented policing prepared by an array of scholars and produced by the National Institute of Justice (U.S. Department of Justice) and the Program in Criminal Justice Policy and Management, John F. Kennedy School of Government, Harvard University.

Jerome H. Skolnick and David H. Bayley, *Community Policing: Issues and Practices Around the World* (Washington, D.C.: National Institute of Justice, May 1988).

Malcolm K. Sparrow, Mark Moore, and David M. Kennedy, *Beyond 911: A New Era for Policing* (New York: Basic Books, 1990).

Appendix F: Future Research Topics

CONTACT	RESEARCH NEEDS IDENTIFIED
Noreen Blonien Assistant Director California Department of Corrections	The real need for information pertains to the street gangs and what works in terms of dealing with them.
William Cady Deputy Chief Oxnard Police Department Oxnard, California	We need more program evaluation and information on what others around the country are doing, especially the innovative things that small police departments (which are in the majority) are doing to address the gang problem.
Ko-lin Chin, Ph.D. New York City Criminal Justice Agency	It is crucial to gather information from a full set of actors, including gang members, victims, community leaders, and law enforcement to shape future research projects and program development. Topics studied should include the relationship between gangs and gang violence, the relationship between gangs and drug trafficking, the history of the tongs and their roles in the United States.

CONTACT	RESEARCH NEEDS IDENTIFIED
Commander Robert Dart Chicago Police Department Gang Crime Section	There needs to be a national conference to exchange ideas and information that involves all persons who deal with the gang problem. In particular, these questions need to be addressed: • Why has there been a proliferation of gang-related shootings? • Why are gang problems increasing?
Jeffrey Fagan, Ph.D. School of Criminal Justice Rutgers University Newark, New Jersey	Research priorities: • How do youths get out of gangs? • How do gang members compare with non-gang members?
David Fattah Co-founder of the House of Umoja Director of Community Outreach Philadelphia, Pennsylvania	• Look at the reasons associated with the shortened life span of African-American males. • Study the impact of racism on the development and growth of gangs (including racist gangs such as the skinheads). Does having access to the political structure deter the development of gangs? • Study gangs in their contexts in order to understand the contextual variables (i.e., having to do with community structure) that affect gang formation and proliferation.

CONTACT	RESEARCH NEEDS IDENTIFIED
Michael Genelin Chief, Hard-Core Gang Unit Los Angeles District Attorney's Office	We need to know more about the role that schools can play in stopping the gang process.
Clay Hollopeter Boys' and Girls' Club El Monte, California	Identifying programs that help keep youths in school and invested in learning is vital.
Ronald Huff, Ph.D. Ohio State University Columbus, Ohio	Qualitative ethnographic studies of gangs and drug distribution are critical.
David Huizinga, Ph.D. Institute for Behavioral Sciences Denver, Colorado	Research should focus on factors associated with the spread and formation of gangs as well as those that increase and decrease participation.

CONTACT	RESEARCH NEEDS IDENTIFIED
Lonnie Jackson Maclaren School Woodburn, Oregon	Determining whether community improvement (parenting, recreation, job skills development, removal of graffiti) has a deterrent effect on gang involvement is critical.
Malcolm Klein, Ph.D. Social Science Research Institute University of Southern California Los Angeles, California	The top priority is to evaluate programs and to know what does and does not work. We must evaluate existing programs before designing new ones.
Joyce E. Madrid-Bustos Administrative Assistant to the Deputy Secretary of Operations and Programs New Mexico Corrections Department	• Development of staff training models. • Development of an information system to track and monitor gang members. • Research to assist in predicting who is most likely to join a gang and to assess the relationship between careers in crime and gang membership.
Wes McBride Los Angeles County Sheriff's Office	Research on the current status of gangs is desperately needed— a true sociological study of why gangs exist. Why is a gang member the way he or she is? It is important to have a nationwide, in-depth study of gangs that doesn't necessarily assume they all come from the same mold.

CONTACT	RESEARCH NEEDS IDENTIFIED
Joan Moore, Ph.D. University of Wisconsin Department of Sociology Milwaukee, Wisconsin	There is a great need for more studies of black gangs. Research should emphasize ethnographic methods, which enable the researcher to understand the gangs in terms of the lives of their members and communities. Program evaluation is valuable, since it serves to "demythify" programs and clears the way for the next step.
Tony Ostos Paramount Counseling Services Paramount, California	Research priorities should focus on developing appropriate ways to work with existing gang members. In addition, research should be focused on how schools can be made more effective in working with youths who are prone to gang involvement, in particular minority youths.
Natalie Salazar Executive Director Community Reclamation Project Lomita, California	The highest priority should be on researching what can work in neighborhoods to get people active in not allowing gangs to take over—to give people the will and courage to do something about the situation.

CONTACT	RESEARCH NEEDS IDENTIFIED
Irving Spergel, Ph.D. School of Social Service Administration University of Chicago	• Quantitative and ethnographic research is needed. • National assessments of the problems and solutions. • Development of baseline data on the nature and extent of the gang problems in each community where there is a known problem. • Who are gang youths? What distinguishes those who will be shooters from those who will not? What is the psychology of risk-taking? • Program evaluation—which will also help answer the question about who these youths are.
Barbara Wade Executive Director Positive Inc. Miami, Florida	• Study of the relationship between law enforcement and gangs, including the development of models for use by law enforcement agencies (emphasis on the application of community policing in gang neighborhoods). • Study of how gangs evolve in communities and how that evolution relates to the social structure and the economy of the neighborhood.

CONTACT	RESEARCH NEEDS IDENTIFIED
Ron Zuniga Assistant Director Inspections and Investigations Arizona Department of Corrections	What is needed to operate a criminal enterprise in prison? It would be important to ask current and former inmates about the mechanisms as well as corrections officers. In addition there needs to be research identifying the sociological correlates of gang formation.

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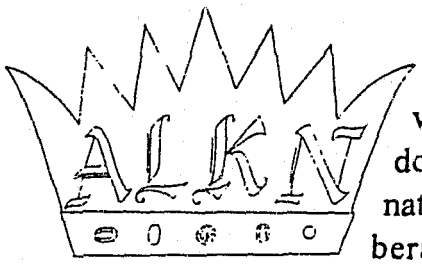
THE BOSTON PHOENIX • SECTION ONE • NOVEMBER 26, 1993

LATIN MASS

The Latin Kings come to Boston, preaching community service and ethnic pride — and inspiring fear. From Chicago to Springfield, members of the Kings have been implicated in drug dealing, gun-running, and murder. Can they rise above their violent past?

by TIM SANDLER



IT'S 7 P.M. ON A STORMY WEDNESDAY AT MADISON Park High School, and Savior, the Roxbury-chapter vice-president of the Latin Kings, is promoting the doctrine of the Almighty Latin King Nation — a nationwide gang, thousands deep, whose members, police say, are violent drug-pumpers. They recently began recruiting in Greater Boston.

Savior, however, is telling the 30 Latin Kings and Queens (as the women are known) what he's told police and youth-service leaders across the region: the Latin Kings are nothing more than a benevolent Latino social organization intent on promoting community service and cultural identity.

At this first organized meeting with street workers from Boston Community Centers, Savior, solidly built and serious-minded, wants to allay fears about nascent Latin King chapters, which are surfacing from Roxbury and Chelsea to Burlington and Waltham. The Latin Kings are there to support members, there to encourage, there to help, he says. He repeats the word "family" time and again.

But for the past several months, as the group's numbers have escalated (one Latin King estimates the Boston-area membership to be approaching 100), the FBI and local police have been sharing damning intelligence. In police files: details of a murder last year ordered and carried out by Latin King members in Springfield; news clips on the casualties of a bloody war between Latin Kings and members of a rival gang, Los Sólidos, in Connecticut; drug- and arms-trafficking charges against members of the group's "supergang" (to use an FBI agent's term) — tens of thousands in number — in Chicago.

Law-enforcement sources say they're used to dealing with gang-related crimes. But what's unnerving about the Latin Kings, they say, beyond their sheer numbers nationwide, is how well organized they appear to be. Their rituals, secrecy, and bureaucratic structure, police say, rival those of mainstream fraternal organizations like the Knights of Columbus.

The group's confidential national charter, a copy of which was obtained by the *Phoenix*, is testimony to the organization's businesslike orientation. Included in the 57-page document are prayers, sacred colors (black and gold), a funeral-arrangement form, a history of the organization, general rules for all members, a description of the organization's chain of command, a salute (which means "I die for you"), a constitution, an explanation of the gang's emblem (a five-pointed crown), and designated holidays.

Would-be members are investigated before they're admitted. New members are required to sign the Almighty Latin King Creed, which swears them to "uphold with my heart, body and mind all of the rules, laws and directives governed by the Great Constitution of the Executive Crown" and to "relinquish all ties" to other organizations. All members are expected to pay monthly dues of $20 and follow a 10-point Executive Code of Forbiddance (page 18). The code, among other things, prohibits lusting after another member's spouse or taking any drug that is "unhealthy to the mind, body and character of oneself."

Chelsea Police Chief Edward Flynn, who first spotted Latin King colors in his city last month, says the group is like no other he's seen.

"What's remarkable about the Latin Kings is they combine some potent ingredients in a very dangerous and seductive combination — ethnic pride combined with the need for self-esteem. And what they basically attempt to do is recruit people in ways that are more reminiscent of a cult than a conventional turf-oriented gang.

"By combining the needs of the personal, ethnic, and religious . . . you're going to enlist a lot of disaffected, dysfunctional, and needful youth into your cause. I guess it was just a matter of time in America that we united crime and cults in one organization, and that's what's happened here."

Flynn's department is implementing a three-pronged strategy — prevention, intervention, and suppression — to keep the Latin Kings from rooting in Chelsea, where Latinos make up 47 percent of city residents.

Because of the reputation that has preceded the Kings' arrival in Greater Boston, most authorities have received Savior's pitch with considerable skepticism. But the Latin Kings say they're intent on legitimizing the group in the Boston area, and they've gone to great lengths to clear the group's name. A promotional flier recently posted in

See KINGS, page 18

GANG SALUTE: "We can go two ways," says Joker (right). "We can go the positive way — with people's help — or we can go the negative way." Above: the Latin Kings' insignia.

PHOTO BY ERIC ANTONIOU

Kings

Continued from page 17

Waltham, for instance, reads, in part:

THE LATIN KINGS STAND FOR PEACE NOT VIOLENCE.

The Latin Kings are an organization developed to enhance the Latin community. The Latin Kings are not a gang but a family that believes in peace and positive energy to help the Latin people grow to their potential and become a better race.

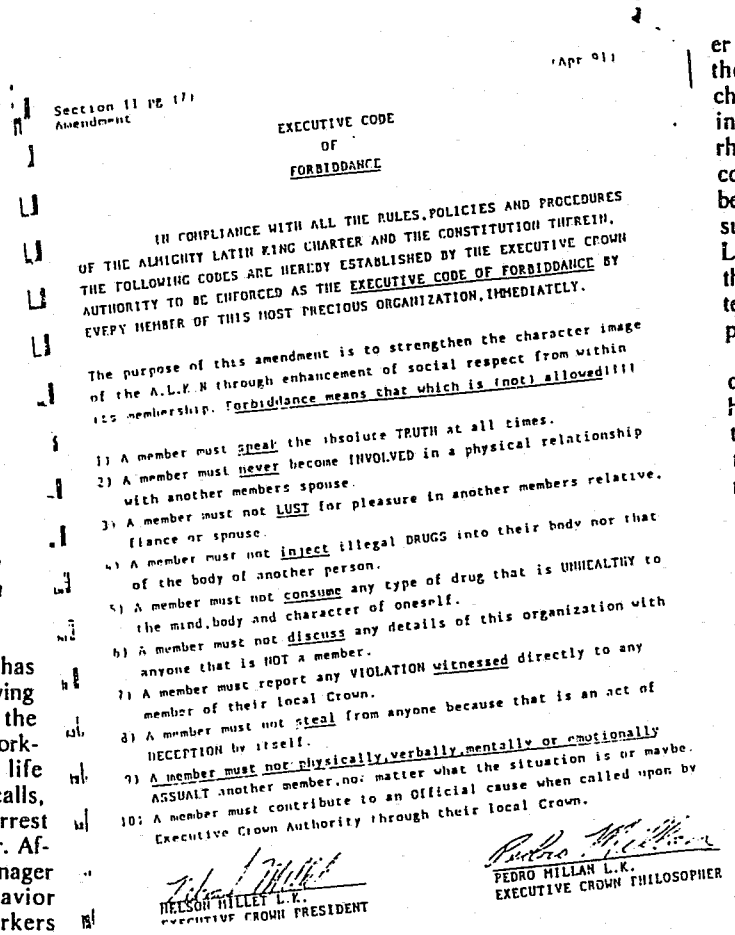
The Latin Kings do not advocate drugs or the use of drugs or anything illegal. Instead, they encourage education, community service and unity among the Latin race.

The gathering at Madison Park has another purpose as well. Savior's trying to persuade his members to trust the Boston Community Centers street workers, who he says helped turn his life around. There was a time, he recalls, when he had seven outstanding arrest warrants, two for attempted murder. After talking with Tracy Litthcut, manager of the street-worker program, Savior turned himself in. The street workers guided and supported him through the legal system, he says. He ended up serving no jail time.

But there was another catalyst for putting his gang activities behind him, he says, lowering his raspy voice: "I decided after my son passed away that I needed to get my life together."

Savior's testimony strikes a chord in the group. Many of them — some in college, some unemployed, some from broken homes, some with criminal records and past drug problems — could tell similar stories. Savior tugs at a thread in them that reaches beyond heritage.

When he's finished, Litthcut ambles to the middle of the room. "I believe what [Savior] and Joker [the Roxbury-chapter president, who's absent tonight] are saying," he says in street-wise tones. And Litthcut assures those in the group that the street workers will help them with jobs, health care, and legal matters. "But let me tell you," he warns. "There's a lot of talk about you going around the city. People are watching you. All types of people. If you stop being a family and start with the gang thing, the pressure is going to come down on you. I want you all to focus on the right thing. People are watching you."



Apr 91

Section 11 PE 171
Amendment

EXECUTIVE CODE
OF
FORBIDDANCE

IN COMPLIANCE WITH ALL THE RULES, POLICIES AND PROCEDURES OF THE ALMIGHTY LATIN KING CHARTER AND THE CONSTITUTION THEREIN, THE FOLLOWING CODES ARE HEREBY ESTABLISHED BY THE EXECUTIVE CROWN AUTHORITY TO BE ENFORCED AS THE EXECUTIVE CODE OF FORBIDDANCE BY EVERY MEMBER OF THIS MOST PRECIOUS ORGANIZATION, IMMEDIATELY.

The purpose of this amendment is to strengthen the character image of the A.L.K.N through enhancement of social respect from within its membership. Forbiddance means that which is (not) allowed!!!!

1) A member must speak the absolute TRUTH at all times.
2) A member must never become INVOLVED in a physical relationship with another members spouse.
3) A member must not LUST for pleasure in another members relative, fiance or spouse.
4) A member must not inject illegal DRUGS into their body nor that of the body of another person.
5) A member must not consume any type of drug that is UNHEALTHY to the mind, body and character of oneself.
6) A member must not discuss any details of this organization with anyone that is NOT a member.
7) A member must report any VIOLATION witnessed directly to any member of their local Crown.
8) A member must not steal from anyone because that is an act of DECEPTION by itself.
9) A member must not physically, verbally, mentally or emotionally ASSAULT another member, no matter what the situation is or maybe.
10) A member must contribute to an Official cause when called upon by Executive Crown Authority through their local Crown.

NELSON HILLEL L.K.
EXECUTIVE CROWN PRESIDENT

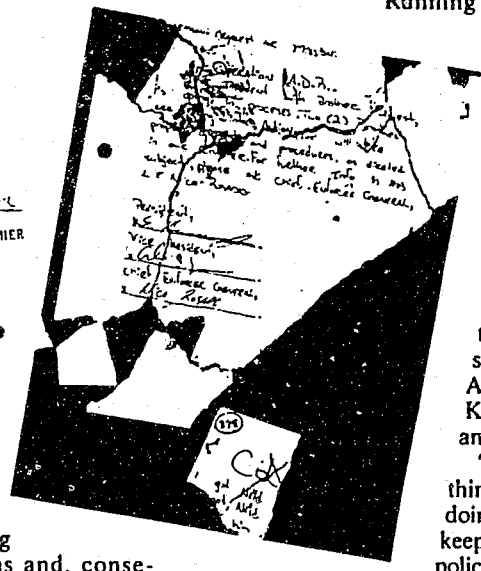
PEDRO HILLAN L.K.
EXECUTIVE CROWN PHILOSOPHER

THE KINGS' Executive Code of Forbiddance (above) and the death warrant against "Nardy" Esteras, code-named "Operation ADR," for *Amor de Rey* — "Love of the King." The warrant says in part: "Two (2) Brothers are going into Action, and will take proper demands and procedures."

Like Litthcut, street worker Jim MacGillivray believes the Latin Kings deserve a chance to prove their good intentions are more than rhetoric. Cooperation, not confrontation, he says, may be the best approach to ensure that the Boston-area Latin Kings don't move in the direction that their sister chapters have in other parts of the country.

"If we are smart as a society of adults, we would help them do the right thing," he says. "And I think they want to do the right thing. We should encourage that."

But after three years on the streets, MacGillivray has no illusions about the realities facing urban youths and, consequently, the challenges ahead for the Latin Kings. "No matter how well-intended they are, they are still young minority people in an urban environment, and at best, it's difficult to stay out of trouble," he says. "You don't have to be in a gang to get in trouble. And law enforcement is going to hype up charges against them. And once they get into trouble, they'll say, 'See, they're already at it.' "



Streetfighting men

Just how difficult it will be for the Latin Kings not to succumb to the way of the streets was apparent last week, when they called on members from allied chapters for a brawl with an established Latino gang in Chelsea known as the Running Rebels.

Thinking about the incident still infuriates Joker, who sanctioned the fight. (Each Latin King who spoke for the purpose of this article did so on condition that his street name, or no name, be used.) Standing on a Roxbury street corner with a few other Latin Kings, one suffering from a badly swollen jaw after being attacked with a bottle, Joker insists that unresponsive authorities gave the group no choice but to take matters into its own hands.

The way he tells it, a couple of days before the incident a Latin Queen was jumped and punched by members of the Running Rebels. Group members, who had in the preceding weeks started talking with Chelsea authorities, went to police and the community organization ROCA (Reach Out to Chelsea Adolescents) and asked them to do something. Nothing was done, Joker says. The morning of the fight, another group member, this time a male, was jumped by several Running Rebels. Again, says Joker, the Latin Kings went to the authorities and got no action.

"We tried to do the right thing," Joker says. "But we're doing all the footwork as far as keeping the peace, and they [the police] are doing nothing. We're not looking for trouble from nobody. We're worried about our family, not nobody else. We really, sincerely want to do something good, but the gang members are fucking with us and we've got to defend ourselves. If the police don't understand that, they can kiss my ass."

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Kings

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Chief Flynn doesn't dispute Joker's account of the events leading up to the skirmish, but says the police encouraged the Kings to identify the attackers and file police reports. Neither suggestion was heeded, he says.

Several hours after the second Latin King was jumped, Joker says, members gathered to plan their next move.

"The brothers got together and said enough is enough, and we're not going to take it no more," he says. After agreeing that no weapons would be used, dozens of Latin Kings from Roxbury, Burlington, and Waltham joined their Chelsea affiliates, then found the Running Rebels. "And our brothers started beating the fuck out of them," Joker recalls. When police finally broke up the brawl, they charged seven Latin Kings and one Running Rebel with unlawful assembly and disorderly conduct. Savior was among those arrested.

The incident in Chelsea has embittered the Latin Kings, who say they're frustrated by the local authorities' relentlessly discrediting their true intentions.

"They're trying as hard as they can for us to be a gang," Joker says. "They want us to be a gang. We're reaching out, and all they do is cut the rope and shut the door."

And if it's a gang they want, Joker says, the police don't know what they're in for. "The police have this image that they can stop us. We got a lot of motherfuckers, and if it came down to it, it would take the National Guard to control us. We could call brothers in Chicago, Connecticut, or Springfield and they would send people. But we don't want it to get to that. We're trying to avoid that. They [the police] want to look at the old Latin Kings. We want to go back to the beginning, where we were a social organization."

AP/WIDE WORLD

A LATIN KING is shot to death in New Britain, Connecticut, on November 4.

Bill Stewart, an assistant chief probation officer at Dorchester District Court, who's been keeping tabs on the Latin Kings since they emerged in Boston, doesn't buy the Kings' advance billing. He's seen the likes of Darryl "God" Whiting — the drug-dealing overlord who ruled city gang operations until his conviction on 23 counts of racketeering, conspiracy, cocaine-dealing, and money-laundering ("Mean Streets," News, July 26, 1991) — pass himself off as an entrepreneurial do-gooder who fed the poor and helped aspiring young musicians. The Latin Kings evoke in Stewart the same skepticism "God" did.

"What's the Spanish word for Eddie Haskel?" he asks wryly, referring to the disingenuous *Leave It to Beaver* character.

Reborn behind bars

There was a time when the Almighty Latin King Nation was indeed only a social organization. Founded in 1940 by a small group of Hispanics (mainly Puerto Ricans) in the Chicago area, it was a response to discrimination that came with being one of the country's "new minorities." The idea was to preserve the Latino culture and enhance members' social and economic status. To protect members from race-related attacks, offshoot strike-back coalitions were created.

The Latin Kings faded from view as the decades passed, but the group was reborn in Connecticut's Somers Correctional Institute, a maximum-security prison, in early 1989. Inmates Pedro Millan and Nelson Millet, who then constituted the group's ruling authority, known as the Supreme Crown, invoked the cultural and social goals of the original organization when they drafted the Latin King charter, which is now reportedly being revised.

Prominent in the Latin King charter are the Five Points of the Crown: love, respect, sacrifice, honor, and obedience. Though much of what is said in the description of the five points is noble enough, there is room for less-than-exalted interpretations. Take, for instance, the description of honor, which, in part, reads: "There is no compromise whatsoever when it comes to your honor. One must never feel any pity for those who betray our Almighty Latin King Nation or its membership."

Whereas much of the Latin Kings' fundamental beliefs are formulated and interpreted by each chapter's chief of philosophy, punishment of members and non-members is the jurisdiction of a chapter's chief enforcement general. The charter incorporates a rigid code of conduct, and the response to violations can be brutal. At the chief enforcement general's disposal is the option of "termination." Termination has a number of meanings, including: a "beat down" by designated members, who punch and kick as the victim crouches; stabbing or shanking; and shooting.

It was only a few months after the Latin Kings spread to Springfield, Massachusetts, that the last option was exercised. It was September 1992, and a 16-year-old Hispanic

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youth named Arnaldo "Nardy" Esteras Perez supposedly slandered a Latin King as he walked by. According to court records, Esteras sneered: "You're a Latin King punk. . . . Put those motherfucking [black and gold gang] beads away."

Esteras and the Latin King, 17-year-old Ismael Cintron, had had previous arguments about drug-dealing turf, it was later revealed in court. Insulting the Latin King colors, though, was evidently the last straw, and Cintron reported the slight to his colleagues. They decided a termination was in order, and drew up the necessary paperwork. Included among the documents was what prosecutors later described as a death warrant (page 18). Signed by the chapter president, vice-president, and chief enforcement general, the paper states that "Two (2) Brothers are going into Action, and will take proper demands and procedures, as directed in our Charter."

After reciting in unison a Latin King prayer, Cintron and two others (one a juvenile who drove) set out for Esteras. When it was all over, Esteras had been killed by two bullets to the torso and several to the head. Six Latin Kings were convicted for their roles in the murder. One was a student at UMass/Amherst.

The attack came only five months after another "termination," in Meriden, Connecticut. On April 26, 1992, about 50 Latin Kings, some wearing military fatigues, descended on a courtyard in a Meriden housing complex. Equipped with guns, bats, and knives, their aim was to bring a wayward chapter into line. The attack was reportedly ordered by Latin King co-founder Millan — who, officials say, was disturbed by reports that the Meriden chapter was not abiding by charter rules. (For security reasons, Millan has since been transferred to a federal prison in Connecticut.) Three members of the insubordinate chapter were seriously injured.

The incident was not isolated, authorities say. Over the past few years, Latin King membership has grown exponentially both within and outside the prison system; estimates of Latin King members in Connecticut range from 5000 to 8000. And with the rising numbers, authorities say, has come increasing violence. Members are accused of threatening state police. AK-47 and Uzi assault rifles have been confiscated from their homes. And incarcerated Latin Kings are accused of killing an inmate in the Somers Correctional Institute by setting him on fire.

The Latin Kings' reputation has also earned them enemies outside of law enforcement. Over the past two months, members of the rival Latino gang Los Sólidos have been implicated in four murders of Latin King members.

'A lot of love'

Beatrice Codianni-Robles, a 45-year-old Latin King board member from Connecticut who holds the title of director of program and charter goals, acknowledges a past propensity toward violence. She insists, though, that the Latin Kings are consciously attempting to purge that element. "We've done some things in the past to earn this negative reputation, but we've got to keep going and doing more positive things to be totally accepted. We're trying to come full circle," she says.

Codianni-Robles, a field worker for the Black Panthers in the 1960s, joined the Latin Kings a couple of years ago after she saw a dramatic change take place in her 21-year-old son. He had been addicted to drugs for years and nothing, she says, could break his habit. The Latin Kings, however, helped instill in him the support and moral code he needed to rise above his addiction, she says.

"I saw a lot of potential, a lot of love," she recalls. "I saw kids who weren't motivated to do anything motivated to do something positive in their lives."

Codianni-Robles began a prison correspondence with co-founder Pedro Millan and suggested that the Latin Kings embark on a public-image campaign, beginning with literacy and high-school classes for its members and AIDS-awareness programs.

"We've made changes," she says. "If you're in school, it's mandatory to stay in school. If not, it's mandatory to go back and at least get your GED. Each chapter has to perform some kind of community service, like cleaning up a park. We have mandatory HIV workshops, because that's hit the Latin community real hard. We collect canned goods at chapter meetings and have a food bank for members and their immediate families.

"You never read about the good we do. We've got to try to overcome the negative stereotypes people have about us. We're a very positive and progressive organization."

With that mission, and a rule requiring members to start new chapters in cities they move to, the Latin Kings seem well on their way to reaching their goal of 100,000 members by the year 2000. Geography seems to matter little; Latin King franchises are becoming as common in heartland states like Iowa and Kansas as they are in metropolitan areas such as Miami and New York.

"We're like fungus," says the Roxbury-chapter counsel to the president, who began the first Latin Kings chapter in Greater Boston after moving from Connecticut a little more than a year ago. "We keep growing, and there's nothing the police or anybody else can do about it."

And in keeping with their benign mission, says the counsel (who requested anonymity), the Latin Kings have done what authorities have been unable to: forge a harmonious coexistence with the city's other Hispanic posses. His group, he says, has already made a "peace treaty" with the Mission Hill-based Goya Boys, is looking for an armistice with the South End Plaza Boys, and is on friendly terms with the once-notorious X-Men, out of Jamaica Plain.

But what separates the Latin Kings from the likes of the Goyas, he says, is their mission. Disparaging the other groups' drug dealing and violent behavior, he says: "They don't have a purpose; they're just there to be. Not like us."

Though police fear that the concord between the groups may ultimately lead to one unified, and perhaps unmanageably dangerous, Latino gang, there are no clear signs that the groups' leaders have the inclination, temperament, or skills to pull off such a merger. And, at least according to Joker, that sort of anxious speculation has little foundation — particularly, he says, when the Boston-area Latin Kings themselves are uncertain about whether they can accomplish their mission.

"We want to work with the people to keep out of trouble," he says. "We can go two ways. We can go the positive way — with people's help — or we can go the negative way." ❑

V.

WORKING WITH THE MEDIA

DR 7-107. Trial Publicity

(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

(1) Information contained in a public record.

(2) That the investigation is in progress.

(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

(5) A warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(3) The existence of or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.

(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(5) The identity, testimony, or credibility of a prospective witness.

(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR 7-107(B) does not preclude a lawyer during such period from announcing:

(1) The name, age, residence, occupation, and family status of the accused.

(2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.

(3) A request for assistance in obtaining evidence.

(4) The identity of the victim of the crime.

(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.

(6) The identity of investigating and arresting officers or agencies and the length of the investigation.

(7) At the time of the seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

(8) The nature, substance, or text of the charge.

(9) Quotations from or references to public records of the court in the case.

(10) The scheduling or result of any step in the judicial proceedings.

(11) That the accused denies the charges made against him.

(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of a sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and this is reasonably likely to affect the imposition of sentence.

(F) The foregoing provisions of DR 7-107 also apply to professional disciplinary proceedings and juvenile disciplinary proceedings when pertinent and consistent with other law applicable to such proceedings.

(G) A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

(5) Any other matter reasonably likely to interfere with a fair trial of the action.

(H) During the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) Physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims, defenses, or positions of an interested person.

(5) Any other matter reasonably likely to interfere with a fair hearing.

(I) The foregoing provisions of DR 7-107 do not preclude a lawyer from replying to charges of misconduct publicly made against him or from participating in the proceedings of legislative, administrative, or other investigative bodies.

(J) A lawyer shall exercise reasonable care to prevent his employees and associates from making an extrajudicial statement that he would be prohibited from making under DR 7-107.

§ 98F. Daily Police Log.

Each police department and each college or university to which officers have been appointed pursuant to the provisions of section sixty-three of chapter twenty-two C shall make, keep and maintain a daily log, written in a form that can be easily understood, recording, in chronological order, all responses to valid complaints received, crimes reported, the names, addresses of persons arrested and the charges against such persons arrested. All entries in said daily logs shall, unless otherwise provided by law, be public records available without charge to the public during regular business hours and at all other reasonable times.

History—

1980, 142; 1991, 125; 1992, 286, § 122, approved, with emergency preamble, Dec 23, 1992, by § 279, effective July 1, 1992.

Editorial Note—

The 1991 amendment, in the first sentence, inserted "and each college or university in which officers have been appointed pursuant to the provisions of section ten G of chapter one hundred and forty-seven".

The 1992 amendment, substituted the first sentence for one which read: "Each police department and each college or university to which officers have been appointed pursuant to the provisions of section ten G of chapter one hundred and forty-seven shall make, keep and maintain a daily log, written in a form that can be easily understood, recording, in chronological order, all responses to valid complaints received, crimes reported, the names, addresses of persons arrested and the charges against such persons arrested."

Annotations—

Validity, construction, and application of statutory provisions relating to public access to police records. 82 ALR3d 19.

FEDERAL COURT INVALIDATES PORTION OF STATE CORI LAW

by: Peter Sacks, Assistant Attorney General,
Administrative Law Division

On March 19, 1993, the United States District Court in Boston struck down as unconstitutional two specific portions of the Commonwealth's Criminal Offender Record Information Law (CORI). The case was Globe Newspaper Co. v. Fenton, Chief Administrative Justice of the Trial Court, No. 89-2868-WD (Woodlock, J.). After careful consultations with representatives of the court system, the law enforcement community, the Legislature, and others, the Attorney General has determined not to pursue an appeal. This article describes the two-part decision and its expected impact on law enforcement officials.

1. Access to Courts' Alphabetical Indices of Closed Criminal Cases.

Judge Woodlock's first holding was that G.L. c. 6, § 172 violated the First Amendment insofar as it barred the public from gaining access to the alphabetical indices of closed criminal cases maintained by the court clerks. In most of the courthouses of the Commonwealth, the only way to gain access to a closed criminal case files is to request the file by docket number. Ordinarily, the easiest way to obtain the docket number corresponding to a case involving a particular defendant, or to find out whether a person was ever a defendant in a particular court, would be to look up that person's name in the alphabetical index of closed cases in that court. But CORI prevented the public from using this index. Therefore, although case files themselves were in principle open to the public (unless sealed by specific court order), the closure of the alphabetical index made it difficult to search for and examine case files (if any) concerning particular individuals.

Previous U.S. Supreme Court cases had held that the First Amendment guarantees to the public a certain level of access to information about criminal trials and related proceedings. The Supreme Court based these holdings on the idea that the First Amendment right to speak out about the conduct of government officials (including judges, police officers, and prosecutors) would be an empty formality unless the public had some right to obtain first-hand information about what that official conduct

actually was. Judge Woodlock, relying on these Supreme Court decisions, determined that there could be no meaningful public access to closed criminal case files so long as a member of the public had no easy way of requesting the file on a particular individual. He therefore held that the First Amendment required the alphabetical indices of closed cases to be open to the public.

The immediate impact of this holding is essentially confined to the court system; court clerks must make the indices publicly accessible, but most other law enforcement officials are not faced with any new responsibilities. Prosecutors should be aware, however, that grand jury minutes and other such materials, which in the past were occasionally filed without being sealed on the assumption that the case file would for most practical purposes be inaccessible to the public, will now become more accessible unless filed under seal or otherwise impounded. Nothing in Judge Woodlock's decision restricts the courts' powers (1) to keep grand jury materials under seal, and (2) to impound all or portions of a case file based on the particular circumstances of that case. Motions for these purposes should still be filed in appropriate cases.

2. Sanctions for Disclosing CORI Material that is Contained in Publicly-Accessible Court Files.

Judge Woodlock also held that the CORI law could not be used to punish a public official for disclosing CORI material if, at the time of disclosure, that material was contained in a publicly-accessible court file. Judge Woodlock reasoned that, if information was already publicly accessible, the First Amendment barred the Commonwealth from punishing officials who chose to discuss that information with a member of the public.

This holding does not require law enforcement officials to disclose such material. Nor does it reclassify police, prosecutorial, or other non-court documents and databases containing CORI material as "public records," which would have to be disclosed pursuant to G.L. c. 4, § 7, cl. 26 and G.L. c. 66, § 10. The court files themselves are open to the public; the decision does not require any other law enforcement files to be opened, and the CORI law continues to restrict dissemination of those files. Members of the public who request information that they assert is already in a publicly-accessible court file may be advised to consult that file directly.

Moreover, it remains forbidden to disclose to an unauthorized person any CORI that is not in a court file, or CORI that is in a court file (or portion thereof) that has been sealed or impounded. This distinction is critical, because the Law Enforcement Automated Processing System/Criminal Justice Information System (LEAPS/CJIS) -- the computerized database maintained by the state Criminal History Systems Board and used by local police departments and other law enforcement officials to obtain criminal histories of specific individuals -- is based on, and contains information from, sources such as Board of Probation files, rather than court files. LEAPS/CJIS thus contains some information that is not in court files and may not be disclosed unless such disclosure is specifically authorized under the CORI law. Nor does LEAPS/CJIS distinguish between cases in which the court files are fully open to the public and cases in which part or all of the court file may have been sealed. For these reasons, disclosure to the public of information obtained from LEAPS/CJIS is risky. Such disclosure should be avoided unless it is absolutely certain that the information being disclosed is in fact currently accessible to the public in a court file.

Also, the user agreements under which many law enforcement officials obtain access to LEAPS/CJIS specifically provide that access may only be used to further legitimate criminal justice purposes. This means that disclosure to a member of the public of information obtained from LEAPS/CJIS is only proper where it serves such purposes. Disclosure for private or non-criminal-justice purposes is inconsistent with the user agreement and may be grounds for restricting or eliminating future access. The Criminal History Systems Board will continue to enforce the terms of user agreements, as well as the restrictions on the disclosure of CORI that is not currently contained in publicly accessible court files. For this reason as well, caution should be exercised before publicly disclosing any information from LEAPS/CJIS.

One other consideration in disclosing LEAPS/CJIS material is that LEAPS/CJIS contains information aggregated from courts all over the Commonwealth. Disclosure of this aggregated information is quite different than simply permitting interested members of the public to inspect court files in individual court clerks' offices. Indeed, the U.S. Supreme Court has ruled that disclosure of FBI "rap sheets" (aggregating a person's criminal history from courts and law enforcement agencies around the country) would constitute a "clearly unwarranted invasion of personal privacy," and was therefore not required under the federal Freedom of Information

Act, even if the individual pieces of information were available to the public at courthouses and police stations scattered around the country. U.S. Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989). Because the Commonwealth's public records laws also contain an exemption for material the disclosure of which "may constitute an unwarranted invasion of personal privacy," G.L. c. 4, § 7, cl. 26(c), LEAPS/CJIS material is not considered to be a "public record" and its disclosure is therefore not required.

Apart from LEAPS/CJIS, there is CORI material in the files maintained by individual law enforcement agencies, and the same rules govern disclosure of this material to any member of the public. Unless such information, at the time of the disclosure, is also contained in a publicly-accessible court file, its disclosure is governed by the CORI law. Unauthorized disclosure may be grounds for sanctions.

Questions on the use of information obtained from LEAPS/CJIS should be directed to the Criminal History Systems Board at 1010 Commonwealth Avenue, Boston, MA 02115, (617) 727-0090. Other questions regarding CORI may be directed to Assistant Attorney General Pam Hunt, Chief of the Criminal Appeals Division, at One Ashburton Place, Boston, MA 02108, (617) 727-2200. Questions specifically concerning Judge Woodlock's decision may be directed to Assistant Attorney General Peter Sacks at the same address and telephone number.