

Abstract

In the last several years, a group of youths calling themselves Malibu Locals Only or MLO has performed several violent crimes, intimidating many people in the area around Malibu, CA. Despite the gang-like appearance of these youths and their crimes, Los Angeles County Sheriff's Department officials insist that MLO is not a gang. This article examines MLO, its history, and its current state in the context of California anti-gang legislation.

The article theorizes that the criminal justice system's failure to call a group like MLO a gang while waging war on other groups, primarily in lower income, heavily minority areas, hurts the effort at fighting gangs in two ways. First, it places too much emphasis on factors like poverty, institutionalization and the media, which have been traditionally thought to be the greatest influences on youths' decisions to join gangs. This improper emphasis, in turn, causes society to ignore more relevant factors like missing support from family members and other responsible adults. Second, the failure to classify MLO as a gang while aggressively attacking primarily minority gangs makes the anti-gang tools that law enforcement uses, such as the STEP Act and civil gang injunctions, constitutionally questionable.

In conclusion, the article will propose solutions to address both of the above concerns. In particular, society must address the "missing protector factor" to keep youths from joining gangs in the first place. In addition, the criminal justice system must ensure that it enforces laws equally or provides explanations for distinctions so as to allow tools like the STEP Act and civil gang injunctions to pass constitutional muster.

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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 at fighting gangs.

Foreword

In 2004, at an otherwise average Southern California house party, a group of youths attacked and beat another teenager without apparent provocation, nearly killing the young man and leaving him with permanently limited mental function.¹ The attackers threatened to kill witnesses if they told police.² Additionally, reports circulated shortly thereafter that a group of youths approached a couple who was walking along the beach and asked the couple where they were from. When the couple replied that they were from Canoga Park,³ the youths attacked and beat them.⁴

Initially, these stories seem unremarkable when compared to the daily barrage of violent images and gang-related horror stories shown in films and news media. However, the attacks are notable for several reasons. First, they occurred in Malibu, California, a

¹ The young man, a promising high school student, was, according to doctors, beaten "nearly to death." To this day, the young man suffers from debilitating headaches and spinal injuries. He has been forced to forego college scholarships due to his inability to concentrate for extended periods caused by the beating. Vicki Godal, *Malibu Gang Investigation to Air on Major Local Television Station*, THE MALIBU TIMES, Feb. 12, 2004, available at <http://www.malibutimes.com/articles/2004/02/12/news/news3.txt>; See also, Craig Stephens, *MLO—Malibu Locals Only Gang*, ENTERTAINMENT WEEKLY, May 2004, available at http://www.craig-stephens.com/doc_entwkly_mlo.html (victim lost scholarship to college because injuries render him unable to maintain focus on difficult tasks).

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

³ Canoga Park is in the San Fernando Valley area of Los Angeles. Since crowds started to flock to Malibu to take advantages of its beaches and surf breaks, there has been tension between the people who live in Malibu and people who live in the San Fernando Valley, only 15 miles inland. Lynn Langway and Neal Karlen, *Attack of the Wannabees*, NEWSWEEK, July 6, 1981, available at <http://www.nealkarlen.com/articles/newsweek/wannabees.shtml>.

⁴ Malibu surfers suggest that the Canoga Park man disrespected the local beaches and, thus, ran afoul of the group of Malibu youths. Jamie Tierney, *Malibu's Least Wanted: Meet So Cal's Low Profile, High Income Surf Gang*, at http://surfingthemag.com/news/surfing-pulse/032904_malibu.

city more frequently associated with its rich and famous residents than with brutal crimes.⁵ Second, the attacks were allegedly performed by a gang called Malibu Locals Only (hereinafter MLO), whose members are alleged to include children of some of these wealthy and famous Malibu residents.⁶ Third, authorities never filed criminal charges against any of the gang members even though the gang nearly beat one victim to death.⁷ Lastly, Los Angeles County Sheriff's spokespeople in Malibu repeatedly assured concerned citizens that MLO was not a gang.⁸

VII. Introduction

Admittedly, MLO is not well-known and may not initially resemble the type of gang that inspires fear in the average person⁹. Malibu does not suffer from the astonishing crime rates seen in Los Angeles areas like Compton, where gangs are more notorious and institutionalized.¹⁰ Also, MLO violence has not yet claimed any lives.

⁵ From Sep. to Dec. of 2005, the median price for home sales in the Malibu zip code 90265 was \$2.95 million. See http://www.malibutimes.com/real_estate/malibu_real_estate_report/. The average per capita income for the city is \$74336, with only 3.2 percent of families reporting income below the poverty line. Wikipedia, at http://en.wikipedia.org/wiki/Malibu,_California#Demographics; Compare these figures with Compton, CA, The per capita income for the city is \$10,389. 28.0% of the population and 25.5% of families are below the poverty line. Wikipedia, at http://en.wikipedia.org/wiki/Compton%2C_CA.

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

⁷ See Vicki Godal *supra*, note 1 (some parents refused to report the incident, fearing more violence for their children); In the first reported beating, the attackers used a Mag-Lite brand flashlight as a weapon. See Jamie Tierney *supra* note 4; See also, Wikipedia at [http://en.wikipedia.org/wiki/Club_\(weapon\)#Maglite](http://en.wikipedia.org/wiki/Club_(weapon)#Maglite) (many policemen carry, use Mag-Lites as clubs though specifically discouraged from doing so).

⁸ In an interview with Craig Stephens, a writer for Entertainment Weekly, 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." See Craig Stephens *supra* note 1; See also, MALIBU CITY COUNCIL, MINUTES OF REGULAR MEETING, at 6 (July 25, 2005) (Deputy Paladino assures City Council that MLO is 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." This movie was a spoof of a rich, Malibu youth trying to live a gangster lifestyle. See Jamie Tierney *supra* note 4; MALIBU'S MOST WANTED (Warner Bros. 2003).

¹⁰ It is useful, for example, to compare the violent crime rates in Malibu, CA and Compton, CA, a city in the Los Angeles area widely known for its gang activity. In 2004, Malibu reported 0 murders per 100,000

Nonetheless, it is troubling that the gang status of this group, which meets the relevant criteria listed in the California Criminal Code for defining a gang,¹¹ 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.

This failure by law enforcement officials like the Los Angeles County Sheriff's Department to recognize MLO as a gang harms efforts at fighting gangs and gang violence. This harm arises because MLO represents a trend in gang violence that has emerged not only in the United States, but around the world for the past 20 years.¹² Specifically, while society has often erroneously focused on gangs as an exclusively urban problem, the more affluent suburbs have experienced significant increases in the formation of gangs.

The focus of this paper is not merely to sound the alarm that the youth gang plague has landed in Middle America's backyard. Rather, the paper seeks to illustrate the criminal justice system's flawed approaches to identifying factors that lead to gang membership. In turn, the paper will demonstrate how the failure to identify these factors harms society's efforts at preventing gang violence in both suburban and urban settings. By making false distinctions between gangs and non-gangs when the predominant apparent distinction is urban versus suburban or affluent versus non-affluent, the criminal justice system fails to address important underlying issues that cause gangs to form. This error causes society to ignore valuable potential solutions to the gang problem.

citizens, as compared to Compton's 40.2. The national average was 5.5 murders per 100,000 citizens. In the same period, Malibu experienced 239.2 aggravated assaults, while Compton experienced 1063.5. The national average was 291.2 per 100,000. Crime Rate Comparison, *at* <http://losangeles.areaconnect.com/crime/compare.htm?c1=malibu&s1=CA&c2=compton&s2=CA>.

¹¹ Cal. Pen. Code § 186.22 (f).

¹² TEEN GANGS: A GLOBAL VIEW (Maureen P. Duffy and Scott Edward Gillig, eds.) (2004).

Additionally, the false distinction between suburban and urban gangs harms existing efforts at fighting gang violence, as it may help perpetuate the appearance of inherent racism in the criminal justice system.

By examining MLO and the related phenomenon of the formation of suburban gangs, this paper will explore several areas of gang development. First, the paper will discuss MLO, including its history and goals. Second, the paper will contrast MLO and its formation with traditional notions of street gangs and why youths join them. Third, the paper will address specific challenges society faces in its war on gangs—prevention of gang membership and effectively fighting gangs once youths are in them. Finally, the paper will propose 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.

VIII. Who is MLO?

In the late 1960's, a tight-knit group of Malibu surfers began to organize to accomplish two goals. Originally, the group sought to protect access to the private Malibu beaches from surfers from the San Fernando Valley and other areas of Los Angeles.¹³ Later, the organization evolved to promote a second goal—the protection of its high school members from rival Mexican gangs.¹⁴ Although the organization began as a loose consortium, the group began to adopt more of a gang persona in this effort.

Where Mexican gangs carved graffiti at school, the Malibu group began to assert their

¹³ This information comes from e-mail correspondence with a founding member of MLO who wished to remain anonymous. Email from anonymous MLO founder, to Brian W. Ludeke (Jan. 27, 2006, 10:28 PST) (on file with author).

¹⁴ Malibu High School did not open until 1992. Before that time, Malibu residents' children attended Santa Monica and Olympic High Schools. *Id.*

claim to the same territory by carving the initials "MLO" over the Mexican gangs' insignia.¹⁵ Thus, MLO was born¹⁶.

As to MLO's original goal, a former founding member of MLO¹⁷ 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 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 of 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 .¹⁸

Thus, MLO became something akin to a substitute police force with respect to the Malibu beaches.¹⁹

As to MLO's second goal, Malibu did not have its own high school until 1992, so Malibu teens attended school in neighboring communities.²⁰ The surfers' appearance

¹⁵ *Id.*

¹⁶ For sake of brevity, this paper will refer to the gang as MLO even in their early incarnation when the "gang" had not necessarily formed as such.

¹⁷ See MLO Founder Email *supra* note 13.

¹⁸ *Id.*

¹⁹ Local surfers' protection of their territory is a common practice. Beaches with conditions amenable to surfing represent only a small portion of the California coastline. These areas are referred to as "surf breaks." When a wave breaks at one of these spots, there is generally only room for one surfer to ride on that wave. Thus, surfers have always had a keen interest in keeping crowds down at surf breaks. See, e.g., Nat Young, *SURF RAGE*, Gardners Publishing (2000) (violence at surf spots has become a global concern, and waves at surf breaks are a finite resource that some surfers will protect with violence); To this day, violence at breaks deemed by local surfers as "locals only" breaks is not at all uncommon. Of note is a Street Terrorism Enforcement and Protection Act injunction sought against a group of Palos Verdes surfers calling themselves the Dirty Underwear Gang for an assault on a non-local surfer. Kevin Cody, *PVE Police Meets with Surfrider*, at <http://www.streetgangs.com/injunctions/topics/011702dirty.html>.

²⁰ See MLO Founder Email *supra* note 13.

made them stand out at the more urban schools,²¹ making them targets for harassment by Mexican gangs.²² "[I]f they were to survive, with a shred of dignity intact, [sic] the Malibu enforcers had to become a little more organized and vigilant about the leave the Malibu people alone rule [sic]." MLO's added organization provided its members with strength in numbers to protect themselves from the already organized Mexican gangs.²³

MLO may have originated as a group of peers organizing to protect their beaches and themselves. However, MLO has evolved into a gang with less innocent goals, now behaving much more like a stereotypical modern street gang. Malibu beaches are now public, so MLO members no longer enforce property rights.²⁴ Additionally, the Malibu community now has its own high school, so MLO members don't form a visible minority at their schools as did their predecessors.²⁵

Although the original impetus for MLO's formation has disappeared, MLO has not. The gang now performs random, violent attacks on innocent non-gang members as evidenced by the aforementioned attacks. ²⁶ Modern MLO behavior now typifies the random, senseless violence seen from street gangs in cities across America. Additionally, drivers through the canyons leading from the San Fernando Valley to Malibu are frequently greeted with MLO graffiti. Ironically, in spite of Los Angeles Sheriff's officials' assertions to the contrary, MLO has evolved into the very type of street gang

²¹ Surfers in the 1960's and 1970's were predominantly white. "Surfing would not be immune to the dark days of Vietnam, and in the late '60s, after a long period of quality public image, the pursuit ducked alongside rock and roll into the counter-culture. Hair grew out and acid was dropped . . ." *Surf Culture*, at <http://www.surflife.com/surfaz/surfaz.cfm?id=916>.

²² See MLO Founder Email *supra* note 13.

²³ *Id.*

²⁴ Proposition 20, the California Coastal Initiative, provided for public access to California beaches. California Coastal Commission, *Permanent Responsibilities of the California Coastal Commission*, at <http://www.coastal.ca.gov/perresp.html>.

²⁵ See, e.g., Trevor Delaney, *Smells Like Teen Spirit*, SMARTMONEY.COM, September 9, 2003, at <http://www.smartmoney.com/magportfolios/stocks/index.cfm?story=september03> (PacSun, a nationwide retailer of surf clothing, enjoyed a 132% return during a three-year period when the S&P index fell 34%).

²⁶ See, e.g., Tierney *supra* note 4 (MLO graffiti appearing throughout Malibu to intimidate outsiders).

against which it originally formed to fight. The MLO founder bemoans the situation in which "[MLO] decline[d] into the current state of the little bitches, that "jump" people like the Mexicans did when I was in school . . . If I was still up there I'd bitch slap some sense into them."²⁷

Because MLO has evolved to behave like a typical street gang, it is important to formulate a precise, relevant definition of the term "gang." Furthermore, to understand what causes youths to join gangs like MLO, it is important to discuss factors in 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.

IX. 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 in their insistence that MLO is not a gang. To do so, it is useful to first define the term "gang" by looking at the relevant law used in California to fight street gangs. Next, this section will examine popularly-held notions of factors that cause youths to join street gangs and will explain why these factors generally cannot fully explain gang membership in either urban or suburban contexts. Lastly, this section will address the "missing protector factor" which helps explain youths' decisions to join not only suburban gangs like MLO, but street gangs in general. Because this factor is more universally relevant to gang membership, it is the most useful factor to address in efforts to prevent gang membership.

²⁷ See MLO Founder Email *supra* note 13..

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.²⁸ This deliberate distinction between gangs and non-gangs raises a key issue with respect to society's efforts at fighting the violence committed by gangs. 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), which essentially criminalizes certain types of gang activities and allows sentence enhancements for gang members.²⁹ Additionally, Los Angeles County has adopted a practice of obtaining civil injunctions to forbid enjoined gang members from many otherwise legal activities.³⁰ 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.

²⁸ See Malibu Town Meeting Minutes *supra* note 8.

²⁹ The STEP Act essentially enables California law enforcement officials to criminalize the act of belonging to a gang. If prosecutors prove a defendant belongs to a gang, they can seek injunctions and sentence enhancements based on this gang membership. Cal. Pen. Code § 186.22.

³⁰ In its final report for 2003-04, the Los Angeles County Grand Jury discussed the background and effectiveness of Los Angeles law enforcement officials' use of civil gang injunctions. With these injunctions, prosecutors, working in conjunction with police can name gangs and gang members in a proposed injunctive order that can forbid otherwise legal behavior like association in public with other gang members. If granted, the order is enforceable through the court's contempt power, enabling fines or prison for violators. 2003-04 LOS ANGELES COUNTY CIVIL GRAND JURY FINAL REPORT, at 169-251, *available at* <http://grandjury.co.la.ca.us/gjreports.html>.

In spite of this need for precision, there exists a great amount of debate as to a precise definition of a street gang.³¹ Nonetheless, in MLO's case, the definition provided by the STEP Act provides the most relevant definition because the aforementioned statements of assurance of MLO's non-gang status were made by California law enforcement officials. The STEP Act, as set forth in California Penal Code § 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 (8), inclusive, of subdivision (e), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.³²

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"³³ and "intimidation of witnesses and victims . . ."³⁴

If a group meets these criteria, California law enforcement officials may utilize the STEP Act to criminalize gang behavior and enhance penalties for crimes committed to further the gang.³⁵ Additionally, with the same criteria, law enforcement officials in Los Angeles could seek a civil injunction to prevent gang members from assembling together in public.³⁶ With such powerful tools available for use against gangs, California

³¹ See, e.g., Jeffrey J. Mayer, *Individual Moral Responsibility and the Criminalization of Youth Gangs*, 28 WAKE FOREST L. REV. 943, 951 (1993) (in spite of need to avoid indiscriminate war on gangs, prosecutors, legislators and academics fail to adequately define "gangs").

³² Cal. Pen. Code § 186.22(f).

³³ Cal. Pen. Code § 186.22 (e)(1).

³⁴ Cal. Pen. Code § 186.22 (e)(7).

³⁵ Cal. Pen. Code § 186.22 (a); Cal. Pen. Code § 186.22 (a)(1).

³⁶ See Los Angeles Civil Grand Jury Report *supra* note 30; 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).

law enforcement officials must ensure fairness in their decisions 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 maintained a presence on that campus,³⁷ and the reports of MLO assaults place the gang's membership above the necessary three required by the STEP Act.³⁸ The gang uses a common identifier, "Malibu Locals Only" or "MLO", and the gang frequently uses graffiti to demarcate MLO territory.³⁹ MLO members associate to commit criminal activity, including the predicate acts as listed in California Penal Code § 186.22.⁴⁰ Thus, MLO meets the relevant criteria to be defined as a gang in California.

Because MLO, thus, appears to be the type of dangerous group the California legislature seemed to want to stop in 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. While 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

³⁷ Email from Mark Kelly, Principal, Malibu High School, to Brian W. Ludeke (Feb. 15, 2006, 18:09 PST); *See also*, Vicki Godal *supra* note 1.

³⁸ *See* Vicki Godal *supra* note 1.

³⁹ *See* Jamie Tierney *supra* note 4; *See also* MLO Founder Email *supra* note 13 (MLO has done this since the 1970's).

⁴⁰ For example, in the aforementioned party assault, gang members committed a violent assault with a deadly weapon, intending to (and succeeding in) committing grave injury to the victim. Furthermore, the gang members involved in the assault told witnesses, including the victim, that they knew where they would live and that they would kill them if the witnesses told police about the assault. These acts constitute assault with a deadly weapon (maybe attempted murder) and witness intimidation. *See* Vicki Godal *supra* note 1.

parents."⁴¹ 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.⁴² 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 in youths' choices to join gangs that might allow society to more effectively fight gangs in both suburban and inner city gangs.

b. Why do youths join street gangs?

There are many reasons why youths join gangs. This section will explore the most popularly held notions of factors in gang membership and will discuss why these stereotypical factors are generally not useful to explain youths' membership in gangs—either urban or suburban. Additionally, this section will discuss a factor called the "missing 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 formulate viable solutions to eradicating this very powerful factor and fighting both suburban and urban gang membership.

Youths are thought to join street gangs for many reasons. The first theory is that they may join gangs to promote a criminal enterprise like the sale of drugs as an

⁴¹ See Malibu Town Meeting Minutes *supra* note 8.

⁴² "Between 1987 and 2000, the City Attorney and District Attorney have attempted 24 [civil gang injunctions] within Los Angeles County." Most of the injunctions included in a report on the injunctions were sought against black and Hispanic gangs like the Rolling 60's (a black Crips gang) and the Venice 13 gang (a Hispanic gang affiliated with the Mexican Mafia prison gang.) See Los Angeles Civil Grand Jury Report *supra* note 30: See also, *People ex rel. Gallo v. Acuna*, 14 Cal.4th 1090 (Cal. 1997) (California Supreme Court upholds constitutionality of civil gang injunctions banning 38 alleged members of the Varrio Sureno Treces gang from congregating in public in the Rock Springs neighborhood of San Jose).

alternative to poverty.⁴³ Second, youths may join gangs due to gangs' presence as institutions in their neighborhoods.⁴⁴ Third, 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.⁴⁵ Fourth, many people feel that youths are led to participation in gangs by violence in the media.⁴⁶ Lastly, youths often join gangs as a response to the "missing protector factor," with the gangs functioning as surrogate families for youths who have non-existing or dysfunctional family support systems.⁴⁷

i. 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 by-product of the poverty in those neighborhoods.⁴⁸ Certainly, the gangs generally romanticized by the entertainment media come mainly from

⁴³ See, e.g., Michael K. Carlie, *Into the Abyss: A Personal Journey into the World of Street Gangs* (2002), at http://www.faculty.missouristate.edu/m/mkc096f/what_I_learned_about/GANGS/WHYFORM/economic_deprivation.htm (if 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).

⁴⁴ See, e.g., James Diego Vigil, *Learning from Gangs: The Mexican American Experience* (1997), at <http://www.ericdigests.org/1997-4/gangs.htm> (because 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).

⁴⁵ "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." *Id.* (quoting RUTH HOROWITZ, HONOR AND THE AMERICAN DREAM: CULTURE AND IDENTITY IN A CHICANO COMMUNITY (Rutgers University Press, 1983); ALFREDO MIRANDE, GRINGO JUSTICE (University of Notre Dame Press, 1987)).

⁴⁶ See, e.g., *Joint Statement on the Impact of Entertainment Violence on Children to the Congressional Public Health Summit*, 106th Cong. (July 26, 2000) (issued by American Academy of Pediatrics, in conjunction with the American Medical Association, American Psychological Association, and American Academy of Child and Adolescent Psychiatry) (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).

⁴⁷ See, e.g., DAN KOREM, SUBURBAN GANGS: THE AFFLUENT REBELS 63 (Int'l Focus Press 1994) (The missing protector factor causes youths join gangs when they cannot count on parents in crisis).

⁴⁸ See, e.g., Wikipedia, at http://en.wikipedia.org/wiki/South_Los_Angeles (poverty and urban decay create crime in gang-ridden South Los Angeles).

economically depressed neighborhoods like Compton, California.⁴⁹ In these neighborhoods, a common conception is that poverty may make gang-related crimes like drug sales attractive to poor youths seeking an escape from poverty.⁵⁰

Indeed, the introduction of crack cocaine to the American drug market has had a profound impact on society—particularly the inner city. Crack combines dual, devastating qualities: it is highly addictive and very affordable.⁵¹ Thus, drugs like crack provide a tremendous business opportunity to gangs willing to exploit this marketability. The epidemic of crack addiction and its corresponding sales by gangs have been evident in neighborhoods like Compton.⁵² The astounding amount of money involved in the crack industry translates to the perception that gangs provide prospective members with the opportunity to avoid the poverty common in these neighborhoods.⁵³ For example, in Compton, 28 percent of the population earns wages below the poverty level.⁵⁴

Although avoiding such poverty may factor into youths' decisions to join gangs in depressed areas like Compton, the existence of suburban gangs like MLO shows that

⁴⁹ "[Compton] has at times been notorious for gang violence, a reputation perhaps exaggerated by the rise to prominence of local gangsta rap group N.W.A. during the 1980s." Wikipedia, at http://en.wikipedia.org/wiki/Compton,_California; Interestingly, Compton did not always possess such a fearsome reputation. The city was once considered attractive to middle class citizens and was once home to two future U.S. Presidents in 1949-1950—George H.W. and George W. Bush. *Ibid.*

⁵⁰ See Michael K. Carlie *supra* note 43.

⁵¹ Crack is a highly addictive, smoked form of cocaine. National Institute on Drug Abuse, *NIDA InfoFacts: Crack and Cocaine*, at <http://www.nida.nih.gov/Infofacts/cocaine.html>; See also, *Crack Cocaine*, at <http://www.streetdrugs.org/crack.htm> (cocaine in this form provides intense euphoria for users, increasing likelihood of compulsive cocaine-seeking behavior); See also, United States Department of Justice, *Crack Cocaine Fast Facts*, at <http://www.usdoj.gov/ndic/pubs3/3978/3978p.pdf> (crack easily abused because it is powerful and can be administered in inexpensive quantities).

⁵² See, e.g., United States Sentencing Commission, *Report on Cocaine and Federal Sentencing Policy*, available at <http://www.ussc.gov/crack/CHAP4.HTM> (Los Angeles cultural gangs like the Crips and Bloods are the primary distributors of crack in Los Angeles).

⁵³ See Michael K. Carlie *supra* note 43.

⁵⁴ Wikipedia, at http://en.wikipedia.org/wiki/Compton%2C_California; See also, Joseph Rodriguez, *Gang Life in Los Angeles: The East Side Story*, THE APF REPORTER, Vol. 16, #2 (1994) available at <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.)

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,⁵⁵ 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.⁵⁶ If poverty were 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 address in the efforts at stopping gang violence.

ii. Gangs as institutions in neighborhoods.

Some people theorize that gangs may become so institutionalized in neighborhoods that youths in those neighborhoods may feel they have no choice but to join gangs.⁵⁷ 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. In such situations, it is not uncommon to see second and third-generation gang members.⁵⁸ Second, neighborhood gangs can infect neighborhoods to the extent that youths may feel

⁵⁵ See, e.g., Wikipedia, at http://en.wikipedia.org/wiki/Malibu%2C_California#Demographics (Median Malibu household income is \$102,031); See also, Carmen DeNavas-Walt, et al., *U.S. Census Bureau, Current Population Reports* 60-221 (2002) (Median household income in United States is \$42,409).

⁵⁶ See, e.g., Gary Stewart, Note, *Black Codes and Broken Windows: The Legacy of Racial Hegemony in Anti-Gang Civil Injunctions*, 107 *Yale L.J.* 2249, 2275 (1998) (most urban youths are not actual gang members).

⁵⁷ See James Diego Vigil *supra* note 44.

⁵⁸ A photograph in a magazine article by Joseph Rodriguez shows a particularly poignant example of families perpetuating gang membership. The photo shows an East Los Angeles gang member teaching his two year old daughter to hold his pistol. See Joseph Rodriguez *supra* note 54.

compelled to join in order to protect themselves from reprisal from the gangs for their refusal to join.⁵⁹

However, neither of these consequences of institutionalization can completely explain the formation of gangs in general, and they certainly don't 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.⁶⁰ However, like poverty, institutionalization does not cause every youth in these neighborhoods to join gangs.⁶¹ Furthermore, in suburban settings like Malibu, gangs like MLO have not become institutionalized like their urban counterparts.⁶² Although MLO has maintained a presence in Malibu since as far back as the late 1960's, it does not play the ominous role in the lives of Malibu residents as do gangs in areas like Compton, where gang violence is something with which residents cope as part of their everyday lives.⁶³ Thus, institutionalization, like poverty, fails to fully explain youth gang membership—particularly in a suburban gang like MLO.

iii. Gangs as ethnic self-protection

The explanations in Section II of MLO's genesis as a form of protection for Malibu teens and their "property" interests in the Malibu beaches are consistent with

⁵⁹ See, e.g., Steve Nawojczyk, *Street Gang Dynamics* (1997) at http://www.sfcasa.org/articles/street_gang_dynamics.htm (many kids intimidated into gangs to avoid continued harassment).

⁶⁰ See KOREM, *supra* note 47, at 68.

⁶¹ See Gary Stewart *supra* note 56.

⁶² See KOREM, *supra* note 47, at 29.

⁶³ 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 wounded in the abdomen. The bullet that hit his wife struck and injured the fetus. Associated Press, *Sailor on Leave from Iraq Killed by Suspected Gang Members*, SAN DIEGO UNION-TRIBUNE, September 5, 2005, available at <http://www.signonsandiego.com/news/state/20050905-2309-ca-sailorkilled.html>.

another common theory on the origin of street gangs—that of gangs as a form of ethnic self-protection.⁶⁴ Gangs arose in United States of America only shortly after its independence to provide protection to groups of people who felt that the law was either unable or unwilling to protect them.⁶⁵ These vulnerable groups, often immigrants, felt the need to protect themselves from hostile people of other ethnicities who would come into their neighborhoods intending to do them harm.⁶⁶

As a modern example of this type of ethnic self-protection, one can examine gangs in East Los Angeles, which has a well-known history of gang violence.⁶⁷ East Los Angeles' population is heavily Hispanic, and the constituency of most of the gangs in that area is correspondingly Hispanic.⁶⁸

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 exhibited an

⁶⁴ See James Diego Vigil *supra* note 44.

⁶⁵ A recent film called "Gangs of New York" presented a vivid picture of gang activity in 19th century New York. Although possibly exaggerated, the film was based on historically documented gangs that existed in the Five Points area of New York City. Gangs controlled different municipal police agencies, creating conflict as to which police agency had power in which area. To protect themselves, each gang had to provide its own protection, as it couldn't rely on the police to provide consistent, reliable protection. *History of Gangs: 1850-1860*, at http://www.knowgangs.com/gang_resources/history/history_004.htm; Wikipedia at http://en.wikipedia.org/wiki/Dead_Rabbits; GANGS OF NEW YORK (Miramax 2002).

⁶⁶ See, e.g., Alexander A. Molina, *California's Anti-Gang Street Terrorism Enforcement and Prevention Act: One Step Forward, Two Steps Back?*, 22 SW. U. L. REV. 457, 1993 (quoting Deborah Rowland, et al., *Suburbs Waking Up to Threat of Gangs*, CHI. TRIB., Sept. 22, 1991, § 1, at 16).

⁶⁷ See, e.g., Wikipedia at http://en.wikipedia.org/wiki/Boyle_Heights (by 1970's, Latino gangs becoming prevalent in Boyle Heights area of East Los Angeles); See also, Carol Ann Morrow, *Jesuit Greg Boyle, Gang Priest*, ST. ANTHONY MESSENGER, August 1999, available at <http://www.americancatholic.org/Messenger/Aug1999/feature1.asp> (60 gangs with 10,000 members in 16 square mile area of East Los Angeles).

⁶⁸ See, e.g., Wikipedia, at http://en.wikipedia.org/wiki/East_Los_Angeles_%28region%29 (since the early 20th century, East Los Angeles is the locus of the Latino population of Los Angeles County);

unwillingness to provide protection.⁶⁹ 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, who are responsible for hundreds of murders in Los Angeles.⁷⁰ Furthermore, the 18th Street Gang has spread across the country and is now responsible for countless more acts of violence.⁷¹

Similar to the 18th Street Gang, MLO came into existence to protect Malibu residents' property interests that were being violated by outsiders without intervention by authorities.⁷² Additionally, Malibu surfers, themselves visible minorities at their schools, had to organize to protect themselves from Mexican gangs that intended to harm them.⁷³ 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, similar to the 18th Street Gang, MLO has evolved into something completely different than a protector of its own ethnic group. MLO has devolved into a gang that is feared not only by outsiders, but by

⁶⁹ An excellent example of this gang-like violence as self-protection is the Zoot Suit Riots of 1943. In response to an alleged attack on whites by a group of "pachucos"-- Mexican-American youths who were identified by their oversized, brightly colored "zoot suits"—Military personnel went, en masse, to East Los Angeles, beating Mexican-Americans. In the end, several hundred Hispanics and only nine whites were arrested. 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; Wikipedia at http://en.wikipedia.org/wiki/Zoot_Suit_Riots.

⁷⁰ See, e.g., Wikipedia at http://en.wikipedia.org/wiki/18th_Street_gang (18th Street Gang responsible for 154 murders in Los Angeles from 1985 to 1995); See also, 18th Street Gang, at http://www.knowgangs.com/gang_resources/18th/18th_001.htm (18th Street linked to Mexican and Colombian drug cartels).

⁷¹ See, e.g., Al Valdez, *California's Most Dangerous Export* (2000) at <http://www.streetgangs.com/topics/2002/18thexport.html> (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).

⁷² See *supra* Section II.

⁷³ See MLO Founder Email *supra* note 13

its own community as well.⁷⁴ 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.

iv. Gangs as the result of violence in the media.

When addressing the cause of modern gang violence, many people point to the prominent portrayal of gang violence in television, movies, and music.⁷⁵ 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.⁷⁶

An area of study called Media Violence Research theorizes regarding this supposed link between media and gang membership. Its proponents point to escalating levels of media violence and attempt to statistically tie this media violence to increases in actual violence in society. Some social scientists theorize that youth act in accordance

⁷⁴ See Vicki Godal *supra* note 1 (Malibu youth afraid to come forth as witnesses, even with reward offered, and only speak to newspaper reporter off the record).

⁷⁵ See American Academy of Pediatrics Report *supra* note 46; See also, Office of Juvenile Justice and Delinquency Prevention, *The Growth of Youth Gang Problems in the United States: 1970-98* (April 2001) at 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.")

⁷⁶ See, e.g., *Hip Hop Style: What is Cool?* at <http://www.pbs.org/newshour/infocus/fashion/hiphop.html> (Hip Hop and gangster style popular among youths in suburbs as well as in urban areas); See also, Jamie Tierney *supra* note 4 (MLO members wearing "gangsta" style Old English script on clothing because it is popular).

with what they learn by watching television and movies or by hearing in music.⁷⁷

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.⁷⁸ In particular, scholars have suggested that blaming the media for gang membership and youth violence functions only as a political scapegoat, enabling politicians to divert people's focus from the social issues at the root of problems like youth gang membership.⁷⁹

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.⁸⁰ A style of rap music called "gangsta rap" is frequently cited as a source of violent influences on youths.⁸¹ Gangsta rap has been popularized by Los Angeles rappers who write songs that reflect the violence in areas where street gangs are prevalent.⁸² This music is made predominantly by black artists about life in black communities like Compton.⁸³ However, the genre's audience has

⁷⁷ See American Academy of Pediatrics Report *supra* note 46

⁷⁸ See, e.g., Joanne Savage, *Does Viewing Violent Media Really Cause Criminal Violence? A Methodological Review*, AGGRESSION AND VIOLENT BEHAVIOR, 10, 99-128. (2004) ("The 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, however, that there is little evidence in favor of focusing on media violence as a means of remedying our violent crime problem.");

⁷⁹ Stuart Fischhoff, *Psychology's Quixotic Quest For the Media-Violence Connection*, Address before the Annual Convention of the American Psychological Association (August 21, 1999) (transcript available at <http://www.calstatela.edu/faculty/sfisco/violence.html>) (questioning methodology and validity of media violence studies).

⁸⁰ The missing protector factor will be fully discussed in Section III (b) *infra*. This factor arises as the result of youths not being able to rely on their parents in crisis situations and being forced to look to their peers, putting them at risk of gang membership.

⁸¹ See American Academy of Pediatrics Report *supra* note 46

⁸² See, e.g., Scott Mervis, *What up, gangsta? The hardcore rap of the '90s*, PITTSBURGH POST-GAZETTE February 16, 2004 (Compton-based rap group N.W.A. popularizes "gangsta" rap, saying violent lyrics reflect events in their community).

⁸³ *Straight Outta Compton*, by NWA (Niggaz With Attitude) is widely regarded as the seminal gangsta rap album, purporting to portray life in Compton. N.W.A., STRAIGHT OUTTA COMPTON (Priority Records 1990).

come to consist predominantly of white youths.⁸⁴ 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.⁸⁵ This counter-culture portrayal of rappers naturally appeals to teenagers, who generally go through stages of rebellion in their adolescence.⁸⁶

Violent lyrics heard by these impressionable youth more likely result in violent behavior when these youth have no source of guidance to provide context for the music. One article on this subject contrasted the music of the Rolling Stones⁸⁷ with that of rapper 50 Cent.⁸⁸ 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 fan run amok?"⁸⁹ 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

⁸⁴ "[A] young white audience . . . purchases 66% of rap music, according to the Recording Industry Association of America." Norman Kelley, *Rhythm Nation: The Political Economy of Black Music*, BLACK RENAISSANCE/RENAISSANCE NOIRE (Summer 1999).

⁸⁵ 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, 347-50 (2005).

⁸⁶ See, e.g., Jeffrey Fagan, *Context and Culpability in Adolescent Crime*, 6 VA. J. SOC. POL'Y & L. 507, 516 (1999) (adolescence is stressful point in youth's life marked by emotional struggles).

⁸⁷ According to their bio on the Rock and Roll Hall of Fame 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, *2006 Inductees*, at <http://www.rockhall.com/hof/inductee.asp?id=182>.

⁸⁸ 50 Cent is the stage name of rapper Curtis Jackson. Jackson, a convicted drug dealer, has been shot nine times and writes rap lyrics about life on the street. These lyrics have become the source of controversy. "On a taping of The O'Reilly Factor, conservative commentator Bill O'Reilly has urged boycotts against rap music. O'Reilly named 50 Cent as a target of his crusade to prevent rappers who promote bad behavior from endorsing mainstream merchandise." Wikipedia, at http://en.wikipedia.org/wiki/50_cent.

⁸⁹ Margaret Wentz, *Get Mad, We're Being Had, Gangsta Rap's Really Bad*, GLOBE AND MAIL, December 1, 2005, available at http://www.fradical.com/Rap_contributes_to_Toronto_violence.htm.

who grow up without family discipline, a sense of law and order, or alternative role models, gangsta rap "has an absolutely catastrophic effect"⁹⁰

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 youth comes as a result of a lack of guidance. The next section will address 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 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.⁹¹ Societal changes like rising divorce rates, increasing numbers of mothers in the workforce, and the failure of public schools to properly educate youth "have posed challenges

⁹⁰ While Pastor Rivers appears to frame the distinction based on black vs. white, he notes that the main difference is an "underclass culture." The lack of guidance is truly the important factor in the influence of the music. *Id.*

⁹¹ See Michael K. Carlie *supra* note 43; See, also., Sandra Fu, *How to Get a Friend out of a Gang*, available at <http://drdrew.com/Topics/article.asp?id=1302> (teens join gangs because of lack of quality attention at home) (Dr. Drew Pinsky, a renowned addiction medicine specialist runs a nightly, nationally-syndicated radio show called *Loveline*. He addresses behavioral issues in adolescents, and he posts articles on these issues on his website, drdrew.com).

particularly for poor families, and also for racial and ethnic minorities. However, 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."⁹² 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.⁹³ This is the single influential factor that both urban and suburban youths who choose to join gangs typically have in common. When law enforcement officials like the Los Angeles County Sheriff's Department in Malibu downplay 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 will first examine the missing protector factor to provide a better understanding of the rationale behind youths' decisions to join gangs like MLO. Next, this section will demonstrate 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, author Dan Korem explores the evolution of gangs in suburban neighborhoods.⁹⁴ Korem notes the absence, in those areas, of the aforementioned factors normally thought to cause gang membership.⁹⁵ As such, the missing protector factor becomes the critical factor in youths' decisions to join suburban gangs. The missing protector factor arises due to the absence of one or more

⁹² See Michael K. Carlie *supra* note 43 (quoting National Science Foundation, *Fostering Successful Families: The Nature of the Problem*, at <http://www.nsf.gov>, last updated May 21, 2001. Not found on the Internet as of April, 2005).

⁹³ See KOREM, *supra* note 47, at 63.

⁹⁴ See KOREM, *supra* note 47.

⁹⁵ *Id.* at 6-10.

stable parental figures in youths' lives.⁹⁶ In stable, "nuclear family" situations, 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.⁹⁷ Conversely, children without the benefit of having both parents constructively involved in their upbringing cannot rely on their parents in crisis situations.⁹⁸ This lack of reliable protectors acts to push youths into gang membership because they lack the important protector figure normally provided by their parents. Consequently, youths must turn to outsiders for such protection and guidance.⁹⁹

Korem writes of a study in which children point to protection influences in their lives. Children first look to parents. Next, they look to other adult authority figures like teachers. If the children do not get the protection they seek from either of those two adult sources, they are forced to turn to their peers.¹⁰⁰ 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.¹⁰¹

This missing protector factor and its potential for pushing youths into gangs has been endorsed by Los Angeles gang intervention expert Father Greg Boyle.¹⁰² Father Boyle is notable for his twenty years of work in the Boyle Heights area of East Los

⁹⁶ The traditional family consists of the "nuclear family" which consists of a functional unit of a mother, a father and their children. *Id.* at 53.

⁹⁷ *Id.* at 65 (approximately 75% of youths in gangs claimed this factor was present).

⁹⁸ This missing protector can arise in the form of one or both of the parents being physically absent during the upbringing. It may also arise if one or both of the parents is dysfunctional. The type of dysfunction involved includes drug or alcohol addiction or mental or physical abuse by the parent. *Id.* at 50.

⁹⁹ *Id.* at 65.

¹⁰⁰ *Id.*

¹⁰¹ See section III (b) (iii) *supra*.

¹⁰² E-mail from Father Gregory J. Boyle, Jesuit Priest/Founder, Jobs For a Future Homeboy Industries, to Brian W. Ludeke, (Apr. 14, 2006, 18:09 PST) (on file with author).

Angeles, assisting youths in avoiding gangs.¹⁰³ Father Boyle opined on Korem's missing protector factor: "Hmmm--missing protective 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."¹⁰⁴ Youths do not decide to join gangs hoping for good things to happen as a result of those decisions. Rather, Father Boyle emphasizes the concept of flight from bad situations into gang life, which is consistent with the concept of the missing protector factor. Abuse or neglect in youths' home situations acts to deprive youths of the hope that parental guidance usually provides. This lack of hope then pushes the youths out of those dysfunctional situations. As a result, gangs become increasingly likely to become the youths' default surrogate families. Avoiding this need for gangs 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.¹⁰⁵

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.¹⁰⁶ Adolescence is a stressful point in youths' lives, and adolescent crime is closely linked to the developmental needs of adolescents.¹⁰⁷ One of these needs is the adolescent's search for an identity.¹⁰⁸ In this search for identity, youths often engage in rough-housing behavior, learning their way around physical violence. When these youths

¹⁰³ See Carol Ann Morrow *supra* note 67.

¹⁰⁴ See Father Boyle E-mail *supra* note 102.

¹⁰⁵ Since 1992, Father Boyle has run a non-profit 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." Edward Iwata, *Homeboy Industries Goes Gang Busters*, USA TODAY, Jul, 10, 2005 available at http://www.usatoday.com/money/smallbusiness/2005-07-10-homeboy-usat_x.htm.

¹⁰⁶ See Fagan *supra* note 86.

¹⁰⁷ *Id.* at 516.

¹⁰⁸ *Id.* at 524.

engage in what may begin as mildly violent behavior, the social context in which they act becomes crucial.¹⁰⁹

Fagan describes this context in terms of two types of normative systems—"decent" and "street."¹¹⁰ "Decent" refers to situations in which youths have stable family backgrounds that provide them with a healthy frame of reference with which to judge events in their lives. "Street", on the other hand, refers to youths who lack a stable family influence and, instead, rely on youths from similarly unstable backgrounds to frame their perspectives of the world around them.¹¹¹ Even in poor, crime-ridden neighborhoods, the majority of adolescents fall within the "decent" class. However, pressures encountered on the street, without positive influences, may steer even "decent" adolescents toward becoming "street."¹¹²

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.¹¹³

Additionally, scholars have advanced an "interactional theory" that cites the influences of social structure on youths' delinquent behavior. A key element of this theory is the idea

¹⁰⁹ *Id.* at 518-19.

¹¹⁰ *Id.* at 528.

¹¹¹ *Id.*

¹¹² *Id.* 535-38.

¹¹³ IRVING A. SPERTEL, *THE YOUTH GANG PROBLEM: A COMMUNITY APPROACH* 115 (Oxford University Press) (1995).

that the influences and subsequent interactions have a bi-directional causality.¹¹⁴ In other words, it assumes not only that anti-social influences like dysfunctional family 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.¹¹⁵ "Street" youths learn "street" scripts—reactions to stressful situations influenced only by other "street" youths. These scripts often involve the use of violence to resolve the stressful situations.¹¹⁶ "Decent" youths, on the other hand, have the positive influences of stable families and can develop alternative, "decent" scripts. These adolescents are, thus, not limited to reacting to stress violently like their "street" counterparts.¹¹⁷

Youths make these behavioral decisions based on interactions with both family and peers. Thus, without a good frame of reference, gang activity in an adolescent's environment can serve as a powerful factor in youths' decisions to engage in violent behavior.¹¹⁸ 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 context can provide.¹¹⁹ Impressionable youths without the expanded context that a good upbringing provides are amenable to the influence of an audience in their decision-making process.

¹¹⁴ TERENCE P. THORNBERRY, ET. AL, GANGS AND DELINQUENCY IN DEVELOPMENTAL PERSPECTIVE 83 (Alfred Blumstein & David Farrington, eds., Cambridge University Press) (2003).

¹¹⁵ See Fagan *supra* note 86 at 535-38.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 537.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

A stressful situation may become violent if a youth seeks to gain status by acting violent in front of peers who 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.

The missing protector factor is important, as stable protectors are an essential part of a "decent" upbringing, providing youth 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 will discuss 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. 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, since 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. Divorce rates have boomed in America in the last 5 decades, seeming to show a tacit acceptance of divorce by a large segment of American

society.¹²⁰ This increasing tolerance leaves an ever-increasing number of American youth without the steady influence and protection of both parents.¹²¹

In addition to this increasing number of youths who grow up in homes without both parents, youths increasingly lack alternative protectors like teachers and coaches, who youths could otherwise rely on as potential substitutes for missing parents.¹²²

School systems, particularly in California, have suffered budget shortfalls that hurt their ability to hire teachers and run extra-curricular programs.¹²³ 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 their parents fail to provide.

Subsequently, youths must look to their peers as role models. This situation, as noted in Section III(b)(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 sorts of results with respect to an alleged member of MLO.

3. Brawley Nolte: Pushed into MLO by missing protector factor?

The impact of the missing protector factor in the decisions of youths to join gangs is illustrated by an alleged MLO member named Brawley King Nolte (Nolte). Nolte

¹²⁰ In the United States, in 2003 there were 7.5 new marriages per 1000 people and 3.8 divorces per 1000. Wikipedia, at <http://en.wikipedia.org/wiki/Divorce>; See also, Michael K. Carlie *supra* note 43. (Rising divorce rate partially responsible for youths' decisions to join gangs).

¹²¹ 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 47, 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."); See also, Carlie *supra* note 43 (in addition to divorce, presence of mothers in the workforce increasing gang membership).

¹²² See KOREM, *supra* note 47, at 65.

¹²³ Kim Saito, *California Universities and Public Schools Face Massive Budget Cuts*, WORLD SOCIALIST WEB SITE, Jan. 15 2003, available at <http://www.wsws.org/articles/2003/jan2003/cali-j15.shtml>.

provides an excellent example of the protector-lacking youth about which 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.¹²⁴ Brawley Nolte, an actor himself, is the son of actor Nick Nolte.¹²⁵ This connection to his famous father has made Nolte the face of MLO in several media accounts of the gang and its actions.¹²⁶

Assuming 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.¹²⁷ 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, attending Malibu High School. Additionally, Nolte allegedly attacked the young man at the party without provocation, at someone else's house.¹²⁸ Thus, Nolte would not have joined MLO because he lived in the type of poverty experienced by some youths who join urban gangs nor because he was protecting any sort of property rights or ethnic interests.

Since these traditional factors cannot explain someone like Brawley Nolte's decision to join a gang, the missing protector factor may become particularly relevant in accounting for the decision. Nick Nolte is divorced from Brawley's mother, so Brawley

¹²⁴ Although Nolte was not charged in the beating reports alleged that he was involved in the beating. "Brawley Nolte has been identified as the member of new gang Malibu Locals Only, who gatecrash posh parties and beat up non Malibu 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." *Nick Nolte's Son in Trouble*, Contact Music, Apr. 4, 2004 at <http://www.contactmusic.com/new/xmlfeed.nsf/mndwebpages/nick%20nolte.s%20son%20in%20trouble>; The suit was filed in Los Angeles Superior Court in Santa Monica but was transferred to a Malibu court. The outcome is still pending. Suit details available at <http://www.lasuperiorcourt.org/civilCaseSummary/index.asp?CaseType=Civil>.

¹²⁵ Brawley Nolte starred opposite Mel Gibson in the Ron Howard film *Ransom*. IMDB, *Brawley Nolte*, at <http://www.imdb.com/name/nm0634509/>; Nick Nolte has starred in over 65 films. He received two Academy Award nominations. IMDB, *Nick Nolte*, at <http://www.imdb.com/name/nm0000560/>

¹²⁶ See Craig Stephens *supra* note 1.

¹²⁷ See Vicki Godal *supra* note 1.

¹²⁸ *Id.*

lacked the protection provided by both parents' involvement in his upbringing.¹²⁹ Furthermore, Nick Nolte has publicly struggled with substance abuse problems, thus seeming to fit the description of a dysfunctional parent.¹³⁰ 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.¹³¹

If this push occurred as described, Nolte may have found this sort of protection and support from MLO. Unfortunately, like many "street" youth who lack parental guidance, as described above in Section III (b) (1), Nolte's support and protection may have come in the form of MLO. MLO's leader is apparently a man who the aforementioned founding MLO member would only fictitiously identify as "Ricco."

[The leader of MLO] 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 (Shitty ink). Although I remember him (my opinion) as a useless bitch that couldn't surf for chit, rumor has it he learned to fight a little in Prison. Little rich actors kids parents are often too busy to even sort of do their job so they are left to be raised by MTV/RAP videos. A head full of gangster rap/culture and "Ricco" for a mentor.¹³²

With such 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

¹²⁹ Nick Nolte divorced Brawley's mother, Rebecca Linger, in 1991 when Brawley was 5 years old. *Nick Nolte*, Yahoo Movies, available at <http://movies.yahoo.com/movie/contributor/1800011534/bio>.

¹³⁰ See, e.g., *Nick Nolte in DUI Arrest*, CBS News, at <http://www.cbsnews.com/stories/2002/09/23/entertainment/main522969.shtml> (Nick Nolte cited in 2002 for driving while under the influence of the powerful depressant GHB—also known popularly as the date rape drug).

¹³¹ 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. Associated Press, *Nick Nolte's Son Faces Felony Pot Charge*, ABC News, Apr. 25, 2005, at <http://abcnews.go.com/Entertainment/wireStory?id=701365>.

¹³² See MLO Founder Email *supra* note 13

could provide the protection that an impressionable youth like Nolte may have lacked in his biological family.¹³³

Due to this type of powerful influence that gangs may provide to 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. Additionally, gang membership appears to be on the rise, spreading throughout America.¹³⁴ Thus, the missing protector factor becomes the most important factor for society to address in its efforts to stop youths from joining gangs.

X. 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.¹³⁵ Malibu officials' failure to properly address MLO as a gang allows such a potentially dangerous gang to exist and grow without any impediment. Second, because of the prevalence of gang violence, the criminal 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

¹³³ 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 at whom the record companies market the most violent gangster material possible. *See* section III *supra*.

¹³⁴ *See, e.g.,* KOREM, *supra* note 47 (gangs spreading from inner city to affluent suburbs).

¹³⁵ *See, e.g.,* TEEN GANGS *supra* note 12 (discusses 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).

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 worldwide.¹³⁶ Los Angeles, in particular, has one of the worst gang problems in the country.¹³⁷ In Los Angeles County, law enforcement officials know of more than 1300 street gangs with over 150,000 members. The City of Los Angeles alone, has roughly 407 gangs and over 56,000 members.¹³⁸ These numbers represent a dramatic rise in the last two decades. In 1989, Los Angeles prosecutors noted that the city had over 700 street gangs and 70,000 gang members.¹³⁹ Furthermore, gangs have spread from the inner-city to suburban areas in Los Angeles and nationwide.¹⁴⁰ With such a dramatic, 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 present a concern to law enforcement officials.

¹³⁶ *Id.*

¹³⁷ "'As goes L.A., so goes the rest of the country,' says Ron Stallworth, a former gang-intelligence coordinator for the state of Utah." Terry McCarthy, *L.A. Gangs are Back*, TIME, 2001, available at <http://www.time.com/time/photoessays/gangs/story.html>.

¹³⁸ Violence Prevention Coalition of Greater Los Angeles, *Fact Sheets*, at <http://www.vpcla.org/factGang.htm>

¹³⁹ Ira Reiner, *Taking on Street Gangs: A Plan for Prosecutors*, PROSECUTOR'S BRIEF, at 5 (Fall 1989).

¹⁴⁰ See KOREM, *supra* note 47.

- i. Why MLO and suburban gangs constitute a particular danger.

This spreading gang threat has become apparent in Malibu. The evolution of MLO from its early form to its modern incarnation, as discussed in Section 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, as 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, creating a more deep-seeded problem for law enforcement officials in the future.

1. The danger of "wannabes"

While gangs like those found in areas like Compton and East Los Angeles are well-known and feared in their communities, 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 "wannabe's."¹⁴¹

"Wannabe's" need to make names for themselves may lead them to commit worse, more

¹⁴¹ "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." Gang Intelligence/ Threat Management Group, *The Wannabe Lie*, posted Apr. 9, 2006, available at <http://violencemanagement.blogspot.com/2006/04/wannabe-lie.html>.

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.¹⁴²

MLO seems to have exhibited this type of "wannabe" behavior in the attacks described in the Foreword section. When the idea of an active gang in Malibu is mentioned those unfamiliar with MLO, the common reaction is derision—the idea that a Malibu gangster has to be a ridiculous "wannabe" of the worst kind.¹⁴³ This lack of respect represents the type of stimulus that may create "wannabe" violence. The random, ultra-violent attack on the non-Malibu resident at the Malibu party would seem 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.¹⁴⁴ The incident, though investigated, never resulted in the filing of criminal charges.¹⁴⁵ In newspaper articles, Los Angeles Sheriff's Detective J.T. Manwell stated that MLO was not a gang. Deputy Vic Paladino made the same statement at a Malibu town meeting.¹⁴⁶ As such, Sheriff's officials appear to fail to recognize the threat that MLO presents as a gang that may want to expand its violent reputation.

¹⁴² *Id.*

¹⁴³ See Jamie Tierney *supra* note 4 (article title, "Malibu's Least Wanted," is a parody of the title of a 2003 film about a wannabe Malibu gangster.

¹⁴⁴ See Vicki Godal *supra* note 1.

¹⁴⁵ *Id.*

¹⁴⁶ See Malibu Town Meeting Minutes *supra* note 8.

ii. 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 will take root in Malibu, becoming an inescapable feature of the community like the gangs of East Los Angeles. This danger of institutionalization should concern a suburban community like Malibu because gangs are particularly difficult to fight when they become well-established.¹⁴⁷ Furthermore, it is difficult to disengage a youth from such an established gang.¹⁴⁸

Typically, youths may belong to a non-institutionalized youth group or gang for a period of time but become less interested when other opportunities like college arise.¹⁴⁹ This assumption may come into play in 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 aforementioned MLO founder, who discounts modern MLO members as "[I]ittle rich actors kids parents [sic]."¹⁵⁰ Unfortunately, the continuing presence of MLO in Malibu and the violent behavior the gang exhibits seem to belie this 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, those opportunities may begin to seem less attractive than life in an established gang.

¹⁴⁷ See KOREM, *supra* note 47, at 68.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 206.

¹⁵⁰ See MLO Founder Email *supra* note 13.

The possibility of such institutionalization has already become evident in MLO's evolution. As discussed in Section II, *supra*, 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 like the aforementioned founder simply moved on to other opportunities like their careers. "Fast forward to today's MLO,"¹⁵¹ and 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.

Because of its increasing level of violence and intimidation of witnesses, MLO has begun to establish itself as a group that inspires fear in its own community. Furthermore, members of the gang aren't simply leaving the gang when it comes time to attend college.¹⁵² MLO appears to be in the process of institutionalization. Unfortunately, not all members of the community, including law enforcement officials appear concerned at this development.¹⁵³ Los Angeles Sheriff's officials' failure to address this issue, thus, creates the risk that MLO will become entrenched in the Malibu community and will become increasingly 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.

¹⁵¹ See MLO Founder Email *supra* note 13

¹⁵² See Jamie Tierney *supra* note 4 (most MLO are "guys who work at Subway").

¹⁵³ See, e.g., Craig Stephens *supra* note 1 (Malibu business owner John Jacobs 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.* (Another Malibu business owner and parent of three children, named only as Jay, has strong feelings about MLO and their cost to the community due to their repeated vandalism of area schools).

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 law 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.¹⁵⁴ 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.¹⁵⁵

Criminal justice officials consider these tools effective and have used them extensively in attacking dangerous street gangs.¹⁵⁶ However, critics of the STEP Act and anti-gang injunctions have questioned their impact on constitutional rights such as freedom of association.¹⁵⁷ 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 clause of the Fourteenth Amendment.¹⁵⁸ 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.

¹⁵⁴ Cal. Pen. Code § 186.22.

¹⁵⁵ See Jeffrey Grogger *supra* note 36.

¹⁵⁶ See Los Angeles Civil Grand Jury Report *supra* note 30.

¹⁵⁷ See, e.g., Matthew Mickle Werdegar, *Enjoining the Constitution: The Use of Public Nuisance Abatement Injunctions Against Urban Street Gangs*, Note, 51 STAN. L. REV. 409, 428-29 (1999) (injunction defendants have civil liberties curtailed simply for associating with people who have committed crimes).

¹⁵⁸ U.S. CONST. amend XIV, §1.

1. Law Enforcement officials must utilize the STEP Act and civil gang injunctions uniformly to avoid equal protection violations.

In 1988, the California legislature enacted California Criminal Code § 186.22, known as the Street Terrorism Enforcement and Prevention Act, or the STEP Act. The STEP Act allows for harsh penalties applied to gang members for gang-related crimes.¹⁵⁹ Importantly, the STEP Act provides criteria that a group must meet to constitute a gang and fall under its purview. The Act requires that the group be an association of people with a common insignia or identifier that associates with the purpose of committing predicate acts as set forth in that statute.¹⁶⁰ Additionally, beginning in the early 1990's, Los Angeles County law enforcement agencies began pursuing civil injunctions against gangs that they classified as public nuisances. As previously noted, these civil gang injunctions allow law enforcement agencies to seek court orders enjoining gang members from associating together in public.¹⁶¹ If violated, the injunctions are enforceable through harsh contempt of court penalties.¹⁶² Both the STEP Act and civil injunctions have been considered successful in providing California law enforcement officials with the ability to target gangs for strict law enforcement action.¹⁶³

Although these tools would be valuable in fighting a suburban gang like MLO, the Los Angeles Sheriff's Department has repeatedly refused to label MLO as a gang. Despite these denials, MLO meets the STEP Act's criteria to be considered a gang. The attacks, as described in the Foreword, show that MLO numbers more than the three

¹⁵⁹ Cal. Pen. Code §186.22.

¹⁶⁰ Cal. Pen. Code § 186.22.

¹⁶¹ See Los Angeles Civil Grand Jury Report *supra* note 30.

¹⁶² See, e.g., Jeffrey Grogger *supra* note 36 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.").

¹⁶³ See Los Angeles Civil Grand Jury Report *supra* note 30; See also Jeffrey Grogger *supra* note 36.

required by the statute.¹⁶⁴ MLO members committed predicate acts under California Penal Code § 186.22 when they performed an assault with a deadly weapon or an assault with great bodily force, using the dangerous MagLite in the attack, and they subsequently threatened witnesses with death.¹⁶⁵ 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.¹⁶⁶ 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.

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. There is no outward indication that officials have made such a decision based on the fact that MLO members are primarily white.¹⁶⁷ 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 regularly sought by police and upheld by courts with respect to primarily minority gangs.¹⁶⁸

¹⁶⁴ See Vicki Godal *supra* note 1.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*; See also, Jamie Tierney *supra* note 4 (MLO members wear T-shirts with MLO in Gothic print, similar to clothing seen on Hispanic gang members); See also Craig 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 knuckles in fights. The gang also have various t-shirts and hats with the initials MLO printed in gothic text.").

¹⁶⁷ 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.

¹⁶⁸ See e.g., Jeffrey Grogger *supra* note 36 ("In Los Angeles County, 22 injunctions have been imposed since 1993; 12 have been imposed since 1997.").

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.¹⁶⁹ Such invidious discrimination will not stand without the state demonstrating a compelling interest in making such a distinction and proving that the interest is being advanced in the least discriminatory manner possible.¹⁷⁰ A pattern of discriminatory use of the STEP Act and civil gang injunctions could demonstrate an invidious purpose behind the laws, which would constitute a Fourteenth Amendment violation.¹⁷¹ 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.

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 officials far more often, with respect to their proportion of the population, than do whites. "About 40% of U.S. prisoners are black. If

¹⁶⁹ See, e.g., *Wayte v. United States*, 470 U.S. 598, 609 (1985) (prosecutorial discretion, though broad, limited by constitutional concerns like racial disparity).

¹⁷⁰ *Loving v. Virginia*, 388 U.S. 1 (1967).

¹⁷¹ *Rogers v. Lodge*, 458 U.S. 613 (1982) (facially neutral law can violate 14th Amendment if used in invidious manner).

incarceration trends continue, 1 in 3 black males today will do time in state prison."¹⁷²

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."¹⁷³

Interestingly, 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. . . "¹⁷⁴

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 37000 Black gang members and over 58000 Hispanic gang members . . . However, White gang members were so scarce that they did not even warrant their own category . . . "¹⁷⁵ These figures do not match a survey in which youths self-reported their gang membership. "[A]n average of 2.8% of Blacks, 2.8% of Hispanics and 1.3% of Whites responded that they had belonged to a gang . . . "¹⁷⁶ 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.¹⁷⁷

¹⁷² Joe Domanick, *Behind Bars: These Jampacked Joints Don't Make You Safe*, LOS ANGELES TIMES, Oct. 16, 2005, at M1.

¹⁷³ Donna Coker, *Supreme Court Review: Foreword: Addressing the Real World of Racial Injustice in the Criminal Justice System*, 93 J. CRIM. L. & CRIMINOLOGY 827, 835 (2003).

¹⁷⁴ See Gary Stewart *supra* note 56, at 2255.

¹⁷⁵ Linda S. Beres and Thomas D. Griffith, *Symposium: Social Justice in the 21st Century: Gangs, School and Stereotypes*, 37 LOY. L.A. L. REV, 935, 948 (2004).

¹⁷⁶ *Id.* at 952.

¹⁷⁷ *Id.* at 953.

This overestimation of minorities' roles in gangs becomes a problem if it results in law enforcement officials' perception 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.¹⁷⁸ 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. Klebold and Harris belonged to a group called the Trenchcoat Mafia, and this group met the relevant criteria to be labeled as a gang.¹⁷⁹ However, the media and police rarely referred to the Trenchcoat Mafia as a gang.¹⁸⁰ 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 . . .¹⁸¹

Having the crimes classified as gang-related would result in the other gang members faced with the possibility that their association with each other could be enjoined under the STEP Act if they lived in California.

Like the Columbine killers, MLO is a predominantly white suburban gang.¹⁸² If the aforementioned 2004 party assault had been performed 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

¹⁷⁸ *Id.* at 952.

¹⁷⁹ *Id.* at 963.

¹⁸⁰ *Id.* at 966-67.

¹⁸¹ *Id.* at 968.

¹⁸² See MLO Founder Email *supra* note 13

attack as gang-related. Thus, the double standard of which Beres and Griffith wrote 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.¹⁸³ "Through the magic of a judicial order, even purely social association becomes a punishable offence, subjecting violators to months of incarceration and significant fines."¹⁸⁴ 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 U.S.¹⁸⁵ These laws stood until the early 1970's, when the Supreme Court announced its disapproval 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'"¹⁸⁶

Modern anti-gang injunctions do not appear to have arisen from the overt racism of the post-Civil War South like the Black Codes and vagrancy statutes. The text of laws like the STEP Act provides for racially neutral application. However, scholar Gary Stewart points out that "despite their lack of overt racial language, these provisions—in particular, the restriction on the rights to association and movement—bear an uncomfortable resemblance to the postbellum vagrancy laws."¹⁸⁷ Stewart describes a concept called aversive racism which he finds common among white Americans. The aversive racist may have racially discriminatory ideas. However, because he knows that

¹⁸³ See Matthew Mickle Werdegar *supra* note 157.

¹⁸⁴ Terence R. Boga, Note, *Turf Wars: Street Gangs, Local Governments, and the Battle for Public Space*, 29 HAR. C.R.-C.L. L. Rev. 477 (1994).

¹⁸⁵ See Gary Stewart *supra* note 56, at 2257-63.

¹⁸⁶ *Id.* at 2263 (quoting *Papachristou v. City of Jacksonville*, 405 U.S. 156, 170 (1972)).

¹⁸⁷ *Id.* at 2268.

these ideas are socially unacceptable, he will mask those ideas while engaged in interracial interactions.¹⁸⁸ This masking makes aversive racism possibly more dangerous than overt racism, as minorities could more easily point out overt discrimination in laws than racism masked by facially neutral statutory language.¹⁸⁹

Stewart finds this sort of facial neutrality particularly troublesome in anti-gang measures like STEP. 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 may come to associate with gang membership. As such, regardless whether they are actually gang members, these youths may be erroneously labeled gang members due to this stereotype. "[S]ome minority youths might automatically be labeled gang members even though similarly situated—and similarly outfitted—white youth would not receive such labels."¹⁹⁰ 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 being seen together in public view.¹⁹¹ One of the defendants, Blanca Gonzalez, was named in the injunctive order because she wore clothing that fit police claimed was worn by members of the gang.¹⁹² "Based on the majority's criteria . . . the City would consider a person to be a member of a Sureno gang . . . [even though their] wardrobe might reflect the cultural garb of urban minority teenagers more generally."¹⁹³

¹⁸⁸ *Id.* at 2269-70.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 2273.

¹⁹¹ *People ex. rel Gallo v. Acuna*, 14 Cal. 4th 1090 (Cal. 1997).

¹⁹² See Gary Stewart *supra* note 56, at 2277-78.

¹⁹³ *Id.* at 2278

While a minority such as Blanca Gonzales may be classified as a gang member simply because of her clothing, white gang members like MLO receive no such scrutiny in spite of their violent, gang-like behavior. MLO members appear to self-identify as a gang, using their common identifier and adopting a style of dress similar to their urban counterparts.¹⁹⁴ 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, this sort of imitation, when done by minorities, carries with it vastly different consequences. This type of double standard raises concerns of racism when a gang like MLO is not treated like a gang.

This double standard ultimately hurts efforts at stopping gangs. Because the STEP Act is written in a racially neutral manner, it can provide prosecutorial officials 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.

¹⁹⁴ See Jamie Tierney *supra* note 4 (MLO members dress in Latino-gang inspired apparel with Old English script because "It's just what's popular.").

Furthermore, as noted in section 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. The next section will propose solutions to these important issues.

XI. Proposed solutions based on what MLO illustrates.

As noted, both urban and suburban gangs, like MLO, present a growing danger to society.¹⁹⁵ 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 Section III(b), 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 group of youths faces a particularly heavy burden as a result of that fight.

This section will discuss 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 youth 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

¹⁹⁵ See Section IV *supra*.

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 youth who lack it.

As noted in Section III(b), the missing protector factor provides the most useful factor for society to attack in efforts at prevention of gang membership. This 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. By contrast, in order to remove the poverty factor from youths' decision making processes in the area of gang membership, the economy of the entire country would have to undergo sweeping changes to ensure the kind of redistribution of wealth that would be necessary to cure that poverty. America's leaders have attempted and failed to resolve the country's poverty issues virtually since the birth of the nation.¹⁹⁶ With the nation's historical failure to solve problems like poverty, it is not realistic to expect that such factors could provide a realistic 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

¹⁹⁶ See, e.g., F. Allan Hanson, *How Poverty Lost its Meaning*, THE CATO JOURNAL, Vol. 17, No. 2, Fall/Winter 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.").

with respect to youths in preschool or early elementary school.¹⁹⁷ 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 SVJ offenders—implementing family, school, and community interventions is the best way to prevent children from developing into [serious, violent juvenile] offenders."¹⁹⁸ This study examined five different types of school programs aimed at preventing youth delinquency, including structured playground activities, behavioral monitoring and reinforcement.¹⁹⁹ "Programs that monitored student behavior and reinforced attendance and academic progress increased positive school behavior . . . and decreased delinquency."²⁰⁰ This reinforcement of positive behavior is consistent with the concept of providing youths with social context as discussed in section III (c) (1), *supra*. 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 a youth's "street" peers. Thus, these programs may dramatically reduce the likelihood that a youth will be pushed into gang life.

¹⁹⁷ Center for Disease Control, *Best Practices of Youth Violence Prevention: A Sourcebook for Community Action (Best Practices)*, Ch. 1, p. 11 (June 2002), at <http://www.cdc.gov/ncipc/dvp/bestpractices/chapter1.pdf>.

¹⁹⁸ Richard F. Catalano, et. al, *School and Community Interventions to Prevent Serious and Violent Offending, Juvenile Justice Bulletin*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, October 1999, available at <http://www.ncjrs.gov/pdffiles1/ojjdp/177624.pdf>.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

Scholars like Dan Korem note that this missing protector factor arises when a youth cannot count on an immediate family member during a time of crisis.²⁰¹ 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."²⁰² "[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."²⁰³ 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's 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.²⁰⁴ Gang prevention personnel in Austin noted that gang members have excellent leadership qualities if channeled properly. They established the Roving Leader program. 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, motivation, encourage goal-setting, and responsibility. The activities offered by the program are: youth support groups, tutoring, parent support group, cooking classes,

²⁰¹ See KOREM, *supra* note 47, at 63.

²⁰² *Id.*

²⁰³ *Id.* at 69.

²⁰⁴ See Center for Disease Control Study *supra* note 197.

and recreation. Youths can get support 24 hours a day."²⁰⁵ In California, Orange 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 . . . Throughout the program, students are involved in cooperative learning, problem-solving, role-play, and drama, self and cultural awareness, and learning self-control and decision making skills."²⁰⁶ 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. Law enforcement officials in Orange County have implemented the "8% Solution."²⁰⁷ This program is based on a study of factors that promote recidivism in youth offenders. 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.²⁰⁸ Orange County has experienced significant gains in reducing recidivism in the youths that fit this criteria by addressing "adequate levels of supervision, structure, and support to minors and their families throughout the intervention process" and "[d]eveloping strategies that produce educational success, in part by assisting families to ensure that their minors attend school regularly."²⁰⁹ By focusing on providing youths with proper family support, Orange County officials have

²⁰⁵ Missy Stagg, *How Can Schools Keep Kids Out of Gangs?* at <http://www.stedwards.edu/educ/eanes/communities.html>.

²⁰⁶ *Id.* at <http://www.stedwards.edu/educ/eanes/schools.html>.

²⁰⁷ Orange County Probation Department, *Orange County's Model Continuum Of Juvenile Justice Services*, at <http://www.oc.ca.gov/Probation/solution/ModelContinuum.asp>.

²⁰⁸ Orange County Probation Department, *8% Problem Study Findings: Exploratory Research Findings and Implications for Problem Solutions*, at <http://www.oc.ca.gov/Probation/solution/ProblemStudyFindings.asp>.

²⁰⁹ *Id.*

shown that they can prevent the type of violence, often gang-related, that has plagued cities like Los Angeles. Cities like Malibu should follow suit by recognizing their gang problem and addressing useful avenues like the above programs for fixing 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."²¹⁰

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 58 percent of schools surveyed by the National Institute of Justice offered gang prevention in the form of individual attention.²¹¹ If schools are incapable of providing the types of program that Korem and like-minded officials have successfully used, the missing protector factor cannot be addressed. This leaves youths completely lacking in adults they can count on in a crisis. 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

²¹⁰ See Kim Saito *supra* note 123.

²¹¹ National Institute of Justice, *Toward Safe and Orderly Schools—The National Study of Delinquency Prevention in Schools*. (Nov. 2004), available at <http://www.ncjrs.gov/pdffiles1/nij/205005.pdf>.

[prison] \$7.4 billion budget is up from its \$5.237 billion budget of 2002-2003."²¹² While the prison budget rises, the improvement of educational programs has apparently not presented such a concern to 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. "[F]unding 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."²¹³ Shortfalls like this could be avoided if the state focused less on incarcerating criminals and more on educating youth so they have alternatives to crime when they finish school. The aforementioned 2 billion dollar increase in the prison budget could address such shortfalls and be used to increase the number of the types of aforementioned programs to keep youths out of gangs.

Governments like California's demonstrate, in these decisions to forsake education in favor of prisons, a lack of foresight that is consistent with the views of many of their constituents. Many American 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.²¹⁴ By contrast, programs like the aforementioned educational programs, though shown to be effective in studies like the

²¹² Patrick G. Jackson, *Supercell: Our Superhero*, Sonoma State University Criminology and Criminal Justice site (2006), available at <http://www.sonoma.edu/cja/info/supercell.html>.

²¹³ EdSource Online, *Lawmakers Hear Conflicting Advice on the Education Budget*, March 2006, available at http://www.edsource.org/edu_fin_cal.cfm.

²¹⁴ See, e.g., Heather Mason Kiefer, *Public on Justice System: Fair, but Still Too Soft*, The Gallup Poll, Feb. 3, 2004 at <http://poll.gallup.com/content/default.aspx?ci=10474> (66% of Americans thought that the criminal justice system was "very fair" or "somewhat fair." Furthermore, 65% of Americans felt that the current criminal justice system is "not tough enough" on crime).

one done by the Center for Disease Control,²¹⁵ are costly and produce results that may not be as immediately apparent to the public as tough sentences for defendants. As such, elected officials' desire to please constituents for re-election purposes make it unlikely that they will devote governments' finite resources to programs like the educational programs.

Because these 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, as mentioned in Section IV, the STEP Act and civil gang injunctions, as they are being used, also involve substantial problems of their own.

- b. Law enforcement officials need to enforce anti-gang measures equally to ensure that minority gang members are not unfairly singled out.

Because states like California fail to prevent youths from joining gangs, gang membership has grown tremendously in the last two decades.²¹⁶ To combat this growth, the California legislature enacted the STEP Act, which criminalizes certain aspects of gang membership.²¹⁷ While prosecutors like Ira Reiner have enthusiastically endorsed the STEP Act and its ability to fight gangs,²¹⁸ the Act presents problems when it is enforced unequally with respect to gang members of different races.²¹⁹ The STEP Act does not textually provide for unequal treatment for gang members of different races.

²¹⁵ See Center for Disease Control Study *supra* note 197.

²¹⁶ See *supra* Section IV (the number of gang members in Los Angeles has nearly tripled since 1989).

²¹⁷ See *supra* Section III (a), pp. 8-10.

²¹⁸ See Reiner *supra* note 139.

²¹⁹ See *supra* Section IV.

However, Los Angeles County Sheriff's Department officials' failure to classify MLO as a gang under the STEP Act raises the possibility that the Act might be failing to meet the constitutional requirement that laws be enforced uniformly with respect to similarly situated people.²²⁰

This lack of uniformity in a criminal law becomes problematic when similarly situated offenders are treated differently.²²¹ 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 some other rational difference.²²² The decision not to classify MLO as a gang and possibly prosecute them under the STEP Act would, thus, pass constitutional muster if the decision 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 the distinction between gangs and non-gangs.

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

If law enforcement fail to articulate the reasons for these distinctions, however, the distinctions help lend credence to critics like Gary Stewart. Dismissing MLO as

²²⁰ See *supra* note 167 (Other factors may account for decision not to vigorously pursue MLO, including prioritization of scarce resources to fight bigger, more violent gangs).

²²¹ *In re Rosencrantz*, 271 P. 902, 905 (Cal. 1928).

²²² *Selowsky v. Superior Court of Napa County*, 181 P. 652, 655 (Cal. 1919).

territorial youth while seeking injunctions against youths like Blanca Gonzalez, who happens to dress like a gang member is thought to dress—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 Los Angeles County Sheriff's officials carefully explain why a group of white youths that meets the criteria to be called a gang doesn't receive such a label.

XII. Conclusion

With the existing prevalence of gangs and gang violence, it is likely that such gangs will be a part of American life for many years to come. The above criticisms and solutions may not have any appreciable impact for years to come. 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 neither focuses primarily, unfairly on minorities nor appears to do so. Law enforcement officials must ensure that this war is waged not only on poor, minority gangs, but also on affluent, 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.