

MS-13

Author : Jeff Welty

Categories : [Evidence](#), [Uncategorized](#)

Tagged as : [confrontation clause](#), [gangs](#), [ms-13](#), [substitute analysts](#)

Date : April 28, 2010

The Fourth Circuit decided a case recently involving members of MS-13. The case involves an interesting Confrontation Clause issue regarding the use of gang experts, which I'll mention at the end of this post, but I thought that the description of the gang itself was compelling enough to warrant a post:

La Mara Salvatrucha, otherwise known as MS-13, is one of the largest and most violent street gangs in the United States. The gang originated in Los Angeles, California in the 1980s. Since then, it has spread across the country and into foreign countries such as El Salvador, Honduras, and Mexico. Today, it has a large presence in the eastern United States

Violence defines MS-13's mission. The gang initiates its members through violence: existing members beat up the new members for a period of thirteen seconds. This ritual is meant to signify the beginning of a new, more brutal lifestyle. Once initiated, MS-13 members commit violent acts to defend the gang's territory against its rivals and to spread fear so that citizens do not report the gang's activities to the police. In fact, gang members are required to attack and, if possible, kill rival gang members whenever they see them. MS-13 members gain status within the gang through their willingness and ability to commit such violent acts.

The gang maintains internal discipline through the use of violence as well. Members who do not follow the rules are routinely beaten, and those who cooperate with the police face penalty of death. The violent nature of MS-13 is captured by one of its mottos: "mata, viola, controla" which means "kill, rape, control."

[United States v. Ayala](#). Based on the conduct of which the defendants were convicted -- including involvement in multiple murders and gang rapes -- the motto was not just talk.

As I mentioned, an interesting legal issue was raised in the appeal. The government called several gang experts -- an LAPD detective, an El Salvador police officer, and a Prince George's County (Maryland) officer -- to testify about "the history, structure, and practices of MS-13." The experts' views were informed in part by "interviews with gang members, the families of gang members, and the gang's victims." Although it was proper for the experts to base their opinions on such interviews under Fed. R. Evid. 703, the defendants argued that the statements made during the interviews were testimonial and the officers' reliance thereon violated the defendants' Confrontation Clause rights. The court rejected this argument, stating that *Crawford* and its progeny do not "prevent[] expert witnesses from offering their independent judgments merely because those judgments were in some part informed by their exposure to otherwise inadmissible evidence . . . [so long as the expert is not] merely acting as a transmitter for testimonial hearsay." Because the gang experts based their opinions not *just* on the interviews, but also on years of study, observation, and involvement in searches of premises used by the gang, the court found that the officers' opinions were based on "independent judgment." Note that this distinction between having an "independent judgment" and being a mere "transmitter" is also at play in the "substitute expert" situation, discussed [here](#) by my colleague Jessie Smith. In essence, when the state seeks to call a substitute lab analyst, medical examiner, etc., to testify about work originally done by another expert, the key is establishing that the substitute expert is not merely parroting the first expert's conclusion, but has actually examined the underlying data closely enough to form an independent opinion.