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## Hard to tell real gangs from mere wannabes

### Mistakes can be costly, experts say

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Twenty years ago, the clues pointing to whether someone was a gang member tended to be unequivocal.

Certain clothes, gestures and esoteric language clearly revealed a person's gang ties – to allies, to rivals and, intentionally or not, to police.

These days, the clues are less reliable.

Some experts say law enforcement officials face a growing risk of misidentifying people as gang members as aspects of gang culture move into the mainstream. Misidentification can have serious consequences in court, where gang-related crimes can carry stiffer sentences, and on the streets, where imitators could have violent encounters with actual gang members.

“Kids act like gangsters who aren't gangsters,” said Al Valdez, a sociology professor at the University of California Irvine who specializes in the history and culture of gangs.

Valdez testified recently as an expert witness in a high-profile San Diego Superior Court case.

“Kids mimic what they see,” he said. “You see kids flashing gang signs, using words once only associated with gangs. I see that all the time.”

Some defense lawyers say individuals are often branded as gang members undeservedly, because of the clothes they wear or the neighborhoods where they live.

“It's been a problem for a long time, but it's becoming more pronounced as time goes by,” said Chief Deputy Public Defender Carl “Rusty” Arnesen.

“The gang look is becoming more popular,” he said, adding that the styles that attract attention range from baggy pants or shorts to tattoos and shaved heads.

Valdez, a former gang investigator with the Orange County District Attorney's Office, referred to the misidentifications as “false positives.” He said he believes an increased potential for false positives has made gang cases more complicated over the past five years.

But some local investigators aren't worried.

“If it did happen, I think they would be very few and far between,” said San Diego police Detective Andrew

Spear, who monitors gangs in the city's southeastern neighborhoods.

Spear said police keep up to date on gang-related trends through ongoing training and contact with informants. He said investigators are required to follow strict guidelines in order to officially identify a person as a gang member.

In San Diego, for example, a person has to meet at least three of nine criteria during a single contact with police to be "documented" as a gang member, or meet at least one of the criteria during three separate contacts. The criteria include wearing gang clothing, displaying hand signs, being seen with other documented gang members and frequenting known gang areas.

"If we don't have anything concrete, the person is not going to be documented," Spear said, adding that even if an individual's name is added to the department's gang file, the designation isn't likely to cause problems if that person remains law-abiding.

"It's not against the law to be a gang member," he said.

Those who are documented but have no further contact with police are purged from the file in five years.

Valdez said one popular gang look – baggy pants cropped just below the knee, paired with high socks – came from California prisons. It was a look born of necessity, when prisoners tried to cool off in warm weather without sending an unintended message to fellow inmates.

"To show any part of your leg to a man would have been considered a homosexual come-on," Valdez said. "Twenty years ago you would not have seen a non-gang member wearing that."

Valdez testified recently on behalf of the defense in a murder case involving five men accused of fatally beating a professional surfer in La Jolla last year. The men were part of a group known as the Bird Rock Bandits, which prosecutors argued was a criminal street gang.

According to testimony at a May hearing, the group had a reputation for drinking and starting fights at parties in the affluent neighborhood, and prosecutors charged the men with assault and battery in connection with several altercations dating to 2004.

In a video played in court, some of the defendants shouted, "BRB!" and, "Bandits for life!" and displayed hand signs.

Valdez said the Bird Rock Bandits case is a good example of a false positive. He testified that the group met a broader, "sociological" definition of a gang, but failed to meet the legal standard.

A judge agreed and dismissed gang allegations filed in the case. The allegations, or enhancements, typically increase potential punishments in criminal cases.

Four of the five defendants have since pleaded guilty to lesser felonies, leaving one, Seth Cravens, still facing a murder charge. Cravens' case is scheduled to go to trial next month.

"The group was a problem," said Valdez, who reviewed evidence in the case before testifying. "(But just) because the group is a problem, we shouldn't stretch the law. We shouldn't make the foot fit into the shoe."

Valdez said he supports aggressive prosecutions in gang cases and doesn't believe, based on his experience, that the laws are being stretched on a routine basis.

Although he stressed that false positives are a growing problem, Valdez said he is less concerned that people who imitate gang culture will attract police attention. Instead, he said, the problem is that they often draw

the ire of actual gang members.

“To the real gang member, gang attire is a uniform,” Valdez said. “If you look like a gang member, the real gang member has a tendency to do a 'hit up' and ask, 'Where you from?' or, 'Who do you claim?' ”

The wrong answer could cause a violent response, he said.

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