

Michigan Journal of Race and Law

Volume 14

2009

The Unconstitutionality, Ineffectiveness, and Alternatives of Gang Injunctions

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Thomas A. Myers, *The Unconstitutionality, Ineffectiveness, and Alternatives of Gang Injunctions*, 14 MICH. J. RACE & L. 285 (2009).

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THE UNCONSTITUTIONALITY, INEFFECTIVENESS, AND ALTERNATIVES OF GANG INJUNCTIONS

Thomas A. Myers*

Gang violence across America puts in jeopardy the peace and tranquility of neighborhoods. Cities are challenged to keep their communities safe from gang violence. One common way in which cities attempt to combat violent gang activity is by using gang injunctions. Gang injunctions are court orders that prohibit gang members from conducting already-illegal activities such as vandalism, loitering, and use or possession of illegal drugs or weapons within a defined area. These injunctions, however, also prohibit otherwise legal activity such as associating with others within the restricted area of the injunction, using words or hand gestures, and wearing certain clothing.

The increased use of gang injunctions to combat violent gang activity is a controversial tactic. The use of gang injunctions raises many constitutional concerns, including violations of the 1st, 4th, 5th, 9th, and 14th amendments. Even if interpreted as constitutional, gang injunctions have been proven ineffective in preventing and deterring gang members from engaging in violent gang activity. Critics believe that gang injunctions create gang cohesiveness, animosity towards the police, and relocate the violent crime created by gang members by pushing gang members into adjacent neighborhoods just outside the injunction's target area. Finally, there are several proven-effective alternatives to gang injunctions.

This Note explores the unconstitutionality of gang injunctions, reveals the ineffectiveness of gang injunctions, and investigates more effective and efficient alternatives.

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* Candidate for J.D., Thomas M. Cooley Law School, May 2010. I am grateful to Professor Mark Dotson for his valuable insight and inspiration in writing about gang injunctions; and to Professor Norman Plate for helping me discover my true passion for writing; and to Darryl Parsell for being a positive mentor to me; and to my Mom and Dad, Tony and Ali, Chris and Azadeh, Justin and Des, Stephanie and Sam, and Stephanie for their unconditional support of me; and finally, to the *Michigan Journal of Race & Law* for all of their hard work in the editing process of this Note.

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INTRODUCTION

Imagine living in a community where you cannot walk down the street with your family. You cannot dress a certain way, have a nickname, or display a tattoo. The very basic liberties you once took for granted have been marginalized into your new, isolated world.

Star football fullback Rashad Newsome lives in this world.¹ Newsome, 19, was stopped by police officers while walking with his teammates after football practice.² Newsome and his teammates are not gang members, but police officers still asked if the boys' names were listed on the city's gang injunction.³ One of the officers then asked if the boys had any nicknames and requested that they lift their shirts so that the officer could check for tattoos.⁴ Newsome has a tattoo of his nickname "Dooley," which was given to him by his family members long ago.⁵ The four football players were taken to the police station and added to the city's gang injunction list as restricted gang members.⁶ Newsome has since been arrested twice: once when he was walking near two other men who were being arrested, and a second time when he and his friend, Carell Johnson, left a computer lab.⁷ Johnson, who has a 3.25 grade point average in school, is also listed on the city's gang injunction.⁸ In fact, the original injunction applied to only 16 gang members, but in nine months, it has expanded to 240 individuals.⁹

Gang injunctions are court orders that prohibit gang members from conducting already-illegal activities such as vandalism, loitering, and use or possession of illegal drugs or weapons within a defined area.¹⁰ But they

1. Sandy Banks, *Injunction Has Community Feeling Handcuffed*, LOS ANGELES TIMES, Apr. 28, 2006, available at <http://www.streetgangs.com/injunctions/topics/042806jordon.html>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *City of Los Angeles Gang Activity Reduction Strategy: Phase 1 Report*, (The Advancement Project, Los Angeles, Cal.), Dec. 29, 2006, at 57, available at http://www.advanceproj.org/doc/gang_phase1.pdf (In November 2005, the Los Angeles City Council and its Ad Hoc Committee on Gang Violence and Youth Development released this report from an outside consultant, The Advancement Project, to develop a comprehensive citywide gang reduction strategy. The Advancement Project proposed, and the City accepted, a three-phase Gang Activity Reduction Strategy Project to be carried out

also prohibit otherwise legal activity such as associating with others within the restricted area of the injunction, using words or hand gestures, and wearing certain clothing.¹¹

The increased use of gang injunctions to combat gang activity is a controversial tactic.¹² First, the use of gang injunctions raises many constitutional concerns, including violations of the 1st, 4th, 5th, 9th, and 14th amendments.¹³ Second, the effectiveness of gang injunctions has been challenged by those who believe that gang injunctions create both gang cohesiveness and animosity toward the police.¹⁴ Critics of gang injunctions also believe that they merely relocate the violent crime created by gang members by pushing gang members into adjacent neighborhoods just outside the injunction's target area.¹⁵ But if certain provisions in gang injunctions are unconstitutional, and not sufficiently effective at combating violent gang activity, what alternatives are available to achieve the desired end?

This Note explores the unconstitutionality of gang injunctions, reveals the ineffectiveness of gang injunctions, and investigates more effective and efficient alternatives. Part II of this Note considers the Constitutional concerns of gang injunctions. Section A addresses the potential for police abuse and establishment of constitutional standards for the police that are sufficient to guard against the arbitrary deprivation of liberty. Section B focuses on the first amendment's constitutional right of speech and association by considering whether certain provisions commonly found within gang injunctions burden no more speech than necessary to serve a significant governmental interest. As an important part of this section, this Note investigates several statistical analyses regarding the effectiveness of gang injunctions to determine whether the device being used (a gang injunction) actually *serves* the significant governmental interest in question (the peace and tranquility of neighborhoods). Part III of this Note addresses the feasibility of gang injunctions and effective alternatives for prevention of gang membership and violent gang activity.

over a nine-month period, from March 29 to December 29, 2006. This report is Phase 1 of the Advancement Project's final report to the City) [hereinafter Phase 1 Report].

11. *People v. Englebrecht*, 106 Cal. Rptr. 2d 738 (Cal. Ct. App. 2001) (outlining specific prohibitions found in the gang injunction from this case).

12. Phase 1 Report, *supra* note 10, at 57.

13. Finn-Aage Esbensen, *Preventing Adolescent Gang Involvement*, JUVENILE JUSTICE BULLETIN (U.S. Dep't of Justice, D.C.), Sept. 2000, at 9, available at <http://www.ncjrs.gov/pdffiles1/ojdp/182210.pdf>.

14. *False Premise False Promise: The Blythe Street Gang Injunction and Its Aftermath*, (ACLU Foundation of Southern California, Los Angeles, Cal.), May 1997, at 5, available at <http://www.streetgangs.com/injunctions/topics/blythereport.pdf> [hereinafter *False Premise False Promise*].

15. *Id.* at 38.

I. BACKGROUND

To better appreciate and comprehend the issues raised by gang injunctions, it is important to have knowledge of the history of gang injunctions. On December 10, 1987, the first court order that represented the modern-day gang injunction was issued against the Playboy Gangster Crips in Los Angeles, California.¹⁶ The judge found many problems with this injunction.¹⁷ First, the judge questioned the logic of imposing civil sanctions on gang members when those gang members do not even comply with probation conditions after being convicted of criminal offenses.¹⁸ Second, the judge found many of the provisions to be in violation of basic constitutional rights.¹⁹ Despite the judge striking eighteen proposed provisions, twenty-three named gang members, and all other individuals believed to be members of the Playboy Gangster Crips, were restricted from already-illegal conduct.²⁰

Another important gang injunction was filed by the Los Angeles City Attorney's Office on February 22, 1993,²¹ and was issued on April 7, 1993.²² The injunction was issued against as many as 500 members of a Latino street gang known as the Blythe Street Gang.²³ Later in this Comment, a report conducted by the American Civil Liberties Union (ACLU) that addresses the Blythe Street gang injunction is analyzed and discussed as evidence of the ineffectiveness of gang injunctions.

Then, on January 30, 1997, the Supreme Court of California, in a 4-3 decision, held a gang injunction to be constitutional in *Gallo v. Acuna*.²⁴ Among other restrictions, provision (a) of the gang injunction prohibited gang members from standing, sitting, walking, driving, gathering, or appearing anywhere in public view with any other member of the gang known as Varrío Sureño Treces.²⁵ One main issue that the court addressed was whether provision (a) "burden[ed] no more speech than necessary to serve a significant governmental interest."²⁶ The court found that provision (a) passed this constitutional test because the provision merely seeks to ensure that gang members have no opportunity to com-

16. EDWARD L. ALLAN, CIVIL GANG ABATEMENT: THE EFFECTIVENESS AND IMPLICATIONS OF POLICING BY INJUNCTION 65 (Marilyn McShane & Frank P. Williams, III eds., LFB Scholarly Publishing LLC 2004).

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. See *False Promise False Promise*, *supra* note 14, at 1.

22. *Id.* at 7.

23. *Id.* at 1.

24. *Gallo v. Acuna*, 929 P.2d 596 (Cal. 1996).

25. *Id.* at 608.

26. *Id.* at 614.

bine, and thus, will not collectively engage in unlawful conduct.²⁷ The court further reasoned that provision (a) did not burden more speech than necessary to serve a significant governmental interest because the burden on speech was structured narrowly enough in relation to the governmental interest of the peace and tranquility of the neighborhood.²⁸

On June 10, 1999, the Supreme Court of the United States found a gang-loitering ordinance to be unconstitutional.²⁹ The City of Chicago, in an attempt to prevent gang violence, enacted an ordinance that allowed a police officer to order all persons loitering or associating on the street to disperse when the police officer reasonably believed someone in the group was a gang member.³⁰ This ordinance was found unconstitutional because it did “not provide sufficiently specific limits on the enforcement discretion of the police.”³¹

On May 9, 2001, the California Court of Appeals held another gang injunction to be constitutional.³² Among other restrictions, provision (s) and provision (t) of the gang injunction were issues on which the court decided.³³ Provision (s) of the gang injunction forbids gang members from using words, phrases, physical gestures, or hand signs which were used to describe the gang known as Posole.³⁴ Provision (t) prohibited gang members in the target area from wearing clothing that bore the name, letters, or numbers that associated with Posole.³⁵ The court addressed the issue similar to the court in *Acuna*, by deciding whether provision (s) and provision (t) of the injunction “burden[ed] no more speech than necessary to serve a significant governmental interest.”³⁶ The court held that the provisions did not burden more speech than necessary to serve a significant governmental interest because gangs look to maintain control by fear and intimidation in their use of gang signs and symbols.³⁷

Between 1993 and 2000, at least 30 gang injunctions were issued in Southern California, and they are still used against criminal street gangs throughout the United States as a way to combat violent gang activity.³⁸

27. *Id.* at 615.

28. See ALLAN, *supra* note 16, at 71 (reasoning that the burden on speech was narrow enough because gang members were still permitted to associate outside of the target area and were permitted to associate out of the public view within the target area).

29. *City of Chicago v. Morales*, 527 U.S. 41 (1999).

30. *Id.* at 47.

31. *Id.* at 64 (reasoning, in part, that the police discretion was too broad because the definitions for “gang member” and “loitering” were not sufficiently defined).

32. *People v. Englebrecht*, 106 Cal. Rptr. 2d 738 (Cal. Ct. App. 2001).

33. *Id.* at 758.

34. *Id.*

35. *Id.*

36. *Id.* at 759–60.

37. *Id.* at 760.

38. Judith Greene & Kevin Pranis, *Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies*, (Justice Policy Institute, Washington, D.C.),

II. ANALYSIS

A. *Potential for Abuse*

Morales discussed an important constitutional implication of anti-gang suppression tactics—an enactment is found unconstitutional when it fails to establish certain standards for the police that are sufficient to guard against the arbitrary deprivation of liberty.³⁹ One situation in which this issue arises is when gang injunctions do not actually name individual gang members, but instead, allow police to use their discretion to determine who is a gang member and who is not. During the three years of enforcement of Chicago's city ordinance, the police issued over 89,000 dispersal orders and arrested over 42,000 people for violating the ordinance.⁴⁰ Anti-gang regulations that allow police officers broad discretion in their use of heavy-handed suppression tactics hinder young men with arrest records and increase hostility towards the police.⁴¹

Former Mayor of Los Angeles, James Hahn, received criticism after he sought a massive citywide injunction against gang members.⁴² Criminal justice director, Ricardo Garcia, said this about Hahn's proposal: "[t]his broad of an injunction is an invitation to abuse by allowing the targeting and harassment of youth of color who are not engaging in any criminal activity."⁴³ What makes this situation even worse is that once an individual's name is added to a gang injunction list, one remains on the list for life.⁴⁴

Jordan Downs, a community just outside Los Angeles, California, has followed the lead of hundreds of other United States cities by issuing a gang injunction against the gang known as the Grape Street Crips.⁴⁵ Police officers "wouldn't know a gang member from a Boy Scout in that community," civil rights lawyer Connie Rice said. "Anybody who's ever said hello to anybody in a gang is [considered] 'affiliated.'"⁴⁶ And the Grape Street injunction has a seemingly ever-expanding list of gang members. The original Grape Street injunction applied to sixteen gang members that were listed by name.⁴⁷ But the injunction also granted po-

July 2007, at 77, available at http://www.justicepolicy.org/images/upload/07-07_REP_GangWars_GC-PS-AC-JJ.pdf.

39. City of Chicago v. Morales, 527 U.S. 41 (1999) at 42.

40. *Id.* at 49.

41. See Banks, *supra* note 1 at 2.

42. David Zahniser, *Hahn Calls For Citywide Injunction to Rid Los Angeles of Gang Activity*, COPLE NEWS SERVICE (2005) at 1, available at <http://chiques-coalition.tripod.com/id13.html>.

43. *Id.* at 2.

44. *Id.*

45. See Banks, *supra* note 1, at 1.

46. *Id.*

47. *Id.*

lice officers the power to use their discretion to add others to the list who satisfied two out of nine Los Angeles Police Department criteria, including tattoos, nicknames, and style of dress.⁴⁸ In just a nine-month time span, 240 individuals were added to the list as gang members.⁴⁹

Several individuals in Jordan Downs admit that they used to be active gang members but no longer are.⁵⁰ One of those individuals, Delvon Cromwell, now works with community gang prevention programs, which teach younger kids positive alternatives to gang life.⁵¹ But Cromwell admits that it is difficult to teach younger kids positive alternatives to gang life when you are not even allowed to sit on your porch and talk to anyone without risking arrest.⁵²

The scope of gang injunctions is usually very broadly drawn.⁵³ The list of named gang members can range from a handful to hundreds.⁵⁴ And the initial string of names is frequently followed by the language, “and any other members.”⁵⁵

California has created a gang database called CalGang, which tracks some 200 datapoints of personal information and gang-related information.⁵⁶ Any person can be entered into the CalGang database if a law enforcement officer determines that the person meets at least two out of ten criteria.⁵⁷ Some of the ten criteria include having a certain tattoo, wearing certain clothing, being in a photograph with a known gang member, using gang-related hand signs, and being identified as a gang member by a reliable source.⁵⁸

There is a high price to pay if a police officer uses his or her discretion to label someone as a gang member. Any person who commits a felony and has been defined as a gang member by law enforcement will receive a sentence enhancement on top of the prescribed prison sentence—for low-level felonies, an extra two to four years; and for violent felonies, an extra ten years.⁵⁹

In just a few years after the CalGang database went statewide, the use of such broad criteria resulted in 47% of African American men in Los Angeles County between the ages of 21 and 24 being logged into the Los Angeles County gang database, and more than a quarter-million Cali-

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. See Greene & Pranis, *supra* note 38, at 27.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* at 27–28.

59. *Id.* at 27.

fornians across the state have been entered into the CalGang database by law enforcement.⁶⁰

By not specifically naming gang members in an injunction, police gain broad latitude to use loose definitions of gang membership.⁶¹ The broad latitude granted to police to define gang members gives police a license to harass people who have the general appearance of a gang member.⁶² Overbroad enforcement of injunctions creates animosity between the community and police and frustrates the trust-building process and credibility needed for community-police collaboration that is necessary for effective gang prevention.⁶³

In April 2007, due to community pressure, Los Angeles showed signs of progress towards more equitable procedures when Los Angeles city attorney Rocky Delgadillo announced new guidelines that mandated significant changes in civil injunction procedures.⁶⁴ If the announced guidelines are implemented, police officers will have to present the city attorney's office with evidence that proves, beyond a reasonable doubt, that a person is an active gang member before adding that person to an injunction list.⁶⁵ Also, those added to the injunction list will be able to petition for removal from it by proving that they are no longer active, or never were active, in a gang.⁶⁶

The real-world examples discussed above can be applied to the rule from *Morales* that explains that an enactment is found unconstitutional when it fails to establish certain standards for the police that are sufficient to guard against the arbitrary deprivation of liberty. Once applied, a better understanding of what constitutes unconstitutional police discretion and what constitutes constitutional police discretion can be better appreciated.

If a city believes that gang injunctions are an effective gang-prevention device, then it should be required that those gang members directly affected by the gang injunction be specifically named in the injunction. This will prevent individuals who are not named in the injunction from being added to the injunction list by police officers who use their broad discretion to label certain individuals as gang members. Giving police broad discretion to label a certain individual walking on the street as a gang member simply because that person's shirt is a particular

60. *Id.*

61. *See* Phase 1 Report, *supra* note 10, at 57.

62. *See generally* Orith Goldberg, *LAPD Slaps Pacoima Gang With Injunction*, (October 6, 2001), available at <http://www.streetgangs.com/injunctions/topics/100601pacoima.html>.

63. *See Citywide Gang Activity Reduction Strategy: Phase III Report*, (The Advancement Project, Los Angeles, Cal.), Dec. 29, 2006, at 92, available at http://www.advanceproj.org/doc/p3_report.pdf (This report is Phase 3 of the Advancement Project's final report to the City of Los Angeles) [hereinafter Phase 3 Report].

64. *Id.* at 29.

65. *Id.*

66. *Id.*

color does not establish certain standards for police that are sufficient to guard against the arbitrary deprivation of liberty of the individual.

Not only must the injunction name specific individuals, but there should be a certain standard that must be met before an individual's name can be added to the list of gang members in the injunction. For example, before an individual can be added to an injunction list as a gang member, the state should have to prove beyond a reasonable doubt that the individual is, in fact, a gang member. While an individual that explicitly admits gang membership would satisfy this standard, a police officer who believes one to be a gang member based solely on the individual's tattoo or color of shirt would not be sufficient to categorize the individual as a gang member. Still, a tattoo or certain colored shirt would certainly be a factor used to prove beyond a reasonable doubt that the individual is a gang member. A standard like beyond a reasonable doubt makes it sufficiently clear that the individual in question is a gang member, while not arbitrarily depriving the individual of his or her liberty. This sufficiently high standard establishes certain criteria for police that are sufficient to guard against the arbitrary deprivation of an individual's liberty.

*B. Burden No More Speech than Necessary to Serve a
Significant Governmental Interest*

Both the court in *Acuna* and the court in *Englebrecht* analyzed provisions in a gang injunction by determining whether those provisions "burden no more speech than necessary to serve a significant governmental interest."⁶⁷ If the provision does burden more speech than necessary to serve the significant governmental interest in question, then that provision will be found unconstitutional and will be stricken.⁶⁸ However, if the provision does not burden more speech than necessary to serve the significant governmental interest, then that provision will be found constitutional and will remain as one of the provisions within the gang injunction.⁶⁹ This section of the Comment will analyze the implications of this test as they relate to provisions similar to provision (a) from *Acuna* and provision (s) and provision (t) from *Englebrecht*.

Provision (a) of the injunction from *Acuna* prohibited gang members from engaging in any form of social interaction in public view with another gang member within the target area.⁷⁰ Provision (s) of the gang injunction from *Englebrecht* prohibited gang members from using words, phrases, physical gestures, or hand signs which were used to describe the

67. Gallo v. Acuna, 929 P.2d 596 (Cal. 1996) at 614.

68. *Id.*

69. *Id.*

70. *Id.*

gang known as Posole.⁷¹ Provision (t) of the gang injunction from *Englebrecht* prohibited gang members in the target area from wearing clothing that bore the name, letters, or numbers that associated with Posole.⁷²

But provisions such as these do not only appear in the gang injunctions from *Acuna* and *Englebrecht*. "Almost every gang injunction has some form of associational prohibition."⁷³

1. The Burden on Speech and Association

For any gang injunction provision dealing with freedom of speech or association to be constitutionally valid, the provision must pass the test discussed in *Acuna* and *Englebrecht*—it must "burden no more speech than necessary to serve a significant governmental interest."⁷⁴ Therefore, before one may analyze the provisions under this test, it must first be determined that each provision deals with speech. First, provision (a) has free speech and associational implications because it prohibits gang members from engaging in any form of social interaction with another gang member. Second, provision (s) also has free speech implications because it prohibits gang members from using words and phrases which are used to describe a certain gang. Finally, provision (t) affects speech because it prohibits gang members from wearing clothing that bears the name, letters, or numbers that are associated with a certain gang. Each of these provisions concerns the First Amendment right to free speech and association, so it must be evaluated whether they burden no more speech than necessary to serve a significant governmental interest.

Under the First and Fourteenth Amendments of the United States Constitution, a state may not criminalize the exercise of the right of assembly simply because its exercise may offend some people.⁷⁵ Otherwise, the right of people to gather in public places would be continually subject to suspension and would provide an invitation to discriminatory enforcement against the ideas, lifestyles, and physical appearance that is resented by the majority of their fellow citizens.⁷⁶ Allowing certain individuals to talk with friends and wear certain clothing may offend some, but that is precisely the type of right that the First and Fourteenth Amendments were designed to protect. And in the end, it is not the association and the red-colored shirt that commits the crime, but the individual who consciously decides to violate the rights of others.

71. *People v. Englebrecht*, 106 Cal. Rptr. 2d 738 (Cal. Ct. App. 2001) at 742.

72. *Id.* at 758.

73. See ALLAN, *supra* note 16, at 48.

74. *Acuna*, 929 P.2d at 614 (quoting *Madsen v. Women's Health Ctr. Inc.*, 512 U.S. 573 (1994)).

75. *Id.* at 619.

76. *Id.*

Not including provisions that restrict gang members from wearing certain clothing or having tattoos serves a compelling public policy reason. If provisions prohibiting gang members from wearing certain clothing or having certain tattoos are found to be constitutional, then the city will likely include such provisions in their gang injunctions with the intent that gang members will comply and not wear a certain colored shirt. But if gang members comply and discontinue wearing certain colored shirts, police detection of gang membership becomes much more difficult because the officers will no longer be able to detect a gang member based upon his or her apparel. Instead, police officers will have to scan the streets looking for gang members dressed like everyone else.

2. "Serving" a Significant Governmental Interest—The Ineffectiveness of Gang Injunctions

Based on the test from *Acuna* and *Englebrecht*, once it is determined that the provision in the gang injunction deals with constitutional rights of speech and association, the governmental interest must be analyzed.⁷⁷ In general, an injunction is a device that is used to enjoin conduct that violates the rights of others.⁷⁸ In such a case, the governmental interest is to preserve the rights of those "others". Similarly, a provision in a gang injunction that restricts an individual's constitutional right of speech or association is a device used to ensure that gang members have no opportunity to combine.⁷⁹ The provision is intended to prevent the threat of collective conduct of gang members.⁸⁰ The ultimate goal of enjoyment of life of the entire community can be attained by effectively preventing the threat of collective conduct of gang members.⁸¹ And there is no doubt that the governmental interest in gang injunction cases is significant.⁸² The peace and tranquility of neighborhoods is extremely important to the enjoyment of everyday life.

But there is a great distinction between a significant governmental interest and the means used to effectuate that governmental interest. The test requires that each provision in the gang injunction dealing with speech or association must burden no more speech than necessary to *serve* a significant governmental interest.⁸³ There is an obvious and significant governmental interest when dealing with gang injunctions—the peace

77. *Id.* at 1121.

78. *People v. Englebrecht*, 106 Cal. Rptr. 2d 738 (Cal. Ct. App. 2001).

79. *Acuna*, 929 P.2d at 615.

80. *Id.*

81. *Id.*

82. *Englebrecht*, 106 Cal. Rptr. 2d at 760.

83. *Acuna*, 929 P.2d at 614.

and tranquility of the neighborhood that is terrorized by gang activity.⁸⁴ But if the means of attaining that interest are ineffective, then the device being used does not *serve* that governmental interest. And if the device being used does not *serve* the governmental interest, then the device should not be used, despite the significance of the governmental interest.

a. Statistical Analysis of a Gang Injunction

Because a gang injunction's effectiveness determines whether it is actually *servicing* a significant governmental interest, this section addresses the statistical research of gang injunctions. Some critics of gang injunctions attack the lack of pragmatic evidence relating to their impact on crime in the target areas and in adjoining neighborhoods.⁸⁵ Researchers have found little evidence that gang injunctions have reduced the gang problem in large cities.⁸⁶

The ACLU conducted a study designed to test the impact and displacement effects of the 1993 injunction against the Blythe Street Gang.⁸⁷ The ACLU's study examined reported violent crime for a six-year period between 1991 and 1996.⁸⁸ The study gathered reported violent crime for nineteen reporting districts covering a maximum north-south distance of five-and-a-half miles and maximum east-west distance of approximately four miles.⁸⁹ The injunction against the Blythe Street Gang falls entirely within reporting district 925, which is surrounded by the other eighteen reporting districts.⁹⁰ For purposes of the ACLU's study, total "reported violent crime" included homicides, rapes, robberies, and aggravated assaults.⁹¹

i. Crime in the Target Area

It would seem logical that Reporting District 925 would show a direct decrease in violent crime in the subsequent months when the gang injunction against the Blythe Street Gang was filed in February 1993,⁹² However, Reporting District 925 experienced no such immediate de-

84. Allan, *supra* note 16, at 62.

85. *Id.* at 87.

86. See *False Premise False Promise*, *supra* note 14, at 2.

87. See ALLAN, *supra* note 16 at 88.

88. See *False Premise False Promise*, *supra* note 14, at 5.

89. *Id.* at 7.

90. *Id.* at 5.

91. *Id.* at 6.

92. *Id.* at 37 (explaining that one reason that a decrease of violent crime within the target area would seem logical is because individuals directly affected by the gang injunction would presumably comply with the injunction and not associate within the target area).

crease in violent crime.⁹³ In fact, the total number of violent crimes in Reporting District 925 more than tripled from February 1993 (the month the injunction was filed) to June 1993 (two months after the injunction was issued).⁹⁴

The Blythe Street injunction is not the only place where gang-related crime increased in the target area after a gang injunction was issued. "Gang-related crime has soared in three of the four San Fernando Valley areas where the court orders are in place, a Daily News analysis shows."⁹⁵ Gang-related crime in the three areas rose 37%, 33%, and 11%.⁹⁶ Marcus Klien, an internationally known gang expert and professor at the University of Southern California explains this relationship, saying, "Gangs love nothing more than being challenged. It increases their cohesiveness and gives them a sense of identity, which is one of the reasons people join gangs in the first place."⁹⁷ Another study commented on the use of suppression efforts such as gang injunctions, noting that "Heavy-handed suppression efforts can increase gang cohesion and police-community tensions, and they have a poor track record when it comes to reducing crime."⁹⁸

In another California area, a review of the impact of local gang injunctions showed that nearly 80% of the gang members named in an injunction were convicted of at least one crime after the injunctions were issued.⁹⁹ Of the 80% convicted, more than half committed crimes in the injunction's target area.¹⁰⁰ This shows that while some gang members continue to commit crimes in the target area after an injunction has been imposed against them, others simply relocate to adjoining areas to commit crimes.

In addition to the statistical support showing the ineffectiveness of gang injunctions, there is a compelling public policy reason for not including provisions which prohibit the movement of gang members. Before gang injunctions were issued, law enforcement could easily locate gang members because they knew where they typically gathered. Officer Terysa Rojas, a Pasadena, California police gang expert, shared her observations on the practical public policy dilemmas of gang injunctions, saying, "The thing is, before the injunctions, they all were hanging out in

93. *Id.* at 37.

94. *Id.* at 8 (referring to data collected from figure 2-1).

95. Jason Kandel, *Gang Unfazed by Law: Injunction Targets See Rise in Crime*, LOS ANGELES DAILY NEWS, (March 6, 2004), available at <http://www.streetgangs.com/injunctions/topics/030604nodo.html>.

96. *Id.*

97. *Id.*

98. See Greene & Pranis, *supra* note 38, at 5.

99. Damone Hale, *Gang Injunction: 300 Black Men Targeted*, BAY VIEW, (Oct. 20, 2006), available at <http://www.streetgangs.com/injunctions/topics/102006sf.html>.

100. *Id.*

the same place. Now that they can't hang out there, you don't know where they are. They're all over, and you can't keep track of them."¹⁰¹

If provisions prohibiting gang members' movement are found to be constitutional, then the city will likely include such provisions in their gang injunctions with the intent that gang members will comply and cease from moving in the target area. But if gang members comply and discontinue from gathering in the target area, the job of detecting gang members becomes much more difficult. Police officers will no longer be able to detect a gang member based upon a common street corner known as a location where gang members used to hang out at all the time. Instead, it will be like looking for the proverbial "needle in a haystack" because gang members will have dispersed outside the target area and separated into much larger vicinities.

ii. Crime in the Adjoining Areas

Critics of gang injunctions hold the view that gang members inclined to engage in illegal activities would simply shift their illegal activities a short distance away just outside the target area of the injunction.¹⁰²

In the ACLU's report, the four reporting districts in an east-west strip of land immediately north of Reporting District 925 seem to have suffered such a shift in illegal activity.¹⁰³ From February 1993 to June 1993, this four-district strip immediately north of Reporting District 925 experienced an increase in total violent crime from 55 to 108 crimes.¹⁰⁴

In addition, the reported violent crime in Reporting District 936, which is immediately south of Reporting District 925, more than doubled between February 1993 to August 1993.¹⁰⁵

Reporting District 937, the southeast neighbor of Reporting District 925, experienced more reported violent crime in April 1993 (the month in which the injunction was issued) than in any one month in the year before and in the year after April 1993.¹⁰⁶

A statistical analysis of these figures supports the assertion that gang injunctions issued against gangs work to relocate gang members and their violent gang activity to adjoining areas. Gang injunctions simply push

101. *Words of Wisdom on Gang Injunctions*, available at <http://chiques-coalition.tripod.com/id11.html> (discussing that police officers could more easily locate gang members before the gang injunctions were issued, because gang members would usually gather in the same area; but since the gang injunctions' issuance, police detection of gang members has been more difficult because gang members are no longer gathering in the same area) [hereinafter *Words of Wisdom*].

102. See *False Premise False Promise*, *supra* note 14, at 39.

103. *Id.* at 38.

104. *Id.* (referring to data collected from figure 3-1).

105. *Id.* at 24 (referring to data collected from figure 2-34).

106. *Id.* at 26 (referring to data collected from figure 2-37).

gang members to another part of the neighborhood outside the injunction's target area.¹⁰⁷ Reported violent crime drastically increased in the four-district strip immediately north of Reporting District 925 immediately after the Blythe Street Gang injunction was filed and issued. Likewise, reported violent crime in the two districts immediately south of Reporting District 925 experienced an unmistakable increase in reported violent crime after the Blythe Street injunction was filed and issued. A statistical analysis of the ACLU's study supports the assertion that gang injunctions relocate violent gang activity to adjoining areas and calls into question the effectiveness of gang injunctions.

b. *A Second Statistical Analysis of Gang Injunctions*

Jeffrey Grogger, a UCLA Professor, conducted another study regarding the effectiveness of gang injunctions.¹⁰⁸ Grogger's study analyzed the impact on reported crime of thirteen gang injunctions in fourteen target areas located in the Los Angeles area.¹⁰⁹ The study included injunctions occurring in Los Angeles County between 1993 and 1998.¹¹⁰ Grogger's study examined whether gang injunctions reduced reported violent crime in the target areas.¹¹¹

The results of Grogger's study suggest that violent crime decreased by about six to twelve crimes per year in the average target area during the year after the injunctions were imposed.¹¹² This equals a 5–10 % decrease in violent crime.¹¹³ Most of this decrease is a result of reductions in assaults, which are the most prevalent form of violent gang crime, but¹¹⁴ "there is no evidence suggesting that the injunctions reduced murders or rapes."¹¹⁵

In the target areas where injunctions were not imposed, and in the United States as a whole, the level of violent crime trended sharply downward during most of the 1990s.¹¹⁶ This nationwide trend cannot be attributed to the thirteen Los Angeles gang injunctions in Grogger's study.¹¹⁷ Therefore, this study's simple before-and-after comparisons of

107. See Zahniser, *supra* note 42.

108. See ALLAN, *supra* note 16, at 92.

109. *Id.*

110. *Id.* at 93.

111. *Id.*

112. Jeffrey Grogger, *The Effects of Civil Gang Injunctions on Reported Violent Crime: Evidence From Los Angeles County*, 45 J.L. & ECON. 69 (2002).

113. *Id.* at 85.

114. *Id.* at 86.

115. See ALLAN, *supra* note 16, at 94.

116. See Grogger, *supra* note 112, at 2 (discussing that the gang injunctions were likely not responsible for the entire 5–10 percent decrease in violent gang activity).

117. *Id.*

crime rates within the target areas could lead one to greatly exaggerate the effects of the injunctions.¹¹⁸

C. Are all "Gang-Related" Crimes Actually Gang Crimes?

There is a factor which skews perceived levels of reported gang violence that should be considered. The way that a gang is defined significantly increases the level of reported gang-related crime, even though some of the crime committed was not actually gang related. California Penal Code section 186.22 defines a "criminal street gang" as "any ongoing organization, association, or group of three or more persons . . . whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity."¹¹⁹

This sweeping definition of a gang, coupled with the broad definition of a gang member discussed earlier in this Comment, can create a problem when gang-related crime is reported. For example, the San Jose police classify a gang-related crime as any crime a gang member commits.¹²⁰ But just because an individual labeled as a "gang member" committed a crime, does not necessarily mean that the individual committed the crime in furtherance of his or her gang. That individual may have committed the crime for his or her own personal reasons, which are completely unrelated to the gang. But still, the crime will be reported as "gang related", ultimately increasing the statistical level of reported gang violence.

D. Alternatives of Gang Injunctions

If certain provisions in gang injunctions do not pass constitutional muster, and if gang injunctions are ineffective at deterring and decreasing violent gang activity, then what are constitutional and effective alternatives to decreasing gang membership and combating violent gang activity?

The New York Police Department reported only 520 gang-related crimes in 2005, while, in that same year, the Los Angeles Police Department reported a staggering 11,402 gang-related crimes.¹²¹

New York City has never embraced the heavy-handed suppression tactics chosen by other cities, especially Los Angeles, and has experienced far less gang violence.¹²² Decades ago, New York City did experience a rise in gang violence; instead of enforcing heavy-handed suppression tac-

118. *Id.*

119. *People v. Englebrecht*, 106 Cal. Rptr. 2d 738 (Cal. Ct. App. 2001).

120. *Gallo v. Acuna*, 929 P.2d 596 (Cal. 1996).

121. *See Greene & Pranis, supra* note 38, at 25.

122. *Id.* at 6.

tics, it implemented a variety of gang intervention programs.¹²³ Since then, gang-related crime in New York City has been consistently decreasing, and the city's approach to gangs and youth crime has proven successful.¹²⁴ New York City has sustained a sufficient level of funding for youth services, recreation, and employment programs.¹²⁵ New York City's continued commitment of gang prevention and gang intervention programs as the primary strategies to combat violent gang activity promotes a more constructive, less counterproductive response to gang violence than the heavy-handed law enforcement tactics utilized by police officers to suppress gangs in other cities.¹²⁶

During the same years that street-work efforts and gang-intervention programs were relieving violent gang activity in New York City, the Los Angeles Police Department resisted the concept of using social-work approaches to overcome gang violence. Instead, it used heavy-handed suppression tactics to combat violent gang activity.¹²⁷ The police chief at that time viewed "gang members [as] incorrigibles, deserving nothing more than a locked-down prison regime."¹²⁸ Recently, the city of Los Angeles has virtually eliminated all of the city's gang prevention and early intervention programs. Instead, over two-thirds of its financial resources aimed at reducing gang violence are used on suppression tactics by the LAPD.¹²⁹ But despite these massive police suppression actions, gang violence is worsening, cementing Los Angeles with the notorious label of being the gang capitol of the world.¹³⁰

The New York approach that focuses its resources on job training, mentoring, after-school activities, and recreational programs has made a significant dent in gang violence.¹³¹ But communities relying heavily on the Los Angeles approach, by focusing their resources on police enforcement, have far less impact on gang violence.¹³² Judith Greene, an expert on gang-prevention strategies, agrees that gang intervention programs are necessary and effective in the fight against gang violence, stating, "It's frustrating to see officials come forward with money for mass arrests, when

123. *Id.*

124. *Id.*

125. *Id.* at 29.

126. *Id.* at 15.

127. *Id.* at 25.

128. *Id.*

129. *Id.* at 29.

130. *Id.*

131. Tom Jackman, *Social Programs to Combat Gangs Seen as More Effective than Police*, WASHINGTON POST, July 18, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/17/AR2007071701716.html>. at B03.

132. *Id.*

the money is so sorely needed in programs that are tried and true and can really work."¹³³

In a Los Angeles study that analyzed the correlation between gang-related violence and socioeconomic factors, the strongest correlations with gang violence were employment and income.¹³⁴ In fact, communities that experienced unemployment rates between 14–16% had 15 times as many gang homicides as neighborhoods where the unemployment rate was between 4–7%.¹³⁵ The study concluded that this correlation between unemployment, lower income, and gang-related crime suggests that community-based economic programs may be more effective than conventional criminal justice suppression tactics.¹³⁶

One school-based gang prevention program has been proven effective and has spread throughout the country to all 50 states and several other countries.¹³⁷ The Gang Resistance Education and Training (G.R.E.A.T.) program was introduced in Phoenix, Arizona in 1991, with the objective of reducing gang activity and educating a population of young people about the consequences of gang involvement.¹³⁸ A study evaluating the effectiveness of the G.R.E.A.T. program compared eighth-grade students who had completed the program with a comparable group of students who had not participated in the program.¹³⁹ The G.R.E.A.T. students reported fewer instances of delinquency, lower levels of gang affiliation, and higher levels of school commitment.¹⁴⁰

Former Boston Police Chief Francis Roache used violence prevention programs to dramatically reduce youth homicides in Boston.¹⁴¹ He said, "You can give me all the police you want and build all the prison cells you can afford, but until you stop the flow of kids into violence I cannot fix the problem."¹⁴²

Sergeant Juan Aguilar of the Washington D.C. Police Department believes that suppression enforcement alone simply does not work, "That's only a Band-Aid. You've got to get to the root of the problem. It's social."¹⁴³ Gang injunctions are not the cure for the disease of gang violence; at best, they are just a band-aid of short-term relief. Gang injunctions are

133. *Id.*

134. Jason Ziedenberg, *Ganging Up on Communities? Putting Gang Crime in Context*, (Justice Policy Institute, Washington, D.C.), 2005, at 6, available at http://www.justicepolicy.org/images/upload/05-07_REP_GangingUp_GC-JJ-PS.pdf.

135. *Id.*

136. *Id.* at 7.

137. See Esbensen, *supra* note 13, at 7.

138. *Id.*

139. *Id.*

140. *Id.*

141. See *Words of Wisdom*, *supra* note 101.

142. *Id.*

143. See Jackman, *supra* note 131.

not the cure for gang violence because they do not attack the problem at its root. Gang injunctions are simply intended to deter already gang members from conducting criminal activity. They do not prevent individuals from joining gangs in the first place. But economic and social programs, such as job training, mentoring, after-school activities, and recreational programs do attack the problem at its root by preventing individuals from joining criminal street gangs.

CONCLUSION

Over the last twenty years, many cities throughout the United States have issued gang injunctions as a way to combat violent gang activity. During this period, gang injunctions have been challenged on many grounds. First, certain provisions in gang injunctions violate the First Amendment by leaving open great potential for abuse when they do not establish constitutional standards for police officers that are sufficient to guard against the arbitrary deprivation of liberty.¹⁴⁴ Second, certain provisions in gang injunctions violate constitutional rights of speech and association when such provisions, which burden fundamental rights, do not sufficiently *serve* the governmental interest in question because they are not effective at preventing and deterring violent gang activity. Finally, there are readily available alternatives that are constitutional and are proven effective at combating violent gang activity.

First, certain provisions in gang injunctions are unconstitutional when they fail to establish standards for police officers that are sufficient to guard against the arbitrary deprivation of liberty.¹⁴⁵ The CalGang database allows law enforcement officers to label anyone as a gang member when the officer believes the individual has met two out of ten criteria.¹⁴⁶ Based on the criteria, anyone can be labeled as a gang member when they exercise basic, expressive rights such as wearing a certain colored shirt, having a tattoo, or even talking on the street with someone else who is in the CalGang database.¹⁴⁷ Sweeping definitions of gang membership and broad police discretion create great potential for police abuse. Standards such as these arbitrarily deprive individuals their most basic liberties.

Vague criteria of gang membership, as in the CalGang database, and provisions in gang injunctions which commonly follow the list of named gang members that give police officers broad discretion to add "any other member" to the injunction do *not* establish standards for police officers that are sufficient to guard against the arbitrary deprivation of an individual's liberty. Tighter and more definite standards, like beyond a reasonable

144. *City of Chicago v. Morales*, 527 U.S. 41 (1999) at 42.

145. *Id.*

146. *See Greene & Pranis, supra* note 38, at 27.

147. *Id.* at 27–28.

doubt, need to be met when determining gang membership. It is only then that these standards will be constitutional because they will be sufficient to guard against the arbitrary deprivation of an individual's liberty.

Second, all provisions in gang injunctions dealing with freedom of speech and association must "burden no more speech than necessary to serve a significant governmental interest."¹⁴⁸ Provisions that prohibit listed gang members from associating with one another, communicating with words or hand signs, and wearing certain clothing concern freedom of speech and association. And there is an obvious governmental interest at stake when confronting violent gangs—the peace and tranquility of neighborhoods. But if the means used to attain that interest are ineffective, then the device being used is not *servi*ng that governmental interest.

The ACLU conducted a six-year study and found not only that gang injunctions can increase gang-related violence in the injunction's target area as a result of intensified gang cohesiveness and animosity towards the police, but can also displace violent gang activity to areas outside the injunction's target area.¹⁴⁹ Three other areas reported increased gang crime after gang injunctions were issued.¹⁵⁰ Another study analyzing the effectiveness of gang injunctions, conducted by Jeffrey Grogger, found that gang violence decreased by at most 5–10 % during the one-year time span after the injunctions were issued.¹⁵¹ However, in target areas where no injunctions were issued, and in the United States as a whole, reported violent gang crime shifted sharply downward during the study's time span.¹⁵²

In the end, if the means used to attain the significant governmental interest are ineffective, then the device being used does not *serve* that governmental interest. There is very little support for the effectiveness of gang injunctions. And the little support that is available is marginal at best, inconclusive, and speculative. Therefore, if the device being used does not *serve* the significant governmental interest at issue, the device should not be used, regardless of the significance of the governmental interest.

Even though certain provisions in gang injunctions are unconstitutional, and gang injunctions are ineffective at combating violent gang activity, constitutional and effective alternatives to combat gang violence exist. New York City, an area one would think would be just as ripe for violent gang activity as Los Angeles, does not have anywhere close to the gang problem and reputation of Los Angeles.¹⁵³ At one time, New York City did have a serious threat of spreading gang activity; but instead of using heavy-handed suppression tactics, New York City imposed a variety

148. Gallo v. Acuna, 929 P.2d 596 (Cal. 1996) at 596.

149. See *False Premise False Promise*, *supra* note 14, at 44.

150. See Kandel, *supra* note 95 at 1.

151. See Grogger *supra* note 112, at 16.

152. *Id.* at 2.

153. See Greene & Pranis, *supra* note 38, at 25.

of social programs.¹⁵⁴ Los Angeles took a more aggressive approach, by combating violent gang activity with heavy-handed suppression tactics such as gang injunctions.¹⁵⁵ As a result, Los Angeles is labeled as the gang capital of the world.¹⁵⁶

The implementation of social programs, such as employment, school programs, and recreational programs provides a better answer to gang violence than heavy-handed suppression tactics such as gang injunctions. Programs that prevent would-be gang members from joining gangs in the first place and that keep would-be gang members off of the streets are the most effective way to prevent gang violence. If would-be gang members are employed at a job, at an after-school program, or are engaged in a recreational program such as a basketball league, then they will not be on the streets engaging in violent gang activity. Social programs keep would-be gang members' focus away from their last-resort-to-life gang membership so that they can focus on more constructive, more productive uses of their time.

In summary, certain provisions of gang injunctions that provide over-reaching definitions of gang membership and provide law enforcement with broad discretion to label anyone as a gang member are unconstitutional because they fail to establish standards for police that are sufficient to guard against the arbitrary deprivation of liberty.¹⁵⁷ Gang injunctions are ineffective at preventing individuals from joining gangs and deterring violent gang activity; thus, they do not *serve* a significant governmental interest. Finally, alternatives such as employment, school programs, and recreational programs used to combat violent gang activity are constitutional and effective. Gang injunctions are not, and have never been, the cure for the disease of gang violence—at best, they are merely a speculative band-aid of short-term relief.

154. *Id.*

155. *Id.* at 25.

156. *Id.* at 19.

157. *City of Chicago v. Morales*, 527 U.S. 41 (1999) at 42.