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## Malibu Locals Only: "Boys Will Be Boys," or Dangerous Street Gang? Why the Criminal Justice System's Failure To Properly Identify Suburban Gangs Hurts Efforts To Fight Gangs

Brian W. Ludeke

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**MALIBU LOCALS ONLY: "BOYS WILL BE BOYS," OR  
DANGEROUS STREET GANG? WHY THE CRIMINAL JUSTICE  
SYSTEM'S FAILURE TO PROPERLY IDENTIFY SUBURBAN  
GANGS HURTS EFFORTS TO FIGHT GANGS**

BRIAN W. LUDEKE\*

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### *Foreword*

In 2003, at an otherwise average Southern California house party, a group of youths attacked and beat a teenager without apparent provocation, nearly killing the young man and leaving him with permanently limited mental function.<sup>1</sup> Later that same year, after the

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1. Vicki Godal, *Malibu Gang Investigation To Air on Major Local Television Station*, MALIBU TIMES, Feb. 12, 2004, available at <http://www.malibutimes.com/articles/2004/02/12/news/news3.txt>. The young man, a promising high school student, was, according to doctors, “beaten nearly to death.” *Id.* To this day, the young man suffers from debilitating headaches and spinal injuries and has been forced to forego college due to his inability to concentrate for extended periods. *Id.*; see also Craig Stephens, *MLO—Malibu Locals Only Gang*, May 2004, [http://www.craigstephens.com/doc\\_entwkly\\_mlo.html](http://www.craigstephens.com/doc_entwkly_mlo.html) (stating that the victim no longer plans to at-

beating of a second victim at a party, the attackers threatened to kill witnesses if they told police.<sup>2</sup> Additionally, reports circulated shortly thereafter of an attack on a couple walking along the beach.<sup>3</sup> A published interview with a surfer familiar with the incidents suggests that some of the violence might have stemmed from visitors from the San Fernando Valley "trashing" local beaches.<sup>4</sup>

Initially, these stories seem unremarkable when compared to the daily barrage of violent images and gang-related horror stories shown in films and by the news media. However, the attacks are notable for several reasons. First, they occurred in Malibu, California, a city more frequently associated with its rich and famous residents than with brutal crimes.<sup>5</sup> Second, the attacks were allegedly perpetrated by a gang called "Malibu Locals Only" (MLO), whose members are suspected to include children of some of these wealthy and famous Malibu residents.<sup>6</sup> Third, authorities never filed criminal charges against any of the gang members even though the gang nearly beat one victim to

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tend college, despite several acceptances, because his injuries rendered him unable to maintain focus on difficult tasks).

2. Godal, *supra* note 1 ("If you tell anyone or do anything, we're going to kill you! We know where you live!").

3. Stephens, *supra* note 1.

4. Jamie Tierney, *Malibu's Least Wanted: Meet So Cal's Low Profile, High Income Surf Gang*, SURFING MAG., Mar. 29, 2004, [http://surfingthemag.com/news/surfing-pulse/032904\\_malibu](http://surfingthemag.com/news/surfing-pulse/032904_malibu) ("[O]ver the summer when there's tons of beach traffic, tons of people trashing the beach, tons of people breaking glass at the beach and then when you go out to surf, you step on it. And this was a guy who probably had it taken out on him. He probably thought he was Mr. Cool coming to the beach from Canoga Park and didn't realize that there actually are some people that care.").

5. In January 2007, the median price for home sales in Malibu was \$2,000,000. *California Home Sale Price Medians by City*, DQNEWS, <http://www.dqnews.com/ZIPCAR.shtml> (last visited Mar. 1, 2007). According to the 2000 Census, the per capita income for the city was \$74,336, with only 3.2% of families reporting income below the poverty line. U.S. Census Bureau, *Malibu City, California – Fact Sheet*, <http://factfinder.census.gov> (search "Malibu, California") (last visited Jan. 15, 2007). Compare these figures with those of Compton, California, where the per capita income for the city was \$10,389, and 28.0% of the population and 25.5% of families were below the poverty line. U.S. Census Bureau, *Compton City, California – Fact Sheet*, <http://factfinder.census.gov> (search "Compton, California") (last visited Jan. 15, 2007).

6. Stephens, *supra* note 1 (reporting that Brawley Nolte and Ed Gibson, sons of well-known actors Nick Nolte and Mel Gibson, respectively, are members of MLO).

death.<sup>7</sup> Last, Los Angeles County Sheriff's representatives in Malibu repeatedly assured concerned citizens that MLO was not a gang.<sup>8</sup>

## I. INTRODUCTION

Admittedly, MLO is not well-known and does not initially resemble the type of gang that inspires fear in the average person.<sup>9</sup> Malibu does not suffer from the astonishing crime rates seen in other Los Angeles areas like Compton, where gangs are more notorious and institutionalized.<sup>10</sup> Also, MLO violence has not yet claimed any lives.<sup>11</sup> Nonetheless, it is troubling that the gang status of this group, which meets the relevant criteria listed in the California Penal Code for de-

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7. Godal, *supra* note 1 (reporting that some parents of victims refused to take legal action, fearing more violence for their children).

8. *See, e.g.*, Stephens, *supra* note 1. In an interview with reporter Craig Stephens, Los Angeles County Sheriff's Department Detective John Manwell stated, "This is simply a local group of kids, and it really doesn't come close to being classified as a gang. There are very definite rules relating to what constitutes a gang, and the MLO does not really come close to fitting that classification." *Id.*; *see also* MALIBU CITY COUNCIL, MINUTES OF REGULAR MEETING 6 (July 25, 2005), available at <http://www.ci.malibu.ca.us/download/index.cfm?fuseaction=download&cid=7415> (documenting Deputy Paladino's assurance to the City Council that "MLO was not a gang, but rather territorial youth").

9. The title of Jamie Tierney's article, *Malibu's Least Wanted*, is a play on the title of a 2003 movie, *Malibu's Most Wanted*. *See* Tierney, *supra* note 4. This movie is a spoof of a rich Malibu youth trying to live a gangster lifestyle. MALIBU'S MOST WANTED (Warner Bros. Pictures 2003).

10. *See* Luke Burbank, *Terror, Hope on the Streets of Compton, Part 1*, NPR, Mar. 6, 2006, <http://www.npr.org/templates/story/story.php?storyId=5247323> ("Gang violence has spiked dramatically on the streets of Compton, the small city in South-Central Los Angeles that has long been plagued by gangs and drugs."); Tracy Manzer, *Gangs Still Thriving in Neighborhoods*, L.A. DAILY NEWS, Sept. 26, 2004, [http://lang.dailynews.com/socal/gangs/articles/lbpl\\_gang1.asp](http://lang.dailynews.com/socal/gangs/articles/lbpl_gang1.asp) (explaining the historical background of Los Angeles gangs like the notorious Bloods gang formed in Compton in the late 1960s). It is useful to compare the violent crime rates in Malibu and Compton. In 2005, Malibu reported 7.5 murders per 100,000 citizens, as compared to Compton's 67.1. Crime Rate Comparison: Malibu Vs. Compton, <http://losangeles.areaconnect.com/crime/compare.htm?c1=malibu&s1=CA&c2=compton&s2=CA> (last visited Jan. 11, 2007). The national average was 6.9 murders per 100,000 citizens. *Id.* In the same period, Malibu experienced 119.5 aggravated assaults per 100,000 citizens, while Compton experienced 1189.2; the national average was 340.1. *Id.*

11. *See* Stephens, *supra* note 1.

fining a gang,<sup>12</sup> is immediately dismissed while the criminal justice system has declared open war on other, similar groups that perform similar criminal activity in the inner-cities.<sup>13</sup>

This failure by law enforcement to recognize MLO as a gang harms efforts at fighting gang violence. This harm results because MLO represents a trend in the expansion of violent gangs that has emerged not only in the United States, but around the world.<sup>14</sup> Specifically, while society has often focused on gangs as an exclusively urban problem, the more affluent suburbs have experienced significant increases in the formation of gangs.<sup>15</sup>

This Article does not merely sound the alarm that the youth gang plague has landed in Middle America's backyard. Rather, this Article seeks to illustrate the criminal justice system's flawed approaches to identifying factors that lead to gang membership. In turn, this Article demonstrates how the failure to identify these factors harms society's efforts at preventing gang violence in both suburban and urban settings. By falsely distinguishing between gangs and non-gangs when the real distinction is between urban and suburban or affluent and non-affluent, the criminal justice system fails to address important underlying issues that cause gangs to form. This error blinds society to valuable potential solutions to the gang problem. Additionally, the false distinction between suburban and urban gangs undermines existing efforts to fight gang violence and helps perpetuate the appearance of inherent racism in the criminal justice system.

By examining MLO and the related phenomenon of suburban gang formation, this Article explores several areas of gang develop-

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12. See CAL. PENAL CODE § 186.22(f) (West Supp. 2007).

13. Beth Barrett, *Bratton's Challenge: LAPD's New Chief Believes Gang Problem Can Be Solved*, L.A. DAILY NEWS, Oct. 2, 2004, [http://lang.dailynews.com/socal/gangs/articles/dnp7\\_main.asp](http://lang.dailynews.com/socal/gangs/articles/dnp7_main.asp) (quoting Los Angeles Police Department Chief William J. Bratton as saying, "In the African-American community the crime problem is way out of proportion to the percentage of the population, much more so than even the Latino community. So the idea of focusing so much attention to those communities is appropriate . . .").

14. See Mike O'Sullivan, *Los Angeles Summit Tackles International Gang Problem*, VOA NEWS, Feb. 8, 2007, <http://www.voanews.com/english/2007-02-08-voa61.cfm>.

15. Amy D. Tsou, *Gang Violence* (1997), <http://www.wright-house.com/ac/papers97/Tsou-ac1.html> ("Originally thought of as just an 'inner-city problem,' gang violence is spreading to the smallest of America's cities.").

ment. Part II discusses MLO, including its history and goals. Part III contrasts MLO and its formation with traditional notions of street gangs and why youths join them. Part IV addresses specific challenges society faces in its war on gangs—prevention of gang membership and effectively fighting gangs once youths are in them. Finally, Part V proposes solutions, based upon what MLO and similar suburban gangs illustrate, to help prevent gang membership and to ensure the criminal justice system's fair and effective use of anti-gang tools in its fight against gangs.

## II. WHO IS MLO?

In the late 1960s, a tight-knit group of Malibu surfers organized to accomplish two goals. Originally, the group sought to protect the private Malibu beaches from surfers from the San Fernando Valley and other parts of Los Angeles.<sup>16</sup> Later, the organization evolved to promote a second goal—the protection of its high school members from rival Mexican gangs.<sup>17</sup> Although the group started out as a loose consortium, it later adopted more of a gang persona in these protection efforts. Where Mexican gangs carved graffiti at school, the Malibu group asserted its claim to the same territory by carving the initials “MLO” over the Mexican gangs’ insignia.<sup>18</sup> Thus, MLO was born.<sup>19</sup>

As to MLO’s original goal, a former founding member of MLO<sup>20</sup> stated that the protectionist attitude toward the Malibu beaches stemmed from Malibu residents’ perception that they had sole responsibility for protecting private property rights attached to the local beaches:

Right or wrong, there was no public access to GREAT surf breaks . . . . To surf at OUR beaches if you were not a “local” you had to criminal [sic] trespass across well posted private property. It

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16. This information comes from e-mail correspondence with a founding member of MLO who requested and was granted anonymity. E-mail from MLO founder to author (Jan. 27, 2006, 10:28 PST) (on file with author).

17. *Id.*

18. *Id.*

19. For the sake of brevity, this Article refers to the gang as MLO even in its early incarnation, when the “gang” had not yet necessarily been formed as such.

20. See E-mail from MLO founder to author, *supra* note 16.

would be EXACTLY like someone climbing the fence and going through your yard wherever you live because they want to go somewhere on the other side or [sic] your property. Although trespassers would get arrested or cited every now and then, it was not considered a high priority call by the police. . . . As most of Malibu's police force lived in the valley or town, I feel they were often symphetic [sic] to the trespassers . . . .<sup>21</sup>

Thus, MLO became something akin to a substitute police force with respect to the Malibu beaches.<sup>22</sup>

As to MLO's second goal, Malibu did not have its own high school until 1992, so Malibu teens attended schools in neighboring communities.<sup>23</sup> The surfers' counter-culture appearance made them stand out at the more urban schools,<sup>24</sup> making them targets for harassment by Mexican gangs.<sup>25</sup> "[I]f they were to survive, with a shred of dignity itact [sic], the Malibu enforcers had to become a little more organized and vigilant about the leave the Malibu people alone rule [sic]."<sup>26</sup> MLO's increased organization provided its members with

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21. *Id.*

22. Local surfers' protection of their territory is a common practice. Paul McHugh, *Surfing's Scary Wave: 'Localism' Intensifying at Ocean Breaks*, S.F. CHRON., May 15, 2003, at C-11. Beaches with conditions amenable to surfing, or "surf breaks," represent only a small portion of the California coastline, and competition is intense at desirable surf breaks. *See id.* ("People fight for the same small plate of beans," said Grant Washburn, a regular at Half Moon Bay's famed Mavericks break."). Violence at breaks deemed by local surfers as "locals only" breaks is not at all uncommon. *See, e.g.*, Kevin Cody, *PVE Police Meets with Surfrider Foundation*, STREETGANGS.COM, Jan. 17, 2002, available at <http://www.streetgangs.com/injunctions/topics/011702dirty.html> (reporting that the Palos Verdes Estates Police Department was taking steps to "stem localism" after an assault by a group of surfers who call themselves the Dirty Underwear Gang).

23. *See Malibu Priority for Minorities*, L.A. TIMES, Feb. 27, 1992, at J2; E-mail from MLO founder to author, *supra* note 16.

24. In the late 1960s, surfers became culturally marginalized, and this marginalization was often reflected in their appearance. *See Surf Culture*, <http://www.surflife.com/surfaz/surfaz.cfm?id=916> (last visited Jan. 15, 2007) ("[I]n the late '60s, after a long period of quality public image, . . . [surfing] ducked alongside rock and roll into the counter-culture. Hair grew out and acid was dropped as fashion plates turned elsewhere for inspiration.").

25. *See* E-mail from MLO founder to author, *supra* note 16.

26. *Id.*

strength in numbers to protect themselves from the already organized Mexican gangs.<sup>27</sup>

Although MLO may have originated as a group of teens organized to protect their beaches and themselves, it has evolved into a gang with less innocent goals and now behaves much more like a stereotypical modern street gang. Malibu beaches are now public, so MLO members no longer enforce private property rights.<sup>28</sup> Additionally, the Malibu community now has its own high school, so MLO members no longer form a visible minority at their schools as did their predecessors.<sup>29</sup>

While the original stimuli for MLO's formation have disappeared, MLO has not. The gang now commits random, violent attacks on innocent non-gang members.<sup>30</sup> Modern MLO behavior now typifies the random, senseless violence seen from street gangs in cities across America.<sup>31</sup> Additionally, drivers through the canyons leading from the San Fernando Valley to Malibu are frequently greeted with MLO graffiti.<sup>32</sup> Ironically, in spite of Los Angeles Sheriff's officials' assertions to the contrary, MLO has evolved into the very type of street gang against which it originally formed to fight. The MLO founder bemoans the situation in which "[MLO] decline[d] into the current state

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27. *Id.*

28. California Public Resources Code section 30210 was enacted in 1972 to codify the provision in California's Constitution that ensures that "access to the navigable waters of this State shall be always attainable for the people thereof." CAL. CONST. art. X, § 4; CAL. PUB. RES. CODE § 30210 (West 2006) (providing that "maximum access . . . and recreational opportunities shall be provided for all the people").

29. MLO members now blend into the high school crowd as more and more teens sport surf clothing. *See, e.g.,* Trevor Delaney, *Smells Like Teen Spirit*, SMARTMONEY.COM, Sept. 9, 2003, <http://www.smartmoney.com/magportfolios/stocks/index.cfm?story=september03> (reporting that Pacific Sunwear, a nationwide retailer of surf clothing, enjoyed a 132% return during a three-year period when the S&P index fell 34%).

30. *See supra* notes 1-4 and accompanying text.

31. *See Godal, supra* note 1 (describing MLO members' participation in random beatings).

32. Kyle Jorrey, *Not a Gang, but a State of Mind*, GRAPHIC, Apr. 1, 2004, <http://graphic.pepperdine.edu/perspectives/2004/2004-04-01-mlo.htm>.

of the little bitches, that 'jump' people like the Mexicans did when [he] was in school."<sup>33</sup>

Because MLO has evolved into a typical street gang, it is important to precisely formulate a relevant definition of the term "gang." Furthermore, to understand what causes youths to join gangs like MLO, it is important to discuss factors influencing gang membership. By carefully defining gangs and addressing what causes youths to join them, the criminal justice system can more effectively prevent gang membership and gang violence.

### III. TRADITIONAL NOTIONS OF GANGS AND REASONS KIDS JOIN

Because MLO now exhibits such unpredictable, violent, gang-like behavior, it is important to discuss whether Sheriff's Department officials are correct when they insist that MLO is not a gang. To do so, it is useful to first define the term "gang" by looking at relevant California law. Next, this Part examines popularly-held notions of factors that cause youths to join street gangs and explains why these factors generally cannot fully explain gang membership in either urban or suburban contexts. Lastly, this Part examines the "missing protector factor," which helps explain youths' decisions to join either suburban gangs like MLO or any street gangs. Because this factor is more universally relevant to gang membership, it is the most useful factor to address in efforts to prevent gang membership.

#### A. *What Is a Gang?*

In public statements and town meetings, Los Angeles Sheriff's Department officials have carefully and repeatedly assured troubled Malibu residents and parents that MLO is not a gang.<sup>34</sup> This deliberate distinction between gangs and non-gangs raises a key issue with respect to society's efforts to fight gang violence. To combat gang violence, the criminal justice system has implemented powerful anti-gang tools. For example, the California legislature enacted the Street Terrorism Enforcement and Prevention Act (STEP Act),<sup>35</sup> which criminalizes certain types of gang activities and allows judges to enhance

33. E-mail from MLO founder to author, *supra* note 16.

34. *See supra* note 8 and accompanying text.

35. CAL. PENAL CODE §§ 186.20-186.33 (West 1999 & Supp. 2007).

sentences for gang members.<sup>36</sup> Additionally, Los Angeles County has adopted a practice of obtaining civil injunctions to forbid enjoined gang members from engaging in many otherwise legal activities.<sup>37</sup> Tools like these raise concerns about law enforcement officials' infringement on individuals' rights—specifically the criminal justice system's criminalization of certain types of otherwise constitutionally protected behavior in the interest of preventing gang violence. Because of these constitutional concerns, a precise definition of what constitutes a gang becomes especially crucial.

In spite of this need for precision, a great amount of debate exists as to a precise definition of a street gang.<sup>38</sup> Nonetheless, in MLO's case, the STEP Act provides the most relevant definition in California. The STEP Act, as set forth in California Penal Code section 186.22(f), defines a gang as follows:

[A]ny ongoing organization, association, or group of three or more persons . . . having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.<sup>39</sup>

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36. The STEP Act essentially enables California law enforcement officials to criminalize the act of belonging to a gang. *See* § 186.22(a). If prosecutors prove a defendant belongs to a gang, they can seek injunctions and sentence enhancements based on this gang membership. §§ 186.22(b), 186.22a.

37. 2003-2004 L.A. COUNTY CIV. GRAND JURY FINAL REP. 169-251, available at [http://grandjury.co.la.ca.us/gjury03-04/LACGJFR\\_03-04.pdf](http://grandjury.co.la.ca.us/gjury03-04/LACGJFR_03-04.pdf) [hereinafter GRAND JURY REPORT] (discussing the use, background, and effectiveness of civil gang injunctions). With these injunctions, prosecutors, working in conjunction with police, can name gangs and gang members in proposed injunctive orders that forbid otherwise legal behavior like association in public with other gang members. If granted, the orders are enforceable through the courts' contempt power, enabling fines or prison for violators. *Id.* at 193-94.

38. *See, e.g.*, Jeffrey J. Mayer, *Individual Moral Responsibility and the Criminalization of Youth Gangs*, 28 WAKE FOREST L. REV. 943, 951 (1993) (arguing that, in spite of the need to avoid an indiscriminate war on gangs, prosecutors, legislators, and academics fail to adequately define "gangs").

39. CAL. PENAL CODE § 186.22(f) (West Supp. 2007).

The enumerated acts to which this section refers include “[a]ssault with a deadly weapon or by means of force likely to produce great bodily injury”<sup>40</sup> and “intimidation of witnesses and victims.”<sup>41</sup>

If a group meets these criteria, California law enforcement officials may use the STEP Act to criminalize gang behavior and enhance penalties for crimes committed to further the gang’s goals.<sup>42</sup> Additionally, under the same criteria, law enforcement officials in Los Angeles can seek a civil injunction to prevent gang members from assembling together in public.<sup>43</sup> With such powerful tools available for use against gangs, California law enforcement officials must be fair in deciding whether to classify groups as gangs.

MLO meets these criteria as set forth in the STEP Act and as used in civil injunctions. With respect to the required number of members under the Act, Malibu High School principal Mark Kelly acknowledged the gang maintains a presence on that campus,<sup>44</sup> and the reports of MLO assaults place the gang’s membership above the three required by the STEP Act.<sup>45</sup> The gang uses a common identifier, “Malibu Locals Only” or “MLO,” and the gang frequently uses graffiti to demarcate MLO territory.<sup>46</sup> MLO members associate to commit crimes, including the predicate acts listed in California Penal Code section 186.22.<sup>47</sup> Thus, MLO meets the relevant criteria to be defined as a gang in California.

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40. § 186.22(e)(1).

41. § 186.22(e)(8).

42. § 186.22(a), (b).

43. See GRAND JURY REPORT, *supra* note 37, at 169-70; see also Jeffrey Grogger, *The Effects of Civil Gang Injunctions on Reported Violent Crime: Evidence from Los Angeles County*, 45 J.L. & ECON. 69 (2002) (examining reported violent crime counts to assess the effectiveness of civil injunctions in Los Angeles County).

44. E-mail from Mark Kelly, Principal, Malibu High School, to author (Feb. 15, 2006, 18:09 PST) (on file with author); see also Godal, *supra* note 1 (“Malibu High School principal Mike Matthews said the MLO has been around for years.”).

45. See Godal, *supra* note 1 (describing one attack by ten young men and another by five males).

46. See Tierney, *supra* note 4; see also E-mail from MLO founder to author, *supra* note 16 (stating that MLO began marking its territory in the 1970s).

47. See CAL. PENAL CODE § 186.22 (West 1999 & Supp. 2007). For example, in both of the aforementioned party assaults, gang members committed a violent assault with a deadly weapon, intending to (and succeeding in) committing grave injury to the victims. Godal, *supra* note 1. Furthermore, the gang members involved in

Because MLO appears to be the type of dangerous group the California legislature wanted to stop by enacting the STEP Act, Sheriff's Department officials could likely prosecute MLO under the Act or obtain a civil injunction against the gang. The Sheriff's Department's failure to take such action or even classify MLO as a gang makes the distinction between MLO and other gangs suspect. When MLO commits violent, gang-like crimes, Sheriff's officials have discounted the crimes, labeling them simply as acts committed by "territorial youth" at "house parties with out-of-town parents."<sup>48</sup> Meanwhile, gangs from less affluent backgrounds that commit similar crimes are subject to stiff sentences under the STEP Act and injunctive orders barring them from associating with one another.<sup>49</sup> This suspect distinction inhibits society's ability to prevent gang violence by placing too much focus on popularly-held notions of what constitutes a gang and what motivates gang membership. This misplaced focus ignores other factors affecting youths' choices to join gangs that might allow society to more effectively fight gangs in both suburban and inner-city settings.

### B. *Why Do Youths Join Street Gangs?*

There are many reasons why youths join gangs. This section explores the most popularly-held notions about factors influencing gang membership and discusses why these stereotypical factors generally cannot explain youths' membership in gangs—either urban or suburban. Additionally, this section examines a factor called the "missing

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the second assault told witnesses, including the victim, that they knew where they lived and that they would kill them if the witnesses told police about the assault. *Id.* These acts constitute assault with a deadly weapon (maybe even attempted murder) and witness intimidation.

48. See MALIBU CITY COUNCIL, *supra* note 8, at 6.

49. GRAND JURY REPORT, *supra* note 37, at 170 ("Between 1987 and 2000 the City Attorney and the District Attorney have attempted 24 [civil gang injunctions] within Los Angeles County."). Most of the injunctions were sought against black and Hispanic gangs like the Rolling 60s (a black Crips gang) and Venice 13 (a Hispanic gang affiliated with the Mexican Mafia prison gang). *Id.* at 171; Rollin' 60s NHood Crips: Hyde Park Los Angeles, <http://www.streetgangs.com/crips/rollin60s.html> (last visited Mar. 4, 2007); *People v. Lennon*, No. B169775, 2005 WL 957751, at \*3-4; *see, e.g., People ex rel. Gallo v. Acuna*, 929 P.2d 596, 601-02 (Cal. 1997) (upholding the constitutionality of a civil gang injunction banning thirty-eight alleged members of the Varrio Sureño Treces gang from congregating in public in the Rock Springs neighborhood of San Jose).

protector factor” that is useful in explaining membership in both urban and suburban gangs. By recognizing and addressing the importance of this factor, society may be able to eradicate the missing protector factor and help fight both suburban and urban gang membership.

One theory regarding youth gang membership is that youths may join gangs to promote a criminal enterprise, like the sale of drugs, as an alternative to poverty.<sup>50</sup> A second theory is that youths may join gangs because gangs are present as institutions in their neighborhoods.<sup>51</sup> A third theory is that gangs may serve as a type of ethnic protection for a segment of society that feels it lacks protection from traditional sources like the police.<sup>52</sup> As a fourth theory, many people feel that youths are led to participation in gangs by violence in the media.<sup>53</sup> Lastly, others hypothesize that youths often join gangs in response to the missing protector factor, with the gangs functioning as surrogate families for youths who have non-existing or dysfunctional family support systems.<sup>54</sup>

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50. See, e.g., MICHAEL K. CARLIE, *INTO THE ABYSS: A PERSONAL JOURNEY INTO THE WORLD OF STREET GANGS* (2002), <http://www.faculty.missouristate.edu/M/MichaelCarlie> (“[I]f a community fails to provide legitimate opportunities for its children to earn money, they may organize to find ways to earn money for themselves. If no legitimate way to earn money is available, illegitimate ways will be found—and one way is through forming a gang.”).

51. See, e.g., James Diego Vigil, *Learning from Gangs: The Mexican American Experience*, ERIC CLEARINGHOUSE ON RURAL EDUC. & SMALL SCHS., Feb. 1997, at 3, [http://www.eric.ed.gov/ERICDocs/data/ericdocs2/content\\_storage\\_01/0000000b/80/2a/28/04.pdf](http://www.eric.ed.gov/ERICDocs/data/ericdocs2/content_storage_01/0000000b/80/2a/28/04.pdf) (“[B]ecause a gang subculture now dominates the streets, youngsters who become street socialized must adjust and conform to the culture that these ‘street elites’ have fashioned.”).

52. See, e.g., *id.* at 4 (citing RUTH HOROWITZ, *HONOR AND THE AMERICAN DREAM: CULTURE AND IDENTITY IN A CHICANO COMMUNITY* (1983); ALFREDO MIRANDE, *GRINGO JUSTICE* (1987)) (“Mirande (1987) attributes the values of gang youths to the effects of systemic suppression of the Mexican American people, while Horowitz (1983) tends to emphasize the protective role that gang members play for others in their kinship and friendship networks.”)

53. See, e.g., Am. Acad. of Pediatrics, Am. Acad. of Child & Adolescent Psychiatry, Am. Psychological Ass’n, Am. Med. Ass’n, Am. Acad. of Family Physicians & Am. Psychiatric Ass’n, Joint Statement on the Impact of Entertainment Violence on Children: Congressional Public Health Summit (July 26, 2000) [hereinafter Joint Statement] (“The conclusion of the public health community, based on over 30 years of research, is that viewing entertainment violence can lead to increases in aggressive attitudes, values and behavior, particularly in children.”).

54. See, e.g., DAN KOREM, *SUBURBAN GANGS: THE AFFLUENT REBELS* 63

### 1. *Gangs Created by, or as an Alternative to, Poverty*

A popular belief is that gangs form in poor, often heavily minority-populated neighborhoods as a byproduct of the poverty in those neighborhoods.<sup>55</sup> Certainly, the gangs generally romanticized by the media come mainly from economically-depressed neighborhoods like Compton, California.<sup>56</sup> A common conception about these neighborhoods is that poverty may make gang-related crimes like drug sales attractive to poor youths seeking an escape from poverty.<sup>57</sup>

Indeed, the introduction of crack cocaine to the American drug market profoundly impacted society—particularly the inner city.<sup>58</sup> Crack combines dual, devastating qualities: it is highly addictive and very affordable.<sup>59</sup> Thus, drugs like crack provide a tremendous business opportunity to gangs willing to exploit this marketability. Crack addiction and its corresponding sale by gangs have reached epidemic

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(1994) (arguing that the missing protector factor causes youths to join gangs when they cannot count on an immediate family member in a crisis).

55. See, e.g., *Plea for Gang Violence Crackdown*, BBC NEWS, Feb. 8, 2007, <http://news.bbc.co.uk/2/hi/americas/6338609.stm> (reporting that Los Angeles Mayor Antonio Villaraigosa stated that gang membership arises from poverty and lack of jobs).

56. See *supra* note 5. Interestingly, Compton was once considered attractive to middle-class citizens and was home to two future U.S. Presidents—George H.W. and George W. Bush. See George Bush Presidential Library and Museum, <http://bushlibrary.tamu.edu/research/find/Doncoll1/bushpaps.html#Series>: (last visited Jan. 19, 2007).

57. See Carlie, *supra* note 50.

58. Roland G. Fryer, Jr., et al., *Measuring the Impact of Crack Cocaine 4* (Nat'l Bureau of Econ. Research, Working Paper No. 11318, 2005), available at [http://post.economics.harvard.edu/faculty/fryer/papers/fryer\\_heaton\\_levitt\\_murphy.pdf](http://post.economics.harvard.edu/faculty/fryer/papers/fryer_heaton_levitt_murphy.pdf) (“The invention of crack represented a technological innovation that dramatically widened the availability and use of cocaine in inner cities.”).

59. NAT'L DRUG INTEL. CTR., U.S. DEP'T OF JUSTICE, *CRACK COCAINE FAST FACTS*, available at <http://www.usdoj.gov/ndic/pubs3/3978/3978p.pdf> (asserting that crack is easily abused because it is powerful and can be produced inexpensively). Crack is a highly addictive, smoked form of cocaine. Nat'l Inst. on Drug Abuse, *InfoFacts: Crack and Cocaine*, <http://www.nida.nih.gov/Infofacts/cocaine.html> (last visited Jan. 19, 2007); see also *Crack Cocaine*, <http://www.streetdrugs.org/crack.htm> (last visited Jan. 19, 2007) (stating that cocaine in this form provides intense euphoria for users, increasing the likelihood of compulsive cocaine-seeking behavior).

levels in neighborhoods like Compton.<sup>60</sup> The astounding amount of money involved in the crack industry translates to the perception that gangs provide prospective members with the opportunity to escape the poverty common in these neighborhoods.<sup>61</sup> For example, in Compton, twenty-eight percent of the population earns wages below the poverty level.<sup>62</sup>

Although avoiding such poverty may factor into youths' decisions to join gangs in depressed areas like Compton, suburban gangs like MLO demonstrate that poverty cannot stand alone as the dispositive factor in gang membership. In neighborhoods like Malibu, where the median income is far above the national average,<sup>63</sup> poverty cannot influence the decision to join a gang. Furthermore, even in poor neighborhoods where gangs are prevalent, the majority of youths do not join gangs.<sup>64</sup> If poverty alone was a reliable indicator of a youth's likelihood to join a gang, one would not see gangs forming in affluent communities like Malibu, and one would see a significantly higher percentage of youths in gangs in communities like Compton. Thus, although poverty may be an important societal issue, it does not represent the most useful factor for law enforcement officials to consider in their efforts to stop gang violence.

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60. See U.S. SENTENCING COMM'N, REPORT ON COCAINE AND FEDERAL SENTENCING POLICY (1995), available at <http://www.ussc.gov/crack/CHAP4.HTM> (finding that Los Angeles cultural gangs like the Crips and Bloods are the primary distributors of crack in Los Angeles).

61. See Carlie, *supra* note 50.

62. U.S. Census Bureau, Compton city, California – Fact Sheet, *supra* note 5. East Los Angeles is another community impacted by gangs and poverty. See Joseph Rodriguez, *Gang Life in Los Angeles: The East Side Story*, APF REP. (1994), <http://www.aliciapatterson.org/APF1602/Rodriguez/Rodriguez.html> (“East L.A. has long been a neglected neighborhood, with a predominantly Mexican population. It has one of the nation's highest school drop-out rates, and youth unemployment hovers at 75 percent.”).

63. See U.S. Census Bureau, Malibu City, California – Fact Sheet, *supra* note 5 (showing that Malibu's median household income in 1999 was \$102,031); CARMEN DENAVAS-WALT ET AL., U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS, P60-221, INCOME IN THE UNITED STATES: 2002, at 2 (2003), available at <http://www.census.gov/prod/2003pubs/p60-221.pdf> (showing that Median household income in United States in 2002 was \$42,409).

64. H. Range Hutson et al., *Adolescents and Children Injured or Killed in Drive-By Shootings in Los Angeles*, 330 NEW ENG. J. MED. 324, 324 (1994).

## 2. *Gangs as Institutions in Neighborhoods*

Some theorize that gangs may become so institutionalized in neighborhoods that youths in those neighborhoods may feel they have no choice but to join gangs.<sup>65</sup> This institutionalization can influence youths' decisions in two ways. First, in many urban neighborhoods, gangs become so firmly entrenched in the fabric of the community that gang membership becomes akin to a family tradition.<sup>66</sup> In such situations, it is not uncommon to see second- and third-generation gang members.<sup>67</sup> Second, neighborhood gangs can infect neighborhoods to the extent that youths may feel compelled to join in order to protect themselves from reprisal from the gangs for their refusal to join.<sup>68</sup>

However, neither of these consequences of institutionalization can completely explain the formation of gangs in general, and they certainly do not explain why youths decide to join gangs in affluent communities like Malibu. Paralleling the poverty factor, the institutionalization of gangs occurs frequently in poorer, urban neighborhoods.<sup>69</sup> However, like poverty, institutionalization does not cause every youth in these neighborhoods to join gangs.<sup>70</sup> Furthermore, in suburban settings like Malibu, gangs like MLO have not become institutionalized like their urban counterparts.<sup>71</sup> Although MLO has maintained a presence in Malibu as far back as the late 1960s, it does not play the omnipresent role in the lives of Malibu residents as do gangs in areas like Compton, where gang violence is something with which

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65. See, e.g., Vigil, *supra* note 51.

66. STEVE NAWOJCZYK, STREET GANG DYNAMICS (1997), <http://www.gangwar.com/dynamics.htm> (“[G]ang culture is so ingrained on the west coast that many families have three and even four generations of gangsters residing in the same residence.”).

67. See, e.g., Rodriguez, *supra* note 62 (displaying a photo of an East Los Angeles gang member teaching his baby daughter how to hold his pistol).

68. See NAWOJCZYK, *supra* note 66 (“[M]any kids are intimidated into gangs to avoid continued harassment.”).

69. See KOREM, *supra* note 54, at 68.

70. See Hutson et al., *supra* note 64, at 324.

71. See KOREM, *supra* note 54, at 29 (discussing the institutionalization of inner-city gangs).

residents cope as part of their everyday lives.<sup>72</sup> Thus, institutionalization, like poverty, fails to fully explain youth gang membership—particularly in a suburban gang like MLO.

### 3. *Gangs as Ethnic Self-Protection*

The explanation in Part II that MLO formed to protect Malibu teens and their property interests in the Malibu beaches is consistent with another common theory on the origin of street gangs—that gangs form for ethnic self-protection.<sup>73</sup>

East Los Angeles, which has a well-documented history of gang violence, exemplifies this type of ethnic self-protection.<sup>74</sup> East Los Angeles' population is heavily Hispanic,<sup>75</sup> as is the constituency of most of the gangs in that area.<sup>76</sup> These East Los Angeles gangs did not originally form with the purpose of terrorizing their own communities. The East Los Angeles barrio gangs were originally formed by Mexican-American youths called "pachucos" who often had to protect themselves from groups of white youths when law enforcement was

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72. John Ritter, *Authorities Concentrate on Compton to Cut Gang Deaths*, USA TODAY, June 19, 2006, at 3A. A chilling example of the gang violence that plagues the citizens of Compton is provided by the story of Osiel Hipolito. Hipolito was home in Compton, on leave after serving in the U.S. Navy in Iraq. While at a strip mall with his pregnant wife, Hipolito was attacked by two suspected gang members. One of the attackers began shooting. Hipolito was killed, and his wife was wounded in the abdomen. The bullet that hit his wife struck and injured the fetus. *Sailor on Leave from Iraq Killed by Suspected Gang Members*, SAN DIEGO UNION-TRIBUNE, Sept. 5, 2005, <http://www.signonsandiego.com/news/state/20050905-2309-ca-sailorkilled.html>.

73. See *supra* note 51 and accompanying text.

74. See Carol Ann Morrow, *Jesuit Greg Boyle, Gang Priest*, ST. ANTHONY MESSENGER, Aug. 1999, available at <http://www.americancatholic.org/Messenger/Aug1999/feature1.asp> (noting the existence of sixty gangs with 10,000 members in a sixteen-square-mile area of East Los Angeles).

75. U.S. Census Bureau, East Los Angeles CDP, California – Fact Sheet, <http://factfinder.census.gov> (search "East Los Angeles, California") (last visited Jan. 20, 2007) (showing that, as of the 2000 Census, the population of East Los Angeles was 96.8% Hispanic or Latino).

76. Cf. Gangs in Los Angeles County, East Los Angeles, <http://www.streetgangs.com/hispanic/eastla.html> (listing the names of thirty-one Hispanic gangs in East Los Angeles) (last visited Feb. 28, 2007).

unwilling to provide protection.<sup>77</sup> However, the gangs did not retain their original, arguably noble goals. In fact, they have not only shunned their original roles as protectors of their people, but have actually become enormous threats to their community. The pachucos who protected themselves and their communities from abuse evolved into the 18th Street Gang, which is responsible for hundreds of murders in Los Angeles.<sup>78</sup> Furthermore, the 18th Street Gang has spread across the country and will no doubt be responsible for countless more acts of violence.<sup>79</sup>

Similar to the 18th Street Gang, MLO came into existence to protect Malibu residents' property interests that were being violated by outsiders when authorities refused to intervene.<sup>80</sup> Additionally, Malibu surfers, themselves visible minorities at their schools, had to organize to protect themselves from Mexican gangs that intended to harm them.<sup>81</sup> Thus, like the 18th Street Gang, MLO may have originally had noble, or at least rational, goals of protecting its community and its members. However, also similar to the 18th Street Gang, MLO has devolved into something completely different than a protector of its own ethnic group. MLO has become a gang that is feared not only by

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77. See, e.g., GOVERNOR'S CITIZEN'S COMMITTEE REPORT ON LOS ANGELES RIOTS: THE ZOOT SUIT RIOTS (1943), available at [http://www.digitalhistory.uh.edu/mexican\\_voices/voices\\_display.cfm?id=104](http://www.digitalhistory.uh.edu/mexican_voices/voices_display.cfm?id=104) (noting that "local police were completely unable or unwilling to handle the situation" after a mob of sailors and soldiers set out to beat up "every zoot-suit they could find"); see also Timeline: Zoot Suit Riots, [http://www.pbs.org/wgbh/amex/zoot/eng\\_timeline/timeline2.html](http://www.pbs.org/wgbh/amex/zoot/eng_timeline/timeline2.html) (last visited Apr. 7, 2007) ("Clashes between servicemen and Mexican American youth occur up to two to three times per day.").

78. Alex Alonso, *18th Street Gang in Los Angeles County*, STREETGANGS.COM, Dec. 22, 2002, <http://www.streetgangs.com/18thstreet.html>; Al Valdez, *California's Most Violent Export* (2000), <http://www.streetgangs.com/topics/2002/18thexport.html> ("In 1994 alone, the Los Angeles County District Attorney's Office prosecuted 30 murders that were the result of hits made by 18th Street gang members . . .").

79. Valdez, *supra* note 78 ("Law enforcement officers have encountered 18th Street members in central and northern California, Alaska, Washington, Oregon, Idaho, Nevada, Arizona, Utah, Colorado, New Mexico, Texas, Nebraska, Iowa, Illinois, Georgia, and on Native American lands."); see also 18th Street, [http://www.knowgangs.com/gang\\_resources/profiles/18th](http://www.knowgangs.com/gang_resources/profiles/18th) (last visited Feb. 28, 2007) (suggesting that 18th Street is linked to Mexican and Columbian drug cartels).

80. See *supra* Part II.

81. See E-mail from MLO founder to author, *supra* note 16.

outsiders, but by its own community as well.<sup>82</sup> As such, like its counterpart in East Los Angeles, MLO has followed a seemingly common metamorphosis away from the ethnic protection model. This common devolution across both suburban and urban contexts suggests that the ethnic protection factor is no longer useful as the primary explanation for the motivation of youths to join gangs. Because this factor no longer provides as clear an explanation for gang membership as it may have in the past, it no longer represents the most useful factor for society to address with respect to prevention of youth gang membership.

#### 4. *Gangs as the Result of Violence in the Media*

When addressing the cause of modern gang violence, many point to the prominent portrayal of gang violence in television, movies, and music.<sup>83</sup> This theory seems to draw further support from the increasing prevalence, in both urban and suburban America, of fashions and imagery that are typically associated with gangs.<sup>84</sup>

Researchers point to escalating levels of media violence and attempt to statistically tie this media violence to increases in actual violence in society.<sup>85</sup> Some social scientists theorize that youths act in ac-

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82. See Godal, *supra* note 1 (reporting that Malibu youths were afraid to come forward as witnesses to a MLO attack, even with a reward offered, and would only speak off the record).

83. See, e.g., Joint Statement, *supra* note 53; OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, THE GROWTH OF YOUTH GANG PROBLEMS IN THE UNITED STATES: 1970-98 (2001), [http://www.ncjrs.gov/html/ojjdp/ojjdprpt\\_yth\\_gng\\_prob\\_2001/chap7.html](http://www.ncjrs.gov/html/ojjdp/ojjdprpt_yth_gng_prob_2001/chap7.html) ("In recent years, increasing consensus has developed in support of the position that media images do have a significant influence, particularly on more susceptible youth. In the case of youth gangs, this contention would not be difficult to sustain. The lifestyle and subculture of gangs are sufficiently colorful and dramatic to provide a basis for well-developed media images.").

84. See *Hip Hop Style: What is Cool?*, ONLINE NEWSHOUR, <http://www.pbs.org/newshour/infocus/fashion/hiphop.html> (last visited Jan. 22, 2007) (stating that hip-hop style is popular among youths in the suburbs as well as in urban areas); Tierney, *supra* note 4 (asserting that MLO members wear "gangsta" style Old English script on their clothing because it is popular).

85. See, e.g., DOUGLAS A. GENTILE ET AL., MEDIA VIOLENCE AS A RISK FACTOR FOR CHILDREN: A LONGITUDINAL STUDY 2 (2004), [http://www.mediafamily.org/research/report\\_gentile\\_et\\_al\\_aps\\_2004.pdf](http://www.mediafamily.org/research/report_gentile_et_al_aps_2004.pdf) ("Media violence exposure is described as a risk factor for aggressive beliefs and behaviors . . .").

cordance with what they learn by watching television and movies or by listening to music.<sup>86</sup> However, while some studies indicate some coincidence of violence in media and in the real world, a similar amount of scholarship suggests a lack of any causal linkage between media and real violence.<sup>87</sup> In particular, scholars have suggested that blaming the media for gang membership and youth violence enables politicians to divert focus from the social issues at the root of problems like youth gang membership.<sup>88</sup> This suggestion that underlying social issues represent the true cause of gang membership and gang violence highlights the importance of the next factor to be discussed—the missing protector factor.<sup>89</sup>

A style of rap music called “gangsta rap” is frequently cited as a source of violent influences on youths.<sup>90</sup> Gangsta rap has been popularized by Los Angeles rappers whose songs reflect the violence in areas where street gangs are prevalent.<sup>91</sup> This music is made predominantly by black artists about life in black communities like Compton.<sup>92</sup> However, the genre’s audience has come to consist pre-

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86. See Joint Statement, *supra* note 53.

87. Joanne Savage, *Does Viewing Violent Media Really Cause Criminal Violence? A Methodological Review*, 10 AGGRESSION & VIOLENT BEHAV. 99, 124-25 (2004) (“[T]he question addressed here is not whether or not the effect is plausible, but whether the effect has been demonstrated convincingly in the scientific literature—and the answer is ‘not so far.’ . . . At this point it must be said . . . that there is little evidence in favor of focusing on media violence as a means of remedying our violent crime problem.”).

88. See, e.g., Stuart Fischhoff, *An Invited Address at the Annual Convention of the American Psychological Association: Psychology’s Quixotic Quest for the Media-Violence Connection* (Aug. 21, 1999), <http://www.calstatela.edu/faculty/sfisco/violence.html> (questioning the methodology and validity of media violence studies).

89. The missing protector factor is fully discussed in Part III.C. This factor arises as the result of youths not being able to rely on their parents in crisis situations and being forced to look instead to their peers, thus putting them at risk of gang membership. See discussion *infra* Part III.C.

90. See, e.g., OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, *supra* note 83.

91. See Scott Mervis, *What up, Gangsta? The Hardcore Rap of the '90s*, PITT. POST-GAZETTE, Feb. 16, 2004, at D1 (chronicling how the Compton-based rap group N.W.A. popularized “gangsta” rap and said violent lyrics reflected events in its community).

92. See, e.g., N.W.A., *STRAIGHT OUTTA COMPTON* (Priority Records 1989)

dominantly of white youths.<sup>93</sup> As more white youths began to buy these records, record executives increasingly sought to portray the black artists as more violent, criminal, and rebellious against conservative values.<sup>94</sup> This counter-culture portrayal of rappers naturally appeals to teenagers, who generally go through stages of rebellion in their adolescence.<sup>95</sup>

Violent lyrics heard by these impressionable youths more likely result in violent behavior when these youths have no source of guidance to provide context for the music. One article on this subject contrasted the music of the Rolling Stones<sup>96</sup> with that of rapper 50 Cent.<sup>97</sup>

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(purporting to portray the violent life in Compton). *Straight Outta Compton* by N.W.A. is widely regarded as the seminal gangsta rap album. See, e.g., Robert Hilburn, *Seminal N.W.A. Sounds Daring Even Today*, MERCURY NEWS (San Jose), Jan. 14, 2007, [http://www.broward.com/mld/mercurynews/entertainment/music/16459196.htm?source=rss&channel=mercurynews\\_music](http://www.broward.com/mld/mercurynews/entertainment/music/16459196.htm?source=rss&channel=mercurynews_music).

93. Norman Kelley, *Rhythm Nation: The Political Economy of Black Music*, BLACK RENAISSANCE/RENAISSANCE NOIRE, Summer 1999, available at [http://www.rapcoalition.org/political\\_economy\\_of\\_music.htm](http://www.rapcoalition.org/political_economy_of_music.htm) (“[A] young white audience . . . purchases 66% of rap music, according to the Recording Industry Association of America . . .”).

94. Sean-Patrick Wilson, Comment, *Rap Sheets: The Constitutional and Societal Complications Arising from the Use of Rap Lyrics as Evidence at Criminal Trials*, 12 UCLA ENT. L. REV. 345, 349-50 (2005).

95. See Jeffrey Fagan, *Context and Culpability in Adolescent Crime*, 6 VA. J. SOC. POL’Y & L. 507, 516 (1999) (describing adolescence as a stressful point in a youth’s life marked by emotional struggles).

96. According to their biography on the Rock and Roll Hall of Fame and Museum website:

[The Rolling Stones’ lyrics] captured the Stones’ attitude: an impolite, plainspoken surliness that brought them into disfavor with rock-hating elements in the establishment. Of course, that only made the group more appealing to those sons and daughters who found themselves estranged from the hypocrisies of the adult world—an element that would solidify into an increasingly militant and disenchanting counterculture as the decade wore on.

Rock and Roll Hall of Fame and Museum, 2006 Inductees, <http://www.rockhall.com/hof/inductee.asp?id=182> (last visited Jan. 13, 2007).

97. 50 Cent is the stage name of rapper Curtis James Jackson III. Jason Birchmeier, *50 Cent – Biography*, ALLMUSIC, <http://allmusic.com> (search “50 Cent”; then follow “Biography” tab) (last visited Jan. 18, 2007). Jackson, a convicted drug dealer, has been shot nine times and writes rap lyrics about life on the street. *Id.* These lyrics have become the source of controversy. Conservative commentator Bill O’Reilly, on his show *The O’Reilly Factor*, has criticized 50 Cent and his endorse-

Drawing parallels between the rebellious lyrics of both popular artists, the author asks, “If obnoxious lyrics lead to violence, then why haven’t 100 million Rolling Stones fans run amok?”<sup>98</sup> The article details the view of Eugene Rivers, a black pastor from Boston:

[F]or adolescent white males, who make up its biggest audience, gangsta rap is relatively harmless. Like the Rolling Stones, rappers offer rebellion on the cheap—a low-cost way to give the finger to authority, have an outlaw fantasy life, and drive your parents nuts, without any social consequences. The white kids “go off to college, put on a suit and go to work at Morgan Stanley.” But for black kids who grow up without family discipline, a sense of law and order, or alternative role models, gangsta rap “has an absolutely catastrophic effect.”<sup>99</sup>

Thus, youths with stable family backgrounds may have greater ability to judge gangsta rap’s violent lyrics in a proper, non-violent context. Conversely, youths without such guidance and stability are more likely to take the violent lyrics literally.

Accordingly, media violence by itself cannot explain gang membership. Any influence it may have on impressionable youths comes as a result of a lack of guidance. The next section addresses how this lack of guidance—the missing protector factor—explains not only some youths’ poor reaction to violence in media, but also some youths’ decisions to join gangs in general.

### *C. Gangs as Surrogate Family and Protection for Potential Members—the Missing Protector Factor*

The above discussions of factors in gang membership show that none of those popularly-held notions constitutes a useful, dispositive factor in determining what causes youths to join gangs. The failure of

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ment deal with shoe company Reebok, urging the company to sever its ties with the rapper because of his “thuggish and sexually explicit lyrics.” Greg Gatlin, *Reebok Toasted for Ties to Rapper*, BOSTON HERALD, Mar. 10, 2004, at 37.

98. Margaret Wente, *Get Mad, We’re Bein’ Had, Gangsta Rap’s Really Bad*, GLOBE & MAIL (Toronto), Dec. 1, 2005, at A31.

99. *Id.* While Pastor Rivers appears to frame the distinction based on black versus white, he notes that the main difference is an “underclass culture.” *Id.* The lack of guidance is truly the important factor in the influence of the music.

family and similar support mechanisms—what author and gang expert Dan Korem calls the “missing protector factor”—provides the most common explanation for youths’ choices to join dangerous street gangs.<sup>100</sup>

Societal changes like rising divorce rates, increasing numbers of mothers in the workforce, and the failure of public schools to properly educate youths “have posed challenges particularly for poor families, and also for racial and ethnic minorities.”<sup>101</sup> But it is important to note that “no segment of our society is immune to the effects of these changes, which have produced a growing sense of crisis even among the well-to-do.”<sup>102</sup> Gangs in both urban and suburban settings may provide vulnerable youths with a sense of protection when they cannot rely on members of their own families to aid them in crisis situations.<sup>103</sup> This is the single influential factor that both urban and suburban youths who choose to join gangs typically have in common.<sup>104</sup> When the Los Angeles County Sheriff’s Department in Malibu downplays the emergence of gangs like MLO in communities like Malibu, they help obscure this very important factor by allowing the focus to remain on the other, less reliable factors. This section first examines the missing protector factor to provide a better understanding of the rationale behind youths’ decisions to join gangs like MLO. Next, this section demonstrates the importance of devoting proper attention to this factor as society tries to prevent youth gang membership.

### 1. *The Missing Protector Factor as a Motivator for Youth Gang Membership*

In *Suburban Gangs: The Affluent Rebels*, Dan Korem explores the evolution of gangs in suburban neighborhoods.<sup>105</sup> Korem notes that

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100. See KOREM, *supra* note 54, at 63; see also Sandra Fu, *How To Get a Friend out of a Gang*, DRDREW.COM, <http://drdrew.com/Topics/article.asp?id=1302> (last visited Jan. 13, 2007) (explaining that teens join gangs because of a lack of quality attention at home).

101. Carlie, *supra* note 50 (quoting NAT’L SCI. FOUND., FOSTERING SUCCESSFUL FAMILIES: THE NATURE OF THE PROBLEM (2001)).

102. *Id.*

103. See KOREM, *supra* note 54, at 63.

104. *Id.*

105. See KOREM, *supra* note 54.

these affluent suburbs were not affected by many of the aforementioned factors, like poverty and institutionalization, normally thought to cause gang membership.<sup>106</sup> As such, the missing protector factor becomes the critical factor in youths' decisions to join suburban gangs.<sup>107</sup> The missing protector factor arises due to the absence of one or more stable parental figures in youths' lives.<sup>108</sup> In the traditional "nuclear family," where both parents are constructively involved in their children's upbringing, youths are far less likely to join gangs because they have responsible adults on whom they can rely to protect them in crises.<sup>109</sup> Conversely, children without the benefit of having both parents constructively involved in their upbringing cannot rely on their parents in crisis situations.<sup>110</sup> This lack of reliable protectors acts to push youths into gang membership. Consequently, youths must turn to outsiders for such protection and guidance.<sup>111</sup>

Korem writes of a study in which children point to protector influences in their lives. Children first look to parents.<sup>112</sup> Next, they look to extended family members.<sup>113</sup> If the children do not get the protection they seek from either of those two sources, they are forced to turn to their peers.<sup>114</sup> Although the influence of gangs is largely destructive rather than constructive, gangs may appear to provide youths with the missing protection through strength in numbers, as evidenced by gangs' early roles as protectors of their communities.<sup>115</sup>

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106. *Id.* at 7-8, 10.

107. *Id.* at 11.

108. *See id.* at 50 ("Every youth in each of the gangs came from a broken, unstable, or severely dysfunctional home."). The traditional family consists of the "nuclear family," which is a functional unit of a mother, a father, and their children. *Id.* at 53.

109. *Id.* at 65 (noting that approximately seventy-five percent of youths in gangs claimed this factor was present).

110. *See id.* at 64. This missing protector can arise in the form of one or both of the parents being physically absent during the upbringing. *See id.* at 50. It may also arise if one or both of the parents is dysfunctional. *Id.* The type of dysfunction involved includes drug or alcohol addiction or mental or physical abuse by the parent. *Id.*

111. *Id.* at 65.

112. *Id.* at 64.

113. *Id.*

114. *Id.*

115. *See supra* Part III.B.3.

This missing protector factor and its potential for pushing youths into gangs has been endorsed by Los Angeles gang intervention expert Father Greg Boyle, S.J.<sup>116</sup> Father Boyle is noted for his twenty years of work assisting youths in avoiding gangs in the Boyle Heights area of East Los Angeles.<sup>117</sup> Father Boyle opined on Korem's missing protector factor: "I like it. In the end a hopeful kid never joins a gang—and always a kid is not seeking anything when he joins a gang—he's fleeing something. The pull factor is not significant—the push factor is."<sup>118</sup> Youths do not decide to join gangs hoping for good things to happen. Rather, as Father Boyle and the missing protector factor emphasize, youths flee from bad situations into gang life. Abuse or neglect in a youth's home situation acts to deprive that youth of the hope that parental guidance usually provides. This lack of hope then pushes the youth out of the dysfunctional situation. As a result, gangs become increasingly likely to serve as default surrogate families. Avoiding the necessity for gangs to act as surrogate families is what Father Boyle has addressed in his often successful efforts to provide young gang members with an alternative form of support.<sup>119</sup>

Professor Jeffrey Fagan discusses this tremendous potential for gang influence on impressionable youths in his article concerning the cultural context in which teen violence arises.<sup>120</sup> Adolescence is a stressful point in youths' lives, and adolescent crime is closely linked to the developmental needs of adolescents.<sup>121</sup> One of these needs is the adolescent's search for a social identity.<sup>122</sup> During this search for an identity, youths often engage in rough-housing behavior, learning their way around physical violence.<sup>123</sup> When these youths engage in what

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116. E-mail from Father Gregory J. Boyle, S.J., Founder, Jobs for a Future Homeboy Industries, to author (Apr. 14, 2006, 18:09 PST) (on file with author).

117. See Morrow, *supra* note 74.

118. E-mail from Father Boyle, *supra* note 116.

119. Edward Iwata, *Homeboy Industries Goes Gang-Busters*, USA TODAY, Jul. 11, 2005, at 1B. Since 1992, Father Boyle has run a nonprofit business called Homeboy Industries. The business focuses on providing youths a way out of gangs by providing jobs, counseling, and gang tattoo removal. Most importantly, Father Boyle says Homeboy Industries represents a "bastion of unconditional love." *Id.*

120. See Fagan, *supra* note 95, at 520-21.

121. *Id.* at 511, 516.

122. *Id.* at 524.

123. *Id.* at 518.

may begin as mildly violent behavior, the social context in which they act becomes crucial.<sup>124</sup>

Fagan describes this context in terms of two types of normative systems—“decent” and “street.”<sup>125</sup> “Decent” refers to youths who have stable family backgrounds that provide them with a healthy frame of reference with which to judge events in their lives.<sup>126</sup> “Street,” on the other hand, refers to youths who fall outside “decent” values and are “opposed to mainstream society.”<sup>127</sup> Even in poor, inner-city neighborhoods, the majority of residents fall within the “decent” class.<sup>128</sup> However, pressures encountered on the street, without positive influences, may steer even “decent” adolescents toward becoming “street.”<sup>129</sup>

Other scholars have supported this idea of youths’ delinquent, “street” peers acting as strong negative influences in the absence of “decent” parenting. Professor Irving Spergel described this influence as follows:

[T]he family and the gang may play complementary socialization roles for gang members, teaching them different survival skills. [The gang is] complementary to the family in lower-class Mexican-American barrio culture in Los Angeles: the women perform dominant roles in the home and the men perform their warrior roles on the street.<sup>130</sup>

Additionally, scholars have advanced an “interactional theory” that cites the influences of social structure on youths’ delinquent behav-

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124. *Id.* at 518-19.

125. *Id.* at 528 (citing Elijah Anderson, *Violence and the Inner City Street Code*, in *VIOLENCE AND CHILDHOOD IN THE INNER CITY* 1 (Joan McCord ed., 1997)).

126. *See id.* (suggesting that youths with “decent” normative systems are those “locked into middle class values”).

127. *Id.*

128. *Id.*

129. *See id.* at 538-39.

130. IRVING A. SPERGEL, *THE YOUTH GANG PROBLEM: A COMMUNITY APPROACH* 115 (1995) (citing Walter B. Miller, *Youth Gangs in the Urban Crisis Era*, in *JUVENILE DELINQUENCY* 91 (James F. Short, Jr. ed., 1976); Mike Sager, *Death in Venice*, *ROLLING STONE*, Sept. 1988, at 64).

ior.<sup>131</sup> A key element of this theory is the idea that the influences and subsequent interactions have a bi-directional causality.<sup>132</sup> In other words, it assumes not only that anti-social influences like dysfunctional families influence youths' selection of peer groups, but also that these peer groups may influence delinquent behavior.

These scholars' concepts support Fagan's idea that youths from both "decent" and "street" backgrounds learn to react to stressful situations in their environments by developing scripts through social interaction and practice. These scripts are consistent methods with which to react to those stressful situations.<sup>133</sup> "Street" youths learn "street" scripts—reactions to stressful situations influenced only by other "street" youths.<sup>134</sup> These scripts often involve the use of violence to resolve the stressful situations.<sup>135</sup> "Decent" youths, on the other hand, have the positive influences of stable families and can develop alternative, "decent" scripts.<sup>136</sup> These adolescents are thus not limited to reacting to stress violently like their "street" counterparts.<sup>137</sup>

Youths make these behavioral decisions based on interactions with both family and peers.<sup>138</sup> Thus, without a good frame of reference, gang activity in an adolescent's environment can serve as a powerful factor in his or her decision to engage in violent behavior.<sup>139</sup> Street gangs accept and often encourage violence, and youths may gain status by engaging in violent acts in front of the audience that a gang provides.<sup>140</sup> Impressionable youths without the expanded context that a good upbringing provides are amenable to the influence of an audience in their decision-making process.<sup>141</sup> A stressful situation may become violent if a youth seeks to gain status by acting violent in

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131. See TERENCE P. THORNBERRY ET AL., GANGS AND DELINQUENCY IN DEVELOPMENTAL PERSPECTIVE 83 (2003).

132. *Id.*

133. See Fagan, *supra* note 95, at 535-39.

134. *See id.*

135. *Id.* at 537.

136. *Id.*

137. *See id.*

138. *See id.* at 537-38.

139. *See id.*

140. *See id.* at 538.

141. *Id.* at 537.

front of peers whom he feels may be impressed by this behavior. By contrast, the added context provided by a “decent” upbringing can provide the youth with alternatives at gaining status, avoiding the perceived need for violence in a stressful situation.<sup>142</sup>

The missing protector factor is important because stable protectors are an essential part of a “decent” upbringing, providing youths with protection and guidance. As shown, adequate protection provides adolescents with the frame of reference needed to address stressful social situations. Without responsible adults—ideally, both functional parents—to provide this protection, adolescents are at risk of becoming “street” youths, susceptible to the destructive influence of street gangs. The next section discusses how this push toward “street” youths can occur in both urban and suburban settings.

## *2. The Missing Protector Factor Exists in Both Urban and Suburban Areas.*

The push out of the “nuclear family” into the surrogate gang family occurs not only in poorer neighborhoods like East Los Angeles, where Father Boyle works, but also in neighborhoods like Malibu.<sup>143</sup> A dysfunctional family, and the accompanying lack of support and guidance, may exacerbate factors such as poverty and the institutionalization of gangs in poorer neighborhoods. Youths with chaotic family situations may lack the guidance needed to cope with the pressure from these other factors. However, because suburban youths do not face the same types of pressures as youths in poorer urban neighborhoods, the missing protector factor remains the one factor that pushes both urban and suburban youths to join gangs.<sup>144</sup> Divorce rates have boomed in America in the last five decades,<sup>145</sup> which reveals at least a

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142. *Id.*

143. *See, e.g.,* David J. Fein, *Married and Poor: Basic Characteristics of Economically Disadvantaged Couples in the U.S.* 4 (MDRC, Working Paper No. SHM-01, 2004), available at <http://www.mdrc.org/publications/393/workpaper.pdf> (revealing that although poverty makes divorce more likely, the divorce rate in the first ten years of marriage remains at 23% for women living in neighborhoods ranked in the top quarter percentile of median family income).

144. *See* KOREM, *supra* note 54, at 63.

145. *Id.* at 53 (comparing the rate of one divorce per six marriages in 1940 to the rate of one divorce per two marriages by 1989). In 2005, there were 7.5 new marriages per 1,000 people and 3.6 divorces per 1,000 in the United States. Martha

tacit acceptance of divorce by a large segment of American society. This increasing tolerance leaves an ever-increasing number of American youths without the steady influence and protection of both parents and makes them vulnerable to gang influence.<sup>146</sup>

Those youths who grow up in homes without both parents may also lack alternative protectors like teachers and coaches, adults that youths could otherwise rely on as potential substitutes for missing parents.<sup>147</sup> School systems, particularly in California, have suffered budget shortfalls that hurt their ability to hire teachers and run extra-curricular programs.<sup>148</sup> This shortage of teachers and after-school programs makes it less likely that students without stable families can turn to teachers or other adults for the protection that their parents fail to provide. Consequently, youths must look to their peers as role models.<sup>149</sup> This situation, as noted in Part III.C.1, may have disastrous results when youths who are similarly deprived of “decent” upbringings serve as frames of reference for each other’s behavior. The following section discusses these results with respect to a suspected member of MLO.

### 3. *Brawley Nolte: Pushed into MLO by the Missing Protector Factor?*

The impact of the missing protector factor in the decisions of youths to join gangs is illustrated by MLO member Brawley King

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L. Munson & Paul D. Sutton, *Births, Marriages, Divorces, and Deaths: Provisional Data for 2005*, NAT’L VITAL STAT. REP., July 21, 2006, at 1, available at [http://www.cdc.gov/nchs/data/nvsr/nvsr54\\_20.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr54_20.pdf); see also *Carlie*, *supra* note 50 (stating that the rising divorce rate, as part of the overall deterioration of the family unit, is responsible for youths’ decisions to join gangs).

146. Although divorce is cited as a prominent factor for the absence of a protector in a youth’s life, other factors may remove a parent from the role of protector in a child’s life. See, e.g., *KOREM*, *supra* note 54, at 55 (“A family may appear to be mentally healthy to an outsider, but if even one parent is *severely* dysfunctional and a youth takes the *brunt* of that dysfunction—it can be the activating mechanism that initiates gang involvement.”); *Carlie*, *supra* note 50 (suggesting that, in addition to divorce, the presence of mothers in the workforce results in increased gang membership).

147. See *KOREM*, *supra* note 54, at 65.

148. Kim Saito, *California Universities and Public Schools Face Massive Budget Cuts*, WORLD SOCIALIST WEB SITE, Jan. 15, 2003, <http://www.wsws.org/articles/2003/jan2003/cali-j15.shtml>.

149. *KOREM*, *supra* note 54, at 63-64.

Nolte. Nolte provides an excellent example of the protector-lacking youths about whom Korem writes. Nolte is one of the MLO members accused in a pending civil suit of attacking the young man who was nearly beaten to death at a party.<sup>150</sup> Brawley Nolte, an actor himself,<sup>151</sup> is the son of actor Nick Nolte.<sup>152</sup> This connection to his famous father has made Nolte the face of MLO in several media accounts of the gang and its actions.<sup>153</sup>

If the allegations are true, Nolte's behavior conforms to traditional notions of gang behavior. He took part in his gang's violent, random attacks and intimidation of witnesses.<sup>154</sup> However, Nolte does not fit in with many of the traditional notions of what causes youths to join urban gangs. Nolte lived with his father in the affluent community of Malibu.<sup>155</sup> Additionally, the attacks took place at parties at others' houses.<sup>156</sup> Thus, Nolte could not have joined MLO because he lives in poverty or because he was protecting any sort of property rights or ethnic interests.

Because these traditional factors cannot explain Brawley Nolte's decision to join a gang, the missing protector factor becomes particularly relevant in accounting for the decision. Nick Nolte is divorced

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150. *Nick Nolte's Son in Trouble*, CONTACTMUSIC.COM, Apr. 22, 2004, <http://www.contactmusic.com/new/xmlfeed.nsf/mndwebpages/nick%20nolte.s%20son%20in%20trouble> ("Brawley Nolte has been identified as the member of new gang Malibu Locals Only, who gatecrash posh parties and beat up non Malibu [sic] kids. And now the 17-year-old . . . has been named in a lawsuit by one youngster who claims Brawley and his gang mates 'struck, hit, kicked, beat, assaulted and battered' him at a party.").

151. Brawley Nolte starred as Mel Gibson's son in the film *Ransom*. *Nick Nolte's Son in Trouble*, *supra* note 150.

152. Biography for Brawley Nolte, <http://www.imdb.com/name/nm0634509/bio> (last visited Jan. 25, 2007). Nick Nolte has starred in over sixty-five films and has received two Academy Award nominations. Nick Nolte, <http://www.imdb.com/name/nm0000560/> (last visited Jan. 25, 2007).

153. *See, e.g.*, Stephens, *supra* note 1.

154. *See Nick Nolte's Son in Trouble*, *supra* note 150 (suggesting Nolte's involvement in alleged MLO beating of "youngster"); Godal, *supra* note 1 (describing alleged threats made by MLO member to witnesses of a beating).

155. *See Lawsuit Against Nolte and Son Advances*, WASH. POST, May 12, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/12/AR2006051201270.html>.

156. Godal, *supra* note 1.

from Brawley's mother,<sup>157</sup> so Brawley may have lacked the protection provided by both parents' involvement in his upbringing. Furthermore, Nick Nolte has publicly struggled with substance abuse problems, so he seems to fit the description of a dysfunctional parent.<sup>158</sup> With this lack of a stable family situation, Brawley Nolte appears to typify the at-risk suburban youth who is pushed to look to peers to fulfill the role of protector and provide the social context with which to develop his behavior.<sup>159</sup>

If this push occurred as described, Nolte may have found this sort of protection and support from MLO. Unfortunately, like many "street" youths who lack parental guidance,<sup>160</sup> Nolte's support and protection may have come in the form of MLO. One of MLO's founding members has fictitiously identified MLO's self-proclaimed leader as "Ricco," stating:

[Ricco] is an Arab/Persian . . . . In between prison for drug and other charges he lives with his wealthy Arab parents [in Malibu]. He has some "cool" prison tats . . . [and] rumor has it he learned to fight a little in Prison. Little rich actors kids [sic] parents are often too busy to even sort of do their job so they are left to be raised by

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157. Nick Nolte divorced Brawley's mother, Rebecca Linger, in 1994. See *Nick Nolte's Son Faces Felony Pot Charge*, S.F. CHRON., Apr. 25, 2006, <http://sfgate.com/cgi-bin/article.cgi?f=/n/a/2005/04/25/entertainment/e073159D58.D> TL. Brawley Nolte was born in 1986; this means that Brawley was roughly eight years old at the time of the divorce. See Biography for Brawley Nolte, *supra* note 152 (listing Brawley's date of birth as June 20, 1986).

158. See, e.g., *Nick Nolte in DUI Arrest*, CBS NEWS, Sept. 12, 2002, <http://www.cbsnews.com/stories/2002/09/23/entertainment/main522969.shtml> (reporting that Nick Nolte had been arrested in 2002 on suspicion of driving under the influence and noting Mr. Nolte's reputation as a "heavy drinker"); see also Nick Nolte Biography – Yahoo! Movies, <http://movies.yahoo.com/movie/contributor/1800011534/bio> (last visited Jan. 19, 2007) (citing reports that describe Nick Nolte as "the dysfunctional version of the Hollywood leading man" and "a recovering alcoholic and former drug abuser").

159. Brawley Nolte continued to commit delinquent acts as of April 2005, when he was arrested in West Virginia for possession of marijuana with intent to distribute. *Nick Nolte's Son Faces Felony Pot Charge*, *supra* note 157.

160. See discussion *supra* Part III.C.1.

MTV/RAP videos. A head full of gangster rap/culture and “Ricco” for a mentor.<sup>161</sup>

With a lack of adequate parental guidance, a youth like Nolte may have been led astray by other powerful social influences. With his prison tattoos and apparently self-adopted tough guy image, “Ricco” could conceivably convey the image of someone who could provide the protection that an impressionable youth like Nolte seems to have lacked in his biological family.<sup>162</sup>

Due to this type of powerful influence that gangs may exert over vulnerable youths like Nolte, the importance of a stable family environment is crucial. However, the stable nuclear family is becoming more and more a thing of the past.<sup>163</sup> Additionally, gang membership appears to be on the rise, spreading throughout the United States.<sup>164</sup> Thus, the missing protector factor becomes the most important factor for society to address in its efforts to stop youths from joining gangs.

#### IV. CHALLENGES IN THE WAR ON GANGS AND HOW FAILURE TO PROPERLY ADDRESS MLO HURTS THE WAR ON GANGS

Due to the rise in gang membership, the failure of authorities like the Los Angeles County Sheriff’s Department to properly identify a gang like MLO increases the challenges faced by the criminal justice system in the fight against gang violence. First, gangs and the violence that they bring to their communities have become a matter of global concern.<sup>165</sup> Malibu officials’ failure to properly address MLO as a gang allows a potentially dangerous gang to exist and grow unimpeded. Second, because of the prevalence of gang violence, the crimi-

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161. E-mail from MLO founder to author, *supra* note 16.

162. This is particularly true in light of today’s youths’ apparent fascination with gang culture. Gangster rap dominates the hip hop market, and its customers are white youths to whom the record companies market the most violent gangster material possible. *See supra* Part III.B.4.

163. *See supra* notes 145-48 and accompanying text.

164. *See* KOREM, *supra* note 54, at 7-8 (describing the spread of gang activity from the inner city to affluent suburbs).

165. *See* TEEN GANGS: A GLOBAL VIEW (Maureen P. Duffy & Scott Edward Gillig eds., 2004) (discussing the gang problems in such diverse places as Australia, the Bahamas, Great Britain, Honduras, Ireland, Israel, Italy, Jamaica, Malaysia, Papua New Guinea, Puerto Rico, Taiwan, and Trinidad and Tobago).

nal justice system has adopted powerful, though constitutionally suspect, tools like civil gang injunctions and the STEP Act in its war against youth gangs. If authorities fail to classify suburban gangs like MLO as gangs when they appear to meet statutory definitions of gangs, the war on gangs begins to appear arbitrary. This arbitrary enforcement raises Equal Protection questions by placing a seemingly heavier burden on the constitutional rights of minorities. Thus, it appears to harm the legitimacy of anti-gang measures and seems to perpetuate the appearance of inherent racism in the criminal justice system.

*A. Gangs Are a Problem of Epidemic Proportions, Particularly in Los Angeles County*

Gangs have become prevalent nationwide.<sup>166</sup> Los Angeles, in particular, has a tremendous problem with gang violence.<sup>167</sup> "In Los Angeles County, law enforcement officials know of more than 1300 street gangs with over 150,000 members."<sup>168</sup> The City of Los Angeles alone has roughly 407 gangs and over 56,000 gang members.<sup>169</sup> These numbers represent a dramatic rise in the last two decades. In 1989, Los Angeles prosecutors noted that the county had over 700 street gangs and 70,000 gang members.<sup>170</sup> Furthermore, gangs have spread from the inner city to suburban areas throughout the nation.<sup>171</sup> With such a dramatic and recent increase, the criminal justice system must aggressively fight gangs, not only in the inner city, but also in the suburbs. As such, a gang like MLO should concern law enforcement officials.

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166. Michigan State University Libraries – Criminal Justice Resources – Gangs, <http://www.lib.msu.edu/harris23/crimjust/gangs.htm> (last visited Mar. 9, 2007) ("Gang experts say at least 21,500 gangs—with more than 731,000 members—are active nationwide.").

167. Beth Barrett, *Homegrown Terror*, L.A. DAILY NEWS, Sept. 26, 2004, [http://lang.dailynews.com/socal/gangs/articles/ALL\\_p1main.asp](http://lang.dailynews.com/socal/gangs/articles/ALL_p1main.asp) (stating that since 1999, gang violence has claimed over 3,000 lives in the greater Los Angeles area).

168. Violence Prevention Coalition of Greater Los Angeles, Fact Sheets – Gang Violence, <http://www.vpcla.org/factGang.htm> (last visited Jan. 31, 2007).

169. *Id.*

170. See Ira Reiner, *Taking on Street Gangs: A Plan for Prosecutors*, PROSECUTOR'S BRIEF, Fall 1989, at 5.

171. See KOREM, *supra* note 54, at 7.

This spreading gang threat has become apparent in Malibu. The evolution of MLO from its early form to its modern incarnation, as discussed in Part II, shows it now has much in common with the gangs in Compton and East Los Angeles. Los Angeles Sheriff's officials should label them as such and address the problem before MLO creates worse problems for Malibu. A gang like MLO, left unchecked, could create problems for Malibu in two ways. First, less established gangs and gang members can be even more dangerous than established gangs because these "wannabe" gangsters may feel the need to appear dangerous like their more established counterparts. Second, if a gang like MLO is allowed to grow without intervention by law enforcement officials, the gang can become institutionalized in the community and create a more deep-seated problem for law enforcement officials in the future.

### 1. *The Danger of "Wannabes"*

While gangs like those found in Compton and East Los Angeles are well-known and feared in their communities,<sup>172</sup> members of less-established gangs like MLO may feel pressure to live up to the images of their more established counterparts. These less-established gang members are often referred to as "wannabes."<sup>173</sup> A "wannabe's" need to make a name for himself may lead him to commit worse, more random crimes than those committed by established gangs, whose existing reputation makes it unnecessary to act violently solely out of a desire to create a reputation.<sup>174</sup>

MLO seems to have exhibited this type of "wannabe" behavior in the attacks described in this Article's Foreword. When the idea of an active gang in Malibu is mentioned to those unfamiliar with MLO, the common reaction is derision—a Malibu gangster has to be a ridiculous

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172. See *supra* notes 72-74 and accompanying text.

173. "Wannabe" is a shortened version of "want to be." "Real gang members will even tell you that the most dangerous juvenile is one who is 'false flagging' [synonym for wannabe]. . . . A juvenile who wants to be in a gang will often go to extremes to prove that he is 'down.' As a result he may be more prone to violence." Posting of Anthony to Gang Intelligence/Threat Management Group, The Wannabe Lie, <http://violencemanagement.blogspot.com/2006/04/wannabe-lie.html> (Apr. 7, 2006).

174. See *id.*

“wannabe” of the worst kind.<sup>175</sup> This lack of respect represents the type of stimulus that may create “wannabe” violence. The random, ultraviolent attack on the non-Malibu resident at the Malibu party seems to be consistent with the idea of excessive “wannabe” violence—MLO and its members wanting to create an intimidating reputation for themselves.

Unfortunately, Los Angeles Sheriff’s officials have treated this dangerous behavior in a dismissive manner.<sup>176</sup> The beating, though investigated, never resulted in the filing of criminal charges.<sup>177</sup> In interviews, Los Angeles Sheriff’s Detective J.T. Manwell stated that MLO was not a gang.<sup>178</sup> Deputy Vic Paladino made the same statement at a Malibu town meeting.<sup>179</sup> As such, Sheriff’s officials apparently fail to recognize the threat that MLO presents as a gang that may want to expand its violent reputation.

## 2. *The Danger of Institutionalization*

In addition to ignoring this “wannabe” danger, law enforcement officials’ failure to address MLO as a gang creates the danger that MLO, like the gangs of East Los Angeles, will take root and become a permanent fixture in the community. This danger of institutionalization should concern a suburban community like Malibu because gangs are particularly difficult to fight when they become well-established.<sup>180</sup> Furthermore, it is difficult to disengage a youth from such an established gang.<sup>181</sup>

Typically, youths may belong to a non-institutionalized youth group or gang for a period of time but become less interested when

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175. See Tierney, *supra* note 4 (asking a Malibu High surfer if members of MLO act like the “wannabes” portrayed in the movie *Malibu’s Most Wanted*). The title of Tierney’s article, *Malibu’s Least Wanted*, parodies the title of a 2003 film about a “wannabe” Malibu gangster. See *id.*

176. See Godal, *supra* note 1.

177. *Id.*

178. See, e.g., Stephens, *supra* note 1 (“This is simply a local group of kids, and it really doesn’t [sic] come close to being classified as a gang.”).

179. See MALIBU CITY COUNCIL, *supra* note 8, at 6.

180. See KOREM, *supra* note 54, at 68.

181. See *id.*

other opportunities like college arise.<sup>182</sup> This assumption may explain the public's seeming lack of concern with respect to MLO. It is possible that society sees a gang like MLO in an affluent community and assumes that, because of their wealth and mobility, MLO members will simply choose to leave the lifestyle when they tire of it. This idea seems to have been adopted even by people somewhat familiar with the gang, like the MLO founder who discounts modern MLO members as "[l]ittle rich actors kids [sic] parents."<sup>183</sup> Unfortunately, the continuing presence of MLO in Malibu and the violent behavior the gang exhibits belie the notion that the gang will just go away if ignored. If law enforcement officials allow a gang like MLO to become part of the fabric of the community, opportunities like college may begin to seem less attractive than life in an established gang.

The possibility of such institutionalization has already become evident in MLO's evolution. As discussed in Part II, MLO began as a loose association of surfers that protected themselves and their private beaches. The gang's role as protectors of the Malibu community and beaches disappeared when Malibu beaches became public and Malibu got its own high school. Many early MLO members simply moved on to other opportunities.<sup>184</sup> Today, one sees a gang that has already shown a willingness to increase its pattern of violent behavior to a level that meets the STEP Act's criteria for defining a gang.<sup>185</sup>

Because of its increasing level of violence and intimidation of witnesses, MLO has established itself as a group that inspires fear in its own community. Furthermore, members of the gang are not simply leaving the gang when it comes time to attend college.<sup>186</sup> MLO appears to be in the process of institutionalization. Unfortunately, not all members of the community, including law enforcement officials, appear concerned with this development.<sup>187</sup> Los Angeles Sheriff's offi-

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182. *Id.* at 206.

183. See E-mail from MLO founder to author, *supra* note 16.

184. *See id.*

185. See CAL. PENAL CODE § 186.22 (West 1999 & Supp. 2007).

186. See Tierney, *supra* note 4 (explaining that some MLO members "used to work at Subway [and] Blockbuster").

187. See, e.g., Stephens, *supra* note 1 (interviewing Malibu business owner John Jacobs, who calls the attention to MLO in the media overblown hype over youths doing "normal things[;] they surf, drink beer, chase girls and fight[;] they don't sit at home studying the piano"). *But see id.* (interviewing another Malibu

cial's failure to address this issue thus creates the risk that MLO will become entrenched in the Malibu community and will become increasingly more difficult to fight in the future. Because of this institutionalization concern and the dangers posed by gangs—both “wannabe” and established—the criminal justice system has adopted powerful tools, to be discussed in the next section, in its war on gangs.

### *B. Tools Used by Law Enforcement in the War on Gangs*

Because of the growing problem of gangs and the concern that they are becoming institutionalized in communities throughout the state, California has created tools to assist the criminal justice system in aggressively fighting gangs and gang violence. These tools include the STEP Act and civil gang injunctions. The STEP Act allows law enforcement officials to criminalize the mere act of participating in activities that may benefit gangs.<sup>188</sup> Additionally, Los Angeles law enforcement officials can seek civil gang injunctions, using nuisance law, to prevent gang members from otherwise legal acts like assembling together in public.<sup>189</sup>

Criminal justice officials consider these tools effective and have used them extensively in attacking dangerous street gangs.<sup>190</sup> However, critics of the STEP Act and anti-gang injunctions have questioned their impact on constitutional rights such as freedom of association.<sup>191</sup> This questionable constitutionality, when coupled with the potential for arbitrary enforcement, creates two grave concerns. First, arbitrary enforcement, like the refusal to use STEP Act enforcement or injunctions against a suburban, white gang, creates the concern that minorities are being singled out for harsher treatment under the criminal justice system's anti-gang tools, violating the Equal Protection

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business owner and parent of three children, named only as Jay, who has strong feelings about MLO and its cost to the community due to its repeated vandalism of area schools).

188. See CAL. PENAL CODE § 186.22(b)(1) (West Supp. 2007).

189. See Grogger, *supra* note 43, at 69-70.

190. See GRAND JURY REPORT, *supra* note 37, at 169-79.

191. See, e.g., Matthew Mickle Werdegar, Note, *Enjoining the Constitution: The Use of Public Nuisance Abatement Injunctions Against Urban Street Gangs*, 51 STAN. L. REV. 409, 428-29 (1999) (arguing that enjoined defendants' civil liberties are curtailed simply for associating with people who have committed crimes).

Clause of the Fourteenth Amendment.<sup>192</sup> Second, such arbitrary enforcement, if done in a seemingly invidiously discriminatory manner, harms the efforts of the criminal justice system by perpetuating the appearance of racism in the system.

1. *Law Enforcement Officials Must Use the STEP Act and Civil Gang Injunctions Uniformly to Avoid Equal Protection Violations*

In 1988, the California legislature enacted California Penal Code section 186.22, part of the Street Terrorism Enforcement and Prevention Act, or the STEP Act.<sup>193</sup> The STEP Act allows for harsh penalties to be applied to gang members for gang-related crimes.<sup>194</sup> Importantly, the STEP Act provides the criteria that a group must meet to constitute a gang and fall under its purview. The Act requires a group of people with a common insignia or identifier that associates with the purpose of committing predicate acts as set forth in that statute.<sup>195</sup> Additionally, in 1987, Los Angeles County law enforcement agencies began pursuing civil injunctions against gangs whose activities were classified as public nuisances.<sup>196</sup> As previously noted, these civil gang injunctions allow law enforcement agencies to seek court orders enjoining gang members from associating together in public.<sup>197</sup> If violated, the injunctions are enforceable through harsh contempt of court penalties.<sup>198</sup> Both the STEP Act and civil injunctions have been successful in providing California law enforcement officials with the ability to target gangs for strict law enforcement action.<sup>199</sup>

Although these tools would be valuable in fighting a suburban gang like MLO, the Los Angeles Sheriff's Department has repeatedly

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192. See U.S. CONST. amend. XIV, § 1.

193. See CAL. PENAL CODE §§ 186.20-186.33 (West 1999 & Supp. 2007).

194. See § 186.22.

195. § 186.22(f).

196. GRAND JURY REPORT, *supra* note 37, at 169-70.

197. *Id.* at 169-70.

198. See Grogger, *supra* note 43, at 72 ("Once an injunction is imposed, prosecutors can pursue violations of the injunction in either civil or criminal court. The maximum penalty for civil contempt is a \$1,000 fine and 5 days in jail. The maximum penalty under criminal prosecution is a \$1,000 fine and 6 months in jail.").

199. See GRAND JURY REPORT, *supra* note 37, at 192, 195-97; Grogger, *supra* note 43, at 89.

refused to label MLO as a gang.<sup>200</sup> Despite these denials, MLO meets the STEP Act's gang criteria. The attacks, as described in the Foreword, show that MLO has more than the three persons required by the statute.<sup>201</sup> MLO members committed predicate acts under California Penal Code section 186.22 when they committed an assault with a deadly weapon or an assault with great bodily force, and subsequently threatened witnesses with death.<sup>202</sup> The gang has a common insignia and identifier, as they self-identify with MLO and frequently spray-paint graffiti with the MLO identifier in areas around Malibu.<sup>203</sup> Thus, according to the STEP Act criteria, MLO constitutes a gang. As such, Los Angeles law enforcement officials could prosecute MLO members using the STEP Act or could seek a civil gang injunction against MLO. However, it appears that the officials have simply chosen not to do so.

This failure by Los Angeles Sheriff's Department officials to attack MLO as a gang raises the question of why such a decision is being made. Nothing outwardly indicates that officials have declined to act because MLO members are primarily white.<sup>204</sup> However, the fact that a predominantly white, suburban gang can escape the close scrutiny of law enforcement officials raises the possibility of arbitrary enforcement when STEP Act prosecutions and civil gang injunctions are

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200. See *supra* note 8.

201. See CAL. PENAL CODE § 186.22(f) (West Supp. 2007); Godal, *supra* note 1.

202. See CAL. PENAL CODE § 186.22(e); Stephens, *supra* note 1.

203. See CAL. PENAL CODE § 186.22(f); Godal, *supra* note 1; see also Tierney, *supra* note 4 (stating that MLO members wear shirts with "Malibu" and "Locals Only" in "gansta"-style script); Stephens, *supra* note 1 ("[MLO members] have their own clothing and jewelry designed by Bill Wall jewelry. These are insignia fighting rings they combine in sets of four to use as brass nuckles [sic] in fights. The gang also have [sic] various t-shirts and hats with the initials MLO printed in gothic text.").

204. There are some logical reasons officials might not want to acknowledge MLO as a gang. Sheriff's officials may need to make selective allocation of scarce law enforcement resources. Sheriff's officials may not want to encourage these youths by providing infamy in their reports to the media. Additionally, they might feel pressure from Malibu residents to provide a sort of NIMBY response—Malibu residents may not want to acknowledge the presence of gangs in their backyards. Unfortunately, Sheriff's Department officials have not articulated any of these reasons for their decision not to pursue MLO as a gang.

regularly sought by police and upheld by courts with respect to primarily minority gangs.<sup>205</sup>

The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution forbids states from enacting laws that place a greater burden on minorities or from enforcing facially-neutral laws such that minorities bear a greater burden under those laws.<sup>206</sup> Such invidious discrimination will not stand unless the state demonstrates a compelling interest in making such a distinction and proves that the interest is being advanced in the least discriminatory manner possible.<sup>207</sup> A pattern of discriminatory use of the STEP Act and civil gang injunctions could demonstrate an invidious purpose behind the laws, which would violate the Fourteenth Amendment.<sup>208</sup> If the STEP Act and civil gang injunctions are to remain legitimate tools in combating gang violence, California law enforcement officials must ensure that such decisions are not being made arbitrarily or discriminatorily so that minorities do not bear a disproportionate share of the burden of those laws.

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205. See, e.g., Grogger, *supra* note 43, at 70 (“In Los Angeles County, 22 injunctions have been imposed since 1993; 12 have been imposed since 1997.”). In particular, Grogger makes note of injunctions imposed on the following gangs: Blythe Street, Orange Street Locos, West Side Longos, Denver Lanes, Villa Boys/Krazy Boys, Lennox 13, Chopper 12, West Coast Crips, 18th Street (Jefferson Park), 18th Street (Pico-Union), Mara Salvatrucha, Shatto Park Locos, Columbia Little Cynos, and Harpys. *Id.* at 75. Most, if not all, of these gangs are classified as either Hispanic or black gangs. See Hispanic Gangs in Los Angeles County, <http://www.streetgangs.com/hispanic> (last visited Mar. 9, 2007) (Hispanic); A Brief History of the Los Angeles Based Crips, <http://www.streetgangs.com/crips> (last visited Mar. 9, 2007) (black “crips”); All Blood Gangs in Los Angeles County, <http://www.streetgangs.com/bloods> (last visited Mar. 9, 2007) (black “bloods”).

206. See *Wayte v. United States*, 470 U.S. 598, 608 (1985) (holding that prosecutorial discretion, though broad, is limited by constitutional concerns like racial disparity).

207. See *Loving v. Virginia*, 388 U.S. 1, 11 (1967).

208. See *Rogers v. Lodge*, 458 U.S. 613, 618 (1982) (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976)) (“Necessarily, an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another.”).

*2. Uniform Enforcement of the STEP Act and Civil Gang Injunctions  
Is Especially Important in Light of Racial Concerns  
in the Criminal Justice System*

The possibility of arbitrary and discriminatory enforcement of laws like the STEP Act and civil gang injunctions highlights the inherent part that race is sometimes thought to play in the criminal justice system. Minorities, particularly African Americans, come into contact with law enforcement far more often, with respect to their proportion of the population, than do whites. "About 40% of U.S. prisoners are black. If incarceration trends continue, 1 in 3 black males born today will do time in state prison."<sup>209</sup> Furthermore, "racial disparities in incarceration likely reflect differential enforcement. Police officers are more likely to stop African Americans for traffic stops and, once stopped, they are more likely to search the vehicles of African Americans."<sup>210</sup> This high rate of incarceration only serves to exacerbate the missing protector factor that causes such high rates of gang membership. "By removing so many black men from the community and stigmatizing them forever with a criminal conviction, criminal law enforcement is likely to mean more single-parent families [and] less adult supervision of children . . . ."<sup>211</sup>

This racial disparity also plays a part in law enforcement efforts at stopping gangs. A database used by the Los Angeles District Attorney "listed over 37,000 Black gang members and over 58,000 Hispanic gang members. . . . However, White gang members apparently were so scarce in Los Angeles that they did not even warrant their own category . . . ."<sup>212</sup> These figures do not match a survey in which youths self-reported their gang membership. "[A]n average of 2.8% of

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209. Joe Domanick, Editorial, *Behind Bars: These Jampacked Joints Don't Make You Safe*, L.A. TIMES, Oct. 16, 2005, at M1.

210. Donna Coker, *Foreword: Addressing the Real World of Racial Injustice in the Criminal Justice System*, 93 J. CRIM. L. & CRIMINOLOGY 827, 835 (2003).

211. Gary Stewart, *Black Codes and Broken Windows: The Legacy of Racial Hegemony in Anti-Gang Civil Injunctions*, 107 YALE L.J. 2249, 2255 (1998) (quoting David Cole, *The Paradox of Race and Crime: A Comment on Randall Kennedy's "Politics of Distinction,"* 83 GEO. L.J. 2547, 2558 (1995)).

212. Linda S. Beres & Thomas D. Griffith, *Gangs, Schools and Stereotypes*, 37 LOY. L.A. L. REV. 935, 948 (2004) (citing IRA REINER, OFFICE OF THE DIST. ATT'Y, COUNTY OF L.A., GANGS, CRIME AND VIOLENCE IN LOS ANGELES 110 tbl.I (1992)).

Blacks, 2.9% of Hispanics, and 1.3% of Whites responded that they had belonged to a gang . . . .”<sup>213</sup> If one considers those numbers with respect to the proportions in the population that those ethnic groups represent, white gang members would exceed the number of black and Hispanic gang members combined.<sup>214</sup>

This overestimation of minorities’ roles in gangs becomes a problem if it results in the perception by law enforcement officials that gangs are only a problem in poor, minority communities. This perception can create aggressive policing in poor areas and pervasive stops of minority youths.<sup>215</sup> Professors Linda Beres and Thomas Griffith illustrated this troubling possibility in their discussion of the police treatment of Dylan Klebold and Eric Harris, the Columbine murderers.<sup>216</sup> Klebold and Harris belonged to a group called “the Trenchcoat Mafia,” which should have met the general criteria used to classify groups as gangs.<sup>217</sup> However, the media and police rarely referred to the Trenchcoat Mafia as a gang.<sup>218</sup> As such, Beres and Griffith noted the appearance of a double standard:

Imagine that African American or Latino youth formed a group that wore black trench coats and combat boots in school, roamed the halls in groups, called itself a “mafia,” and included members who espoused a hatred of other races and had a predilection for making bombs. It is inconceivable that such a group would be classified as a clique, club, or social circle instead of a gang. It seems equally clear that if two members of this group shot fellow students and planted bombs at the school, the crimes would be classified as gang-related . . . .<sup>219</sup>

In California, classification of the crimes as gang-related would mean that other gang members could be enjoined from associating with each other under the STEP Act.<sup>220</sup>

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213. *Id.* at 952.

214. *Id.* at 953.

215. *See id.* at 949-51.

216. *See id.* at 962-68.

217. *Id.* at 963.

218. *Id.* at 966-67.

219. *Id.* at 968.

220. *See supra* note 188 and accompanying text.

Like the Trenchcoat Mafia, MLO is a predominantly white, suburban gang.<sup>221</sup> If the MLO party assaults in 2003 had been perpetrated by a group of minority youths who used a gang name and who had threatened and intimidated witnesses, it is hard to imagine that the Los Angeles County Sheriff's Department would not have labeled the attack as gang-related. Thus, the double standard Beres and Griffith wrote about appears to have come into play in the decision not to call MLO a gang.

This apparent double standard presents further concerns when it arises within the context of the STEP Act and civil gang injunctions. As previously noted, these tools have been criticized for their infringement on alleged gang members' civil rights.<sup>222</sup> "Through the magic of a judicial order, even purely social association becomes a punishable offense, subjecting violators to months of incarceration and significant fines."<sup>223</sup> Critics of anti-gang injunctions have likened them to the Black Codes and vagrancy laws that were enacted shortly after the emancipation of the slaves in the United States.<sup>224</sup> These laws stood until the early 1970s, when the Supreme Court disapproved of "a regime in which the poor and the unpopular are permitted to 'stand on a public sidewalk . . . only at the whim of any police officer.'"<sup>225</sup>

Modern anti-gang injunctions do not appear to have arisen from overt racism like the Black Codes and vagrancy statutes of the post-Civil War South. The text of laws like the STEP Act provides for racially-neutral application.<sup>226</sup> However, scholar Gary Stewart points out that "despite their lack of overt racial language, these provisions—in particular, the restrictions on the rights to association and movement—bear an uncomfortable resemblance to the postbellum vagrancy laws."<sup>227</sup> Stewart describes a concept called "aversive racism,"

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221. See Ned Zeman & Lucy Howard, *Malibu Mob*, NEWSWEEK, June 22, 1992, at 8.

222. See, e.g., Werdegar, *supra* note 191, at 428-29.

223. Terence R. Boga, Note, *Turf Wars: Street Gangs, Local Governments, and the Battle for Public Space*, 29 HARV. C.R.-C.L. L. Rev. 477, 477 (1994).

224. See, e.g., Stewart, *supra* note 211, at 2263.

225. *Papachristou v. City of Jacksonville*, 405 U.S. 156, 170 (1972) (quoting *Shuttlesworth v. Birmingham*, 382 U.S. 87, 90 (1965)), *quoted in* Stewart, *supra* note 211, at 2263.

226. See CAL. PENAL CODE § 186.22(f) (West 1999).

227. Stewart, *supra* note 211, at 2268.

which he finds common among white Americans.<sup>228</sup> The aversive racist may have a racially-discriminatory disposition; however, because he knows that this disposition is socially unacceptable, he will mask it while engaged in interracial interactions.<sup>229</sup> This masking makes aversive racism possibly more dangerous than overt racism, as minorities could more easily point out overt discrimination in laws than they could discrimination masked by facially-neutral statutory language.<sup>230</sup>

Stewart finds this sort of facial neutrality particularly troublesome in anti-gang measures like STEP.<sup>231</sup> Though not overtly racist, STEP may criminalize non-criminal behavior like association and cultural dress. Minority youths, in particular, may wear urban apparel that law enforcement associates with gang membership. As such, regardless of whether they are actually gang members, these youths may be erroneously labeled gang members due to this stereotype. Ultimately, “some minority youths might automatically be labeled gang members even though similarly situated—and similarly outfitted—white youth would not receive such labels.”<sup>232</sup> This dangerous possibility was realized in *People ex rel. Gallo v. Acuna*, in which members of a Hispanic San Jose street gang were enjoined from appearing together in public view.<sup>233</sup> One of the defendants, Blanca Gonzalez, was named in the injunctive order, in part, because she wore clothing matching police descriptions of that worn by members of the gang.<sup>234</sup> “Based on the majority’s criteria . . . , ‘the City would consider a person to be a member of a Sureno gang . . . ,’ even though [his or her] wardrobe

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228. *See id.* (“Most whites no longer publicly express thoughts of black inferiority. Nonetheless, blacks and other minorities continue to suffer from stigma and disadvantage. This is largely because more subtle forms of racism now dominate the racial landscape.”).

229. *Id.* at 2270.

230. *Id.*

231. *See id.* at 2265-68 (suggesting that the potential use of STEP to impose anti-gang injunctions bears an “uncomfortable resemblance” to facially-neutral but racially-oppressive postbellum vagrancy statutes).

232. *Id.* at 2273.

233. *People ex rel. Gallo v. Acuna*, 929 P.2d 596, 601, 608 (Cal. 1997).

234. *See Stewart, supra* note 211, at 2277-78 (quoting *Acuna*, 929 P.2d at 622 (Chin, J., concurring in part and dissenting in part)) (“[T]he only pieces of evidence justifying an injunction against Ms. Gonzalez were the facts that she had worn ‘a black top and black jeans’ that fit police descriptions of gang members and that she had claimed gang membership.”).

might reflect the cultural garb of urban minority teenagers more generally."<sup>235</sup>

While a minority such as Blanca Gonzalez may be classified as a gang member simply because of her clothing, white gang members like those in MLO receive no such scrutiny in spite of their violent, gang-like behavior. MLO members appear to self-identify as a gang by using their common identifier and adopting a style of dress similar to their urban counterparts.<sup>236</sup> On one hand, one might discount MLO's style of dress and apparent self-designation as a gang as mere "wannabe" behavior. However, as demonstrated in Ms. Gonzalez's case, urban-style dress by minorities carries with it vastly different consequences. This type of double standard raises concerns of racism when MLO is not treated like a gang.

This double standard ultimately hurts efforts to stop gangs. Because the STEP Act is written in a racially-neutral manner, it can provide prosecutors with a legitimate, valuable tool with which to fight gangs. However, even if one disagrees with Stewart's aversive racism arguments, unequal enforcement of laws lends credence to such criticisms. Initially, such unequal enforcement presents concerns of an equal protection violation. If minority youths' constitutional rights are burdened more than those of whites when there is no compelling reason for such inequity, the STEP Act and civil gang injunctions violate the Fourteenth Amendment. Furthermore, unequal enforcement may show the existence of a double standard in the criminal justice system and may support race-based criticisms.

Because the criminal justice system appears to have embraced this double standard by failing to classify MLO as a gang, the criminal justice system has harmed efforts at stopping gangs by allowing the appearance of racism in the system. Furthermore, as noted in Part III, the failure to call MLO a gang places too much focus on stereotypical causes of gang membership, causing officials to ignore the most important factor—the missing protector factor. Part V proposes solutions to these important issues.

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235. *Id.* at 2278 (quoting *Acuna*, 929 P.2d at 621).

236. *See* Tierney, *supra* note 4 (suggesting that MLO members dress in apparel with "gangsta"-style script because "[i]t's just what's popular").

## V. PROPOSED SOLUTIONS BASED ON WHAT MLO ILLUSTRATES

Both urban and suburban gangs, like MLO, present a growing danger to society.<sup>237</sup> Society must fight this danger on two levels. First, society needs to take action to stop youths from joining gangs in the first place. As discussed in Part III.C, this entails identifying the missing protector factor as the most relevant factor in youth gang membership and taking action to eliminate this factor. Second, society must ensure that the criminal justice system not only has useful tools with which to fight gangs, but also that the system uses those tools so that no single minority group is particularly burdened as a result of that fight.

This Part discusses ways in which society can address both of these needs. To accomplish the first goal, society needs to attempt to alleviate the missing protector factor's influence in both urban and suburban youths' decision-making processes. To do so, society must establish programs to ensure that at-risk youths who lack parental protectors have enough alternative sources of protection and guidance available to them so that gangs never become their only option. As to the second goal, the criminal justice system must ensure that prosecution of gangs under legislation like the STEP Act and the use of civil gang injunctions do not constitute a violation of the Equal Protection Clause. It can do this either by ensuring that it enforces laws uniformly or by requiring law enforcement officials to clearly articulate and properly justify their decisions to selectively prosecute different gangs.

### *A. Society Must Address Gang Membership Before It Becomes an Issue in the Criminal Justice System by Providing Protection and Guidance to Youths Who Lack It*

As noted in Part III.C, the missing protector factor is the most useful factor for society to attack in efforts to prevent gang membership. The missing protector factor is most useful because it arises in both urban and suburban youths' decisions to join gangs. Furthermore, the missing protector factor is one of the few factors over which society can realistically exercise some control.<sup>238</sup> By contrast, in order to re-

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237. See *supra* Part IV.

238. See KOREM, *supra* note 54, at 69 (noting success with 400 gang members

move the poverty factor from youths' decisions to join gangs, the economy of the entire country would have to undergo sweeping changes to redistribute wealth. America's leaders have attempted and failed to resolve the country's poverty issues virtually since the birth of the nation.<sup>239</sup> With the nation's historical failure to solve problems like poverty, it is not realistic to expect that such factors could provide a basis for efforts at stopping youths from deciding to join gangs.

Implementing programs in conjunction with schools to provide children with viable alternatives to gangs, however, is much more realistic. Programs such as community-based interventions with at-risk youths have proven effective, particularly with respect to youths in preschool or elementary school.<sup>240</sup> As such, using these types of programs to address the missing protector factor provides the most promising approach to preventing youths' decisions to join gangs.

Researchers have generally shared this opinion. "According to the Study Group on Serious and Violent Juvenile Offenders . . . convened by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to study the population of [serious violent juvenile] offenders[,] implementing family, school, and community interventions is the best way to prevent children from developing into SVJ offenders."<sup>241</sup> This study examined five different types of school programs aimed at preventing youth delinquency, including structured playground activities and behavioral monitoring and reinforcement.<sup>242</sup> "Programs that monitored student behavior and reinforced attendance and academic progress increased positive school behavior . . . and decreased delinquency."<sup>243</sup> This reinforcement of positive behavior provides youths

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given the support missing at home).

239. See F. Allan Hanson, *How Poverty Lost its Meaning*, 17 CATO J. 189, 189 (1997), available at <http://www.cato.org/pubs/journal/cj17n2-5.html> ("After decades of dashed hopes and expenditures that have produced no tangible benefits, the nation seems tacitly to have acknowledged that we fought a War on Poverty and poverty won.").

240. BEST PRACTICES OF YOUTH VIOLENCE PREVENTION: A SOURCEBOOK FOR COMMUNITY ACTION 1-2, 11 (Timothy N. Thornton et al., Ctrs. for Disease Control & Prev., eds., 2002), <http://www.cdc.gov/ncipc/dvp/bestpractices.htm>.

241. Richard F. Catalano et al., *School and Community Interventions To Prevent Serious and Violent Offending*, JUV. JUST. BULL., Oct. 1999, at 1, available at <http://www.ncjrs.gov/pdffiles1/ojjdp/177624.pdf>.

242. *Id.* at 1.

243. *Id.* at 2.

with social context, as discussed in Part III.C.1.<sup>244</sup> Children from “decent” family backgrounds receive this type of positive reinforcement and develop non-violent scripts with which to deal with stressful situations. These programs ensure that youths, even if they lack this type of positive reinforcement in their home environment, will receive it from a responsible adult instead of “street” peers. Thus, these programs may dramatically reduce the likelihood that a youth will be pushed into gang life.

Scholars like Dan Korem note that the missing protector factor arises “[w]hen a youth cannot count on an immediate family member during a crisis.”<sup>245</sup> Korem notes success in gang intervention and prevention when programs directly attack this lack of support and protection. “[D]irectly addressing this factor in the lives of over 400 Dallas County inner-city youths provided a vaccine against gang enticements over a period of six years.”<sup>246</sup> “[T]he reason 400 Dallas inner-city youths whom I worked with resisted gang activity was because we let them know that whenever and wherever they needed help, we would be there for them.”<sup>247</sup> Korem and his co-workers became the types of protectors that these youths lacked. The role of family as protector means that the youths know they have someone to count on anytime there is a crisis in their lives. By filling this role that the nuclear family would normally play, Korem’s group was able to prevent 400 at-risk youths from joining gangs.

Other communities across America have achieved success with precisely these types of programs. As noted above, these programs are most effective when targeted at youths in elementary school or earlier.<sup>248</sup> Gang prevention personnel in Austin, Texas, noted that gang members have excellent leadership qualities if these qualities are channeled properly.<sup>249</sup> The Austin team established the Roving Leader program.<sup>250</sup>

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244. See *supra* Part III.C.1.

245. KOREM, *supra* note 54, at 63.

246. *Id.*

247. *Id.* at 69.

248. See *supra* note 240 and accompanying text.

249. *How Can Communities Keep Kids out of Gangs?*, GANG PREVENTION AND INTERVENTION: A STUDY IN BEST PRACTICES, <http://www.stedwards.edu/education/communities.html> (last visited Feb. 3, 2007).

250. See *id.*

The program targets youth between the ages of 9-19 years old at risk of gang involvement or juvenile delinquency . . . . The goal of the program is to make students aware of the importance of finishing high school, build self-esteem [sic], motivation, encourage goal-setting, and responsibility. The activities offered by the program are: youth support groups, tutoring, parent support group, cooking classes, and recreation. Youths can get support 24 hours a day.<sup>251</sup>

In California, Orange County and San Bernardino County officials established the CHOICES Program, which "focuses on middle school youths who are at greatest risk and aims to reduce drug use, academic failure, gang activities, drop outs, and delinquency."<sup>252</sup> The program involves students "in cooperative learning, problem-solving, role-play, and drama, self and cultural awareness, and learning self-control and decision making skills."<sup>253</sup> These programs show that schools and communities recognize that they can influence youths not to join gangs by supplying the missing protector when a youth needs it.

This need for surrogate family protection has also been noted by law enforcement officials in Orange County, California. These officials have implemented the "8% Solution."<sup>254</sup> This program is based on a study of factors that promote recidivism in youth offenders.<sup>255</sup> One of the key factors, according to the study, was termed the "Family Problem Factor" and arose in situations where parents are missing, dysfunctional, or abusive.<sup>256</sup> Orange County's program addresses

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251. *Id.*

252. *How Can Schools Keep Kids out of Gangs?*, GANG PREVENTION AND INTERVENTION: A STUDY IN BEST PRACTICES, <http://www.stedwards.edu/educ/eanes/schools.html> (last visited Feb. 3, 2007).

253. *Id.*

254. See County of Orange Probation Department, Orange County's Model Continuum of Juvenile Justice Services, <http://www.oc.ca.gov/Probation/solution/ModelContinuum.asp> (last visited Feb. 3, 2007) ("The focus of the programming is for first-time wards of the Juvenile Court who fit a profile of youths who go on to become '8%' repeat offenders.").

255. County of Orange Probation Department, 8% Problem Study Findings: Exploratory Research Findings and Implications for Problem Solutions, <http://www.oc.ca.gov/Probation/solution/ProblemStudyFindings.asp> (last visited Feb. 3, 2007).

256. *Id.*

“adequate levels of supervision, structure, and support to minors and their families throughout the intervention process” and “[d]evelop[s] strategies that produce educational success, in part by assisting families to ensure that their minors attend school regularly.”<sup>257</sup> By focusing on providing youths with proper family support, Orange County officials have shown that they can prevent the type of violence, often gang-related, that has plagued cities like Los Angeles.<sup>258</sup> Cities like Malibu should follow suit by recognizing their gang problem and addressing useful avenues like the above programs to try to fix their problems.

Unfortunately, in spite of the repeated demonstrations of the potential of such programs, governments—particularly the California state government—have failed to provide schools with the funding needed to implement programs to address the missing protector factor.

California’s schools, which now rank 38th in the nation in per capita spending, will be utterly devastated [by proposed budget cuts] . . . . [E]ven schools in wealthier middle class areas have been asked to lay off 25 percent of their teaching staff, as well as janitors, gardeners, nursing staff and counselors. There is also talk of firing up to 35,000 teachers.<sup>259</sup>

Such budget cuts make it impossible for under-staffed schools to provide the sort of attention needed by youths who lack such attention at home. This problem has been noted nationwide; only fifty-eight percent of schools surveyed by the National Institute of Justice offered gang prevention in the form of individual attention.<sup>260</sup> If schools cannot provide the types of programs that Korem and like-minded officials have successfully used, the missing protector factor cannot be addressed. This leaves youths without adults to count on in a crisis.

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257. *Id.*

258. RICHARD A. MENDEL, LESS COST, MORE SAFETY: GUIDING LIGHTS FOR REFORM IN JUVENILE JUSTICE 29 (2001), available at <http://www.aypf.org/publications/lesscost/pages/06.pdf> (noting that the Orange County program effectively reduced the repeat crime rate to nearly one-half the historical rate).

259. Saito, *supra* note 148.

260. NAT’L INST. OF JUSTICE, U.S. DEP’T OF JUSTICE, TOWARD SAFE AND ORDERLY SCHOOLS—THE NATIONAL STUDY OF DELINQUENCY PREVENTION IN SCHOOLS 3 (2004), available at <http://www.ncjrs.gov/pdffiles1/nij/205005.pdf>.

Thus, society will continue to face the risk that these youths will join gangs.

This failure likely comes as the result of society placing too much focus on jailing gang members and not enough focus on preventing at-risk youths from becoming gang members in the first place. California, for example, spends increasingly large amounts of money to jail prisoners at the expense of its education system. "California's 2005-2006 [prison] \$7.4 billion budget is up from its \$5.237 billion budget of 2002-2003."<sup>261</sup> While the prison budget rises, the improvement of educational programs has apparently not similarly concerned California officials. In particular, critics of California's educational spending cite a recent budget shortfall in which education officials agreed to a cut based on the promise of prompt repayment when the state was on firmer financial ground.<sup>262</sup> Shortfalls like this could be avoided if the state focused less on incarcerating criminals and more on educating youths so that they have alternatives to crime. The \$2 billion increase in the prison budget could address such shortfalls and be used to increase the number and types of programs available to keep youths out of gangs.

Through these decisions to forsake education in favor of prisons, governments like California's demonstrate a lack of foresight that is consistent with the views of many of their constituents. Many citizens favor a "tough on crime" approach primarily because this approach, although costly, provides immediate, tangible results in the form of arrests and incarceration of offenders.<sup>263</sup> In contrast, educational pro-

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261. Criminology & Criminal Justice Dep't, Sonoma State Univ., SuperCell: Our Superhero!, <http://www.sonoma.edu/cja/info/supercell.html> (last visited Feb. 3, 2007).

262. See *Lawmakers Hear Conflicting Advice on the Education Budget*, EDSOURCE ONLINE, March 2006, [http://www.edsource.org/edu\\_fin\\_cal.cfm](http://www.edsource.org/edu_fin_cal.cfm) ("The agreement was based in part on education's understanding that . . . funding would be reduced for one year by a maximum of \$2 billion and the expectation that lost funds would be restored if state finances improved. However, decisions based on differing interpretations of the agreement and the law led, in effect, to a shortfall of \$3.8 billion in the education budget.").

263. See Heather Mason Kiefer, *Public on Justice System: Fair, but Still Too Soft*, GALLUP POLL, Feb. 3, 2004, <http://poll.gallup.com/content/default.aspx?ci=10474> (showing that 66% of Americans thought that the criminal justice system was "very fair" or "somewhat fair," and that 65% of Americans felt that the current criminal justice system was "not tough enough" on crime).

grams, though shown to be effective in studies like the one done by the Centers for Disease Control and Prevention,<sup>264</sup> are costly and produce results that may not be as immediately apparent. As such, elected officials' desires to please constituents for reelection purposes make it unlikely that they will devote governments' finite resources to educational programs.

Because governments either cannot or will not devote proper attention to education and other programs that address the missing protector factor, gang membership will likely continue to increase. Consequently, the criminal justice system is left to focus on an aggressive war on gangs using tools like the STEP Act and civil gang injunctions. However, the STEP Act and civil gang injunctions, as they are being used, also involve substantial problems of their own.<sup>265</sup>

*B. Law Enforcement Officials Must Enforce Anti-Gang Measures Equally to Ensure That Minority Gang Members Are Not Unfairly Singled Out*

Because California has failed to prevent youths from joining gangs, gang membership has grown tremendously in the last two decades.<sup>266</sup> To combat this growth, the California legislature enacted the STEP Act, which criminalizes certain aspects of gang membership.<sup>267</sup> While prosecutors like Ira Reiner have enthusiastically endorsed the STEP Act and its ability to fight gangs,<sup>268</sup> the Act presents problems when it is enforced unequally with respect to gang members of different races.<sup>269</sup> The STEP Act does not explicitly provide for unequal treatment for gang members of different races. However, the Los Angeles County Sheriff's Department's failure to classify MLO as a gang under the STEP Act raises the possibility that the Act is failing to meet the constitutional requirement that laws be enforced uniformly with respect to similarly situated people.<sup>270</sup>

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264. See *supra* note 240 and accompanying text.

265. See *supra* Part IV.B.

266. See *supra* notes 168-73 and accompanying text.

267. See *supra* Part III.A.

268. See Reiner, *supra* note 170, at 7.

269. See *supra* Part IV.

270. See *supra* Part IV.B.1. Other factors may account for the decision not to vigorously pursue MLO, including prioritization of scarce resources to fight bigger,

This lack of uniformity in a criminal law becomes problematic when similarly situated offenders are treated differently.<sup>271</sup> If, on the other hand, a law distinguishes between different classes of offenders, the distinction will withstand constitutional scrutiny if it is not based on an impermissible class like race, but rather on some other rational difference.<sup>272</sup> The decisions not to classify MLO as a gang and not to prosecute its members under the STEP Act would thus pass constitutional muster if the decisions were made on some basis other than race. In other words, to avoid the concern that the STEP Act is being applied in an unconstitutional, non-uniform manner, law enforcement officials should carefully articulate their reasons for distinguishing between gangs and non-gangs.

These distinctions could reasonably be made due to MLO's smaller size and the fact that MLO members have not actually killed anyone in their attacks. Certainly, allocation of scarce resources could constitute a reasonable ground for making such a distinction. Higher priorities could account for the decision of Sheriff's Department officials to apply the STEP Act differently with respect to MLO and urban gangs like the Crips, the Bloods, and the 18th Street Gang, which have more pronounced histories of violence.

If law enforcement fails to articulate the reasons for these distinctions, however, the distinctions help lend credence to arguments by critics like Gary Stewart. Dismissing MLO members as territorial youths while seeking injunctions against youths like Blanca Gonzalez—who happened to dress like a gang member—makes this apparently uneven application of the STEP Act and civil gang injunctions appear to come as the result of racism within the criminal justice system. If race is not the reason for the distinction, it is important that the Los Angeles County Sheriff's Department carefully explain why a group of white youths that meets the gang criteria does not receive such a label.

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more violent gangs.

271. Cf. *Ex parte* Rosencrantz, 271 P. 902, 905 (Cal. 1928) (noting that equal protection is required by the California Constitution in criminal proceedings).

272. *Selowsky v. Superior Court of Napa County*, 181 P. 652, 655 (Cal. 1919).

## VI. CONCLUSION

With the existing prevalence of gangs and gang violence, it is likely that gangs will be a part of American life for many years to come. The above criticisms and solutions may not have any immediate, appreciable impact; however, society must begin to rectify the current situation by addressing the criminal justice system's shortcomings in fighting gang violence. First, society must remove its focus from stereotypical factors thought to cause youths to join gangs and identify the factors that actually cause youths to join gangs. In particular, society should attempt to alleviate the problems created by at-risk youths' lack of adequate family support—the missing protector factor. Second, the criminal justice system must ensure that its war on gangs focuses neither primarily nor unfairly on minorities, and that it does not have the appearance of doing so. Law enforcement officials must ensure that this war is waged not only on poor, minority, urban gangs, but also on affluent, white, suburban gangs. Failure to apply enforcement and solutions uniformly across racial and economic boundaries will assure the criminal justice system, and society in general, of failure in the goal of stopping gang violence.