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GANGS, SCHOOLS AND STEREOTYPES

By Linda S. Beres* and Thomas D. Griffith**

During the past decade, the government and the media warned of the growing danger of youth gangs in schools. A Justice Department bulletin from August 2000 cautioned that gangs in schools are now “very prevalent,”¹ noting that students reporting a “gang presence” in their schools nearly doubled between 1989 and 1995.² This claim was echoed by a December 2001 bulletin warning that gangs are “becoming commonplace in institutions, including schools, that had been considered safe havens.”³

The growth of gangs in schools was viewed as a cause for great alarm. “Youth gangs are linked with serious crime problems in elementary and secondary schools in the United States,” warned one Justice Department bulletin.⁴ Gangs are strongly correlated with the presence of both guns and drugs in schools, cautioned a report by the U.S. Departments of Education and Justice.⁵ Thus, “gangs contribute significantly to school-related victimization.”⁶ The tone

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1. James C. Howell & James P. Lynch, *Youth Gangs in School*, JUV. JUST. BULL. (U.S. Dep’t of Justice/Office of Juvenile Justice & Delinquency Prevention), Aug. 2000, at 6.

2. *Id.*

3. David Starbuck et al., *Hybrid and Other Modern Gangs*, JUV. JUST. BULL. (U.S. Dep’t of Justice/Office of Juvenile Justice & Delinquency Prevention), Dec. 2001, at 2.

4. Howell & Lynch, *supra* note 1, at 1.

5. KATHRYN A. CHANDLER ET AL., U.S. DEP’T OF EDUC., U.S. DEP’T OF JUSTICE, STUDENTS’ REPORTS OF SCHOOL CRIME: 1989 AND 1995 7, 10 (1998).

6. Howell & Lynch, *supra* note 1, at 7. Howell and Lynch note the argument that a causal relationship may not exist between school victimization

of these reports is clear: during the past decade gangs have been infiltrating our schools and making these once-safe institutions far more dangerous.

But is this true? In this article we argue that claims of a growing problem of youth gangs in schools have been exaggerated and that classifications of youth as gang members have been biased against the poor and racial minorities. Antigang school policies adopted on misinformation about the nature and extent of the problem may waste resources and unfairly target minority youth.

To be sure, in some schools gang activity is a serious problem.⁷ And where gang violence leads to the death or serious injury of a student or teacher the impact on the community can be devastating.⁸ Moreover, even where no gang problem exists within a school, there may be a serious gang problem in the community.⁹ In the most heavily gang-infested municipalities, such as Los Angeles and Chicago, gang motivated killings may account for one-quarter of the homicides in the city.¹⁰ Looking at youth homicides alone, the influence of gang violence can be even higher. A Boston study, for example, found that at least 60% of the gun and knife homicides of persons twenty-one years and under were associated with gangs, and that most were the byproduct of long-standing feuds.¹¹ Youth gang

and gangs. However, they then assert in the next paragraph that the relationship is causal. *See id.*

7. *See infra* pp. 944–45 (discussing school principals who report a gang problem).

8. *See, e.g.,* Manny Fernandez, *A Sad Farewell to a Young Life*, WASH. POST, Nov. 7, 2003, at B1 (noting the anguish expressed by the former classmates of an innocent bystander who was gunned down in a gang-related shooting outside of their school); Cara Mia DiMassa & Erika Hayasaki, *Shootings Prompt a Call for Tighter Security Near Schools*, L.A. TIMES, Sept. 18, 2003, at B3 (reporting fear of students and parents after a high school student was shot while waiting for a bus outside the campus); Michael Krikorian et al., *3 Students Critically Hurt in Shooting Near School*, L.A. TIMES, Sept. 10, 2003, at B1 (noting alarm of students and parents in response to the critical wounding of three high school students shot in suspected gang-related attack at a bus stop outside a school).

9. *See infra* pp. 945–46 (discussing the fact that many principals who did not see a gang problem in their schools did find one in their community).

10. *See infra* p. 958.

11. DAVID KENNEDY ET AL., DEP'T OF JUSTICE, REDUCING GUN VIOLENCE: THE BOSTON GUN PROJECT'S OPERATION CEASEFIRE 20–23 (2001) [hereinafter OPERATION CEASEFIRE].

violence is a serious problem that should be addressed through improved social programs and sound law enforcement. However, effective measures to reduce gang violence require accurate information regarding the scope and nature of the problem.

I. YOUTH GANG PRESENCE IN SCHOOLS: A LOOK AT THE SURVEY DATA

If growing gang problems are undermining the safety of our nation's schools, then it might make sense to magnify school-based antigang initiatives. On the other hand, if gang problems are relatively rare in schools, then resources may be more effectively applied elsewhere. It is important, therefore, to examine carefully claims made that youth gangs are becoming "very prevalent" in our schools.

Recently released student survey data from the 1999 school crime supplement to the National Crime Victimization Survey ("NCVS") indicate that the gang presence in schools actually declined between 1995 and 1999.¹² The dire warnings of an increased gang presence and concomitant danger at school, which continued to be issued until late 2001, turned out to be untrue.

It might be argued that the warnings of a growing danger of gangs at school were reasonable based on the data available at the time. The 1999 survey results were not published until 2002¹³ and a student survey taken in 1995 indicated that gangs had increased sharply since 1989.¹⁴ A closer look at the data, however, suggests that even based on the evidence available at the time, there was little support for claims that "very prevalent" gangs were undermining the safety of our nation's schools.

12. LYNN A. ADDINGTON ET AL., DEP'T OF EDUC., ARE AMERICA'S SCHOOLS SAFE? 27-28, 91 tbl.8 (2002).

13. *See id.*

14. *See* CHANDLER, *supra* note 5, at 8 tbl.9, 18 tbl.4 (providing results for 1989 and 1995).

Consider, for example, homicides at school.¹⁵ “At school” homicides are defined broadly to include those occurring on school property, on the way to or from school, and while attending or traveling to or from a school-sponsored event.¹⁶ Homicide statistics are useful markers of changes in the violent crime rate because they are relatively accurate and less subject to variations in crime reporting or enforcement practices.¹⁷

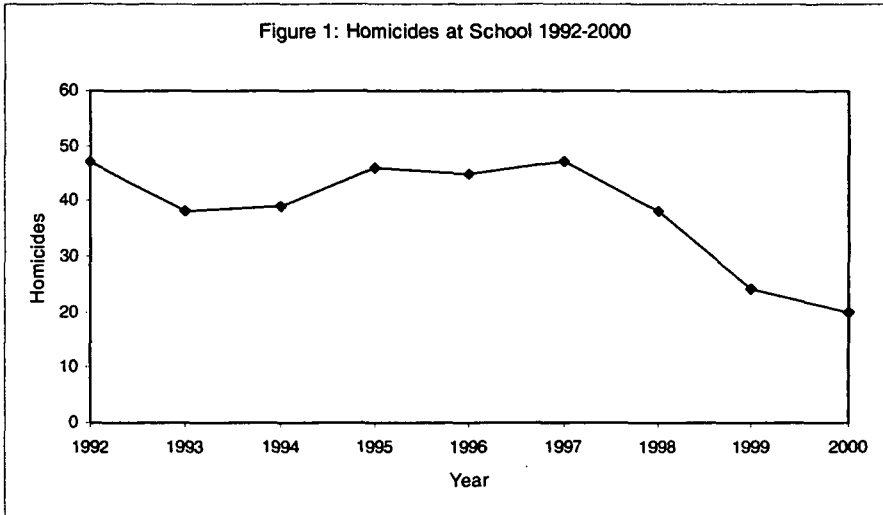
If school gangs were becoming more common and a gang presence is “strongly correlated” with drugs and guns, this should have been reflected in a significantly higher school homicide rate. In fact, however, homicides at school remained flat during most of the 1990’s before dropping at the end of the decade, as shown in Figure 1.¹⁸

15. Homicide statistics are particularly useful for tracking changes in violent crime because they are not substantially influenced by law enforcement practices. See NAT’L CRIMINAL JUSTICE COMM’N, *THE REAL WAR ON CRIME* 4 (Steven R. Donziger ed., 1996) (noting that homicide rates are accurately reported and recorded by police and thus are reliable). For other crimes, changes in reporting or enforcement practices may change police statistics even if the underlying crime rate is unchanged. See *id.* (noting that over the last two decades significantly improved police recording has led to proper recording of a higher percentage of reported crimes). See also DARYL A. HELLMAN & NEIL O. ALPER, *ECONOMICS OF CRIME: THEORY AND PRACTICE* 11 (5th ed. 2000) (noting that differences in crime rates for various years could be due to actual changes or just different recording procedures).

16. JILL F. DEVOE ET AL., U.S. DEP’T OF EDUC., U.S. DEP’T OF JUST., *INDICATORS OF SCHOOL CRIME AND SAFETY: 2003*, at tbl.1.1 n.1 (2003).

17. See *supra* note 15.

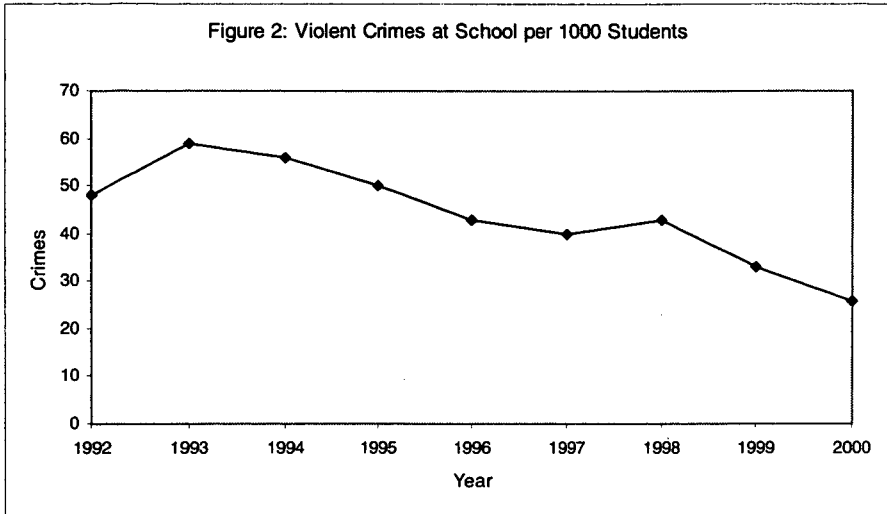
18. For data, see DEVOE ET AL., *supra* note 16, at tbl.1.1 (providing data for homicides at school from 1992–2000).



Next consider a broader measure of school violence. Youth gangs have long been associated with violent clashes with other gangs and with assault and intimidation of nongang members. A sharp increase in gang activity, therefore, should be linked to an increase in non-lethal violent crimes, such as assaults at school. In fact, however, the NCVS found that the violent victimization rate at school also declined during the 1990s, as shown in Figure 2.¹⁹ This result is confirmed by surveys of high school seniors which reveal a decline in violent victimization from the early 1990s to 2002.²⁰

19. For data, see BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS ONLINE, 247 tbl.3.66 (Kathleen Maguire & Ann L. Pastore eds., 2000) [hereinafter SOURCEBOOK ONLINE] (reporting the rates for 1995–2000 based on data from the NCVS), available at <http://www.albany.edu/sourcebook/1995/pdf/t366.pdf> (last visited Dec. 17, 2003). For the earlier data, see printed editions of the Sourcebook for individual years 1992–1994.

20. See *id.*, at 220–21 tbl.3.44, available at <http://www.albany.edu/sourcebook/1995/pdf/t344.pdf> (last visited Dec. 17, 2003) (stating for the years 1990–2002 the percentage of high school seniors who reported victimization experiences during the last twelve months).



It was also claimed that during the 1990s gangs spread from the inner cities to less populated areas,²¹ and that even while the national crime rate was declining, gangs were making new inroads into previously gang-free rural areas.²² One might expect, therefore, that violent victimization at rural schools would increase or, at a minimum, would decline much less sharply than in urban areas. In fact, however, violent victimization declined at about the same rate at urban, suburban and rural schools.²³

A growing threat of gangs in schools should also pose a significant danger to teachers. In fact, however, violent threats against secondary school teachers dropped by over one-third between

21. See James C. Howell et al., *Modern-Day Youth Gangs*, JUV. JUST. BULL. (U.S. Dep't of Justice/Office of Juvenile Justice & Delinquency Prevention), June 2000, at 2 tbl.1. See also Starbuck et al., *supra* note 3, at 2.

22. See Howell et al., *supra* note 21, at 2 tbl.2.

23. Between 1992 and 2000, violent crimes against students ages twelve to eighteen at school or on the way to school declined by about 46% in urban and rural schools and by about 32% in suburban schools. See DEVOE ET AL., *supra* note 16, at 55-57 tbl.2.1.

1993 and the end of the decade,²⁴ and actual assaults against teachers declined by a comparable amount.²⁵

II. GANG GROWTH AND THE NATIONAL CRIME VICTIMIZATION SURVEYS

Much of the alarm about the growth of gangs in schools was based on a comparison of 1989 and 1995 student surveys which suggested that school gangs had doubled during this period. A closer examination of these surveys, however, casts doubt on this conclusion.

Changes in the 1995 survey were designed “to elicit a more complete tally of victimization incidents than did the one used in the 1989 NCVS.”²⁶ Students in the 1995 survey, for example, were specifically asked whether they had been raped or otherwise sexually assaulted, while students in the 1989 survey were not asked this question.²⁷ It is reasonable to believe that the more detailed 1995 NCVS instrument would produce more complete victimization recall than the 1989 instrument.²⁸ Since the more detailed 1995 NCVS victimization questions were completed before students answered questions relating to school crime, it is likely that students had a more complete recollection of the victimization when answering the school crime questions in 1995 than in 1989.²⁹ Thus, a higher victimization rate in the 1995 survey could reflect changes in survey methodology rather than an increase in actual victimization.

The 1995 survey presents scant evidence that the purported increase in “gang presence” led to a rise in victimization. Students

24. The percentage of secondary school teachers threatened with injury declined from 15.0% for the 1993–94 school year to 9.9% for the 1999–2000 school year. *See id.* at 81 tbl.10.1.

25. The percentage of secondary school teachers who reported they were physically attacked by a student declined from 3.2% for the 1993–94 school year to 2.1% for the 1999–2000 school year. *See id.* at 82 tbl.10.2. Most of these attacks were simple assaults. *Id.* at 28. During these same years threats against elementary school teachers declined slightly, *see id.* at 81 tbl.10.1, while actual attacks increased slightly. *See id.* at 82 tbl.10.2. Physical attacks and threats of attack by young children, however, pose much less of a danger than similar acts by older students.

26. CHANDLER ET AL., *supra* note 5, at 23.

27. *Id.*

28. *See id.*

29. *See id.*

reporting the presence of street gangs at school increased from 15.3% to 28.4%.³⁰ This increase in gang presence was not matched, however, by a similar increase in victimization.

Total victimization remained almost unchanged.³¹ Reports of violent victimization increased significantly for female students but remained almost unchanged for males.³² A growth in street gangs, however, would be likely to lead to increased fights between rival gang members at school, increasing male rather than female victimization. The rise in female victimization may more plausibly be explained by the additional questions dealing with frequently underreported crimes, such as sexual assault, which are likely to disproportionately impact female students.³³

A. Changes in the NCVS

Changes in the NCVS may have been responsible for much of the reported increase in school gangs between 1989 and 1995.³⁴ The 1989 survey asked simply "Are there any street gangs at your school?"³⁵ The 1995 survey repeated this same question,³⁶ but returned to the issue later.³⁷ The second time, the gang query was preceded by the following introduction:

We'd like to know a little more about any gangs at or around your school. You may know these as street gangs, fighting gangs, crews, or something else. For this survey, we are interested in gangs that may or may not be involved in violent or illegal activity.³⁸

The student then was asked two questions:

1. Do any of the students at your school belong to a street gang?

30. *Id.* at 18 tbl.4.

31. *See id.* at 3. Some form of victimization was reported by 14.5% of students in 1989 and by 14.6% of students in 1995. *Id.*

32. *See id.* Violent victimization was reported by 2.0% of females and 4.8% of males in 1989 and by 3.3% of females and 5.1% of males in 1995. *Id.*

33. *See id.* at 23 (noting the addition of a specific question on sexual assault).

34. *See supra* text accompanying note 26.

35. *See* CHANDLER ET AL., *supra* note 5, app. B, at 45.

36. *See id.* app. B, at 49.

37. *See id.* app. B, at 51.

38. *Id.*

2. What about gangs that don't have members attending your school . . . have any of those gangs come around your school in the past six months?³⁹

Many students who had previously stated that there were no gangs at their school answered "yes" to one of these additional questions.⁴⁰ This is not surprising. A student reasonably could reject the notion that the mere presence of one gang member means that there are gangs at the school. This is especially true where there is no actual gang activity at the school. It is similarly suspect to claim that a school which has no gang members nevertheless suffers from a "gang presence" merely because a gang "came around" the school during the past half-year. The claim is particularly dubious since there is no requirement that the visiting gang engage in any illegal or disruptive behavior.

It is also troubling that the NCVS defines street gangs to include groups that engage in neither violent nor illegal activity. It is hard to see why schools should be troubled by youth groups whose activities are law-abiding and non-violent. Definitional problems abound: what characteristics should lead a law-abiding, non-violent group of youth to be classified as a gang?

The NCVS also suggested to the surveyed students that street gangs may be known as "crews."⁴¹ But for well over a decade the term "crew" has been hip-hop slang for members of a band or, more broadly, any group of friends or associates.⁴² Thus, this suggestion further increased the danger of classifying entirely innocent groups as gangs.

The choice by the NCVS to include law-abiding and non-violent groups within the definition of gangs is inconsistent with the recommendation of the National Alliance of Gang Investigators Associations ("NAGIA"). Under the NAGIA definition, the term gang is limited to groups who "individually or collectively engage in, or have engaged in, criminal activity which creates an atmosphere of

39. *Id.*

40. See Howell & Lynch, *supra* note 1, at 2.

41. See CHANDLER ET AL., *supra* note 5, app. B, at 51.

42. See The Rap Dictionary, at <http://www.rapdict.org/terms/c> (last visited Sept. 15, 2003). For example, a well-known group of Los Angeles hip-hop musicians in the early 1980's was the "World Class Wreckin' Crew" with Dr. Dre (Andrew Young). See http://www.vh1.com/artists/news/3277/02171998/dr_dre.jhtml (last visited Sept. 15, 2003).

fear and intimidation.”⁴³ Under this definition, a group of students who engaged in illegal conduct would not be labeled a gang if its offenses were limited to behaviors which would not intimidate others, such as underage drinking or smoking marijuana.

B. Exaggerating the Presence of Gangs

The NCVS results are relied upon in a Justice Department report to support the claim that gangs are “very prevalent” in our nation’s schools.⁴⁴ The Justice Department report makes every effort to amplify the perceived gang problem. The report labels a school as having a “gang presence” even where the responding student has denied that gangs exist at his school, so long as the student admits, using the survey’s overbroad definition of a gang, that there is a single gang member at the school or that a gang has “come around” the school within the past six months.⁴⁵ Nevertheless, even using this very broad definition, a gang presence was reported at only 37% of the schools.⁴⁶ Concluding from this data that gangs are “very prevalent” is an overstatement. Moreover, the NCVS decision to label as “gangs” groups that engage in neither violence nor any other illegal activity fostered the perception of a growing danger in schools, even as the actual crime rate both inside and outside of schools was plummeting.

C. Gang Presence and the Perceptions of School Principals

At the same time students were being surveyed about the presence of gang members, school principals were asked whether there was a “gang problem” in their school. The results contradict the notion that “very prevalent” gangs are a widespread problem in our nation’s schools. Only 5.4% of the principals reported a gang

43. Michelle Arciaga, *The Evolution of Prominent Youth Subcultures in America*, at http://www.nagia.org/related_topics.htm (last visited Dec. 19, 2003).

44. See Howell & Lynch, *supra* note 1, at 6.

45. See *id.* at 6 tbl.8.

46. *Id.* at 2.

problem at their schools.⁴⁷ Even in urban schools, only 8.8% of the principals reported a gang problem.⁴⁸

The relationship between the principals' perceptions of a gang problem and student reports of a concentration of gang members was slight. Even in schools that ranked in the top 10% of those polled in terms of the portion of the students who were gang members, only 20% of the principals reported a gang problem.⁴⁹ At these so-called "gang concentration schools" at least 14.4% of the students belonged to a gang.⁵⁰ The correlation between principals reporting a gang problem and existence of a gang concentration in the school was only 12% greater than chance.⁵¹

The reason for the low correlation between gang concentration in the school and principal reports of gang problems is unclear. The authors of the Justice Department sponsored survey found the denial of a gang problem by principals of gang concentration schools "hard to believe." They wrote that "a reasonable person would (we believe) agree that the school certainly has a gang problem if so many students belong to a gang."⁵²

It may be that the reports of the school principals are wrong. School administrators may be myopic and unaware that gangs pose a serious threat to their institution. Alternatively, principals may fear that admitting a gang problem will undermine their own reputation or that of their school. But it is also possible that the mere presence of gang members does not translate into the kind of gang intimidation and violence that would constitute a "gang problem."

Principals in schools with gang concentrations were well aware of gang problems in their community, with 65% of the principals reporting such problems.⁵³ Schools with a high concentration of gang members were disproportionately located in areas with a high

47. GARY D. GOTTFREDSON & DENISE C. GOTTFREDSON, GANG PROBLEMS AND GANG PROGRAMS IN A NATIONAL SAMPLE OF SCHOOLS 59, 60 tbl.15 (Oct. 2001), available at <http://www.gottfredson.com/gang.htm>.

48. *Id.* at 60 tbl.15.

49. *Id.* at 66.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

level of poverty.⁵⁴ Not surprisingly, these schools have a higher number of students with problem behaviors, and students at these schools are more likely to perceive the school as unsafe.⁵⁵

It seems unlikely that school principals working in poverty-stricken communities are aware of gang problems in their communities but ignorant of such problems in their own institutions. It also seems probable that school principals are alert to the level of disciplinary problems in their schools. How, then, can the denial by school principals of a "gang problem" be explained as other than self-interested deception or myopia?

The answer lies in the characterization of the term "gang problem." There is little doubt that youth from poor families are more likely to become gang members.⁵⁶ Schools with many underprivileged students are likely to have both more gang members and a higher level of crime. Within those schools, students who are gang members are likely to be more troublesome than most.⁵⁷ In some cases, the offenses committed will be driven by their gang membership—fighting with other gangs or intimidating other students. Principals in the 20% of the gang concentration schools who reported gang problems may have had such offenses in mind. But in other schools, the misbehavior of gang members within the school may be identical to the misbehavior of nongang members—cutting class, fighting over personal slights, stealing from other

54. See *id.* at 69 (finding a 0.25 correlation between gang participation rate and Concentrated Poverty and Disorganization scale).

55. See *id.* at 70.

56. G. DAVID CURRY & SCOTT H. DECKER, *CONFRONTING GANGS* 74 (1998).

57. See GOTTFREDSON & GOTTFREDSON, *supra* note 47, at 47, 50 tbl.10, 51 tbl.11 (noting that students who are gang members are much more likely than those who are nongang members to carry concealed weapons and engage in violence). It is well-settled that members of youth gangs commit more delinquent acts—especially serious and violent acts—than nongang members. See Terence P. Thornberry, *Membership in Youth Gangs and Involvement in Serious and Violent Offending*, in *SERIOUS AND VIOLENT JUVENILE OFFENDERS: RISK FACTORS AND SUCCESSFUL INTERVENTIONS*, 147, 164 (Rolf Loeber & David P. Farrington eds., 1998) (noting that "[t]his is perhaps the oldest and most robust finding in the research literature on gangs"). See also James C. Howell, *Youth Gangs: An Overview*, *JUV. JUST. BULL.* (U.S. Dep't of Justice/Office of Juvenile Justice & Delinquency Prevention), Aug. 1998, at 9–10 (noting that adolescents who are gang members commit serious and violent offenses at a much higher rate than nongang members).

students and so forth. It would be entirely proper for principals of such schools to reject the notion that their schools have a "gang problem."

D. *The Real Gang Problem*

The most serious problem associated with youth gangs is violence, which is directed most often against members of rival gangs. Although the vast majority of gang violence takes place outside school, when such violence does occur at school and leads to death or serious injury, it can have a terrible effect on students and faculty alike.

Lesser levels of violence can also be disruptive. Although the data show that, in general, violence in schools has declined, in particular cases, gang members might disrupt a school by engaging in frequent fist fights with rival gangs or by intimidating teachers or other students. While in many cases such fighting can be controlled by ordinary disciplinary procedures such as suspension, in other cases it may be important to take an approach specially aimed at the gang origins of the problem such as increasing security measures at the school.⁵⁸

Such measures should not be taken lightly, however, because they can be costly and have a negative impact on the school environment. Intense security measures, such as video cameras, can undermine the privacy of students and have a chilling effect on them.⁵⁹ Antigang measures can also have the unintended effect of increasing gang cohesiveness in response to the perceived outside threat.⁶⁰ Moreover, there is a serious danger that antigang policies will be applied in a manner that discriminates against the poor and members of racial minorities.⁶¹

58. For the most comprehensive evaluation of the effectiveness of school-based gang prevention and intervention programs, see generally GOTTFRIDSON & GOTTFRIDSON, *supra* note 47. The authors note, however, that their assessment is limited by a lack of reliable data. *Id.* at 113.

59. Douglas E. Thompkins, *School Violence: Gangs and a Culture of Fear*, 567 ANNALS AM. ACAD. POL. & SOC. SCI. 54, 65 (2000).

60. See CURRY & DECKER, *supra* note 56, at 35–36 (1998) (reporting on earlier research by Malcolm Klein on Los Angeles gangs). Klein found that gang intervention programs may strengthen gangs by making them appear more important and therefore more attractive. *Id.* at 35.

61. See discussion *infra* pp. 948–57, 971–77.

III. GANGS AND RACIAL STEREOTYPES

Punitive antigang measures in schools are likely to fall disproportionately on minority students. Racial stereotyping is pervasive in the classification of individuals as gang members. Gang databases maintained by police departments are comprised overwhelmingly of Latino, African American and, to a lesser extent, Asian males.⁶² For example, the Gang Reporting Evaluation and Tracking ("GREAT") database presented in the Los Angeles district attorney's report on gang violence listed over 37,000 Black gang members and over 58,000 Hispanic gang members.⁶³ Asians and Pacific Islanders had slightly more than 4,000 listings. However, White gang members apparently were so scarce in Los Angeles that they did not even warrant their own category, but were sorted with individuals of "miscellaneous" ethnicity into a "Misc/White" class with only 358 entries.⁶⁴

Similar proportions were found in an examination of CAL/GANG, which is the successor database to GREAT.⁶⁵ Of 112,000 persons listed in the CAL/GANG database as gang members or associates, roughly two-thirds were Latino, one-third were Black and under 2% were White.⁶⁶

National survey results also reflect the view that the vast majority of youth gang members are Black and Hispanic. A recent Justice Department survey stated that gangs were 34% Black, 46% Hispanic and only 12% White.⁶⁷ The survey also warned of a huge gang problem—finding more than 28,700 gangs with over 780,000 members.⁶⁸

62. Gang databases include youth who are no longer in school. However, it is unlikely that this can explain more than a small portion of the difference in the racial composition between the self-reports and the police databases.

63. IRA REINER, OFFICE OF THE DISTRICT ATTORNEY, COUNTY OF LOS ANGELES, GANGS, CRIME AND VIOLENCE IN LOS ANGELES 110 tbl.1 (1992).

64. *Id.* Some Whites may also be members of multiracial "Stoner" gangs which make up 1330 entries in the database. *Id.*

65. See Anne-Marie O'Connor, *Massive Gang Member List Now Clouded by Rampart*, L.A. TIMES, Mar. 25, 2000, at A1.

66. *See id.*

67. OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, 1998 NATIONAL YOUTH GANG SURVEY 20 (2000) [hereinafter 1998 NATIONAL YOUTH GANG SURVEY].

68. *Id.* at 12.

The overstatement of minority gang participation results from racial stereotyping and a data gathering method by police that focuses almost exclusively on inner city neighborhoods.⁶⁹ Aggressive policing in poor areas produces pervasive stops of minority youth either through “probable cause” or so-called “consensual contacts.”⁷⁰ Police criteria for placement in the gang database can include “associating with gang members,” “corresponding with gang members,” and “wearing gang clothing, such as red or blue jackets and baggy pants.”⁷¹ Meeting two criteria typically is enough to be labeled a gang associate.⁷² By these standards, a youth wearing baggy pants who is seen chatting with a person who is already (rightly or wrongly) in the gang database will be added to the database.⁷³

The potential injustice is magnified by the lack of procedural safeguards to prevent mistaken placement of individuals on gang lists. Youth may be placed on a gang database without a hearing of any sort and even without being informed that they have been listed as a gang member.⁷⁴ Youth can be entered into the gang database on the determination of a single police officer.⁷⁵ Moreover, youth who

69. See CHRISTIAN PARENTI, *LOCKDOWN AMERICA: POLICE AND PRISONS IN THE AGE OF CRISIS* 121 (1999).

70. See *id.*. Youth who consent to be interviewed and photographed are unlikely to believe that they can refuse to cooperate. *Id.*

71. *Id.* at 122 (noting the ten criteria used by law enforcement in Fresno and much of California to identify gang members). Even seemingly more reasonable criteria, such as “having gang-style tattoos,” may be inaccurate. Not only is it unclear how broadly “gang-style tattoos” will be interpreted, but this criterion also may pick up former gang members who lack funds to pay for tattoo removal.

72. *Id.* See also *infra* notes 163–68 and accompanying text.

73. See Patricia Calhoun, *The Gang's All Here*, DENV. WESTWORD, Dec. 10, 1998 (noting that having a nickname and a cell phone could lead to placement on the Aurora Colorado police department gang list and subsequent inclusion on a state gang database).

74. See, e.g., *id.* (noting the difficulty of identifying nongang members who were included in the Colorado Bureau of Information gang database since the contents were confidential); John Seeley, *Vows of Peace*, L.A. WEEKLY, Aug. 4, 2000, at 25 (noting remarks of LAPD commander Dan Koenig showing disapproval of the Sheriff department's new policy of informing individuals of their inclusion on CAL/GANG database).

75. See PARENTI, *supra* note 69, at 121.

have been mistakenly placed on the list have few, if any, ways to challenge their designation as a gang member.⁷⁶

Gang databases also are notoriously out of date⁷⁷ and continue to list as gang members youth who have long ended their association with any gang.⁷⁸ Failure to update lists regularly is particularly troubling since most youth who do join gangs remain members for only a short time.⁷⁹ Longitudinal surveys suggest that between one-half and two-thirds of gang members belong for periods of one year or less.⁸⁰

It is, unfortunately, easy to find cases where police have mislabeled minority youth as gang members. In one case, police in Garden Grove, California stopped two Vietnamese American teenage girls and photographed them.⁸¹ The photographs and other information (such as their age, address and school attended) were placed in police files for suspected gang members.⁸² The girls were

76. One program was developed by the L.A. County Sheriff's Department to allow persons who met certain criteria to be removed from the CAL/GANG database. See George Ramos, *Youths Offered a Way to Get Off State Database*, L.A. TIMES, July 25, 2000, at B1. However, the program did not receive the cooperation of the LAPD.

77. See Ashanti M. Alvarez & Douglass Crouse, *Street Gangs Are a Growing Threat—or Are They?; Anxiety is High, but Hard Facts Are Few*, THE RECORD (Bergen County, NJ), Feb. 16, 2003, at A1 (noting that experts state that the databases "are often outdated within months or even weeks").

78. See DEBORAH LAMM WEISEL, CONTEMPORARY GANGS: AN ORGANIZATIONAL ANALYSIS 62–63 (2002) (stating that the records of gang members may be irregularly purged); CHERYL L. MAXSON, U.S. DEP'T OF JUSTICE, RESEARCH BRIEF: STREET GANGS AND DRUG SALES IN TWO SUBURBAN CITIES 3 (July 1995) (stating that neither Pasadena nor Pomona California authorities purged their gang lists of inactive members).

79. See WEISEL, *supra* note 78, at 63 (noting that the gang literature strongly suggests that gang membership frequently is temporary and transitory). See also Alvarez & Crouse, *supra* note 77 (reporting remark of gang interdiction unit detective that often gang members do not stay with a gang for long).

80. See Battin-Pearson et al., *Early Predictors of Sustained Adolescent Gang Membership*, Paper Presented at the American Society of Criminology Annual Meeting, San Diego, CA (1997); Finn-Aage Esbensen & David Huizinga, *Gangs, Drugs, and Delinquency in a Survey of Urban Youth*, 31 CRIMINOLOGY 565, 565–89 (1993); Thornberry, *supra* note 57.

81. Doreen Carvajal, *O.C. Girl Challenges Police Photo Policy*, L.A. TIMES, May 20, 1994, at A1.

82. *Id.* See also Jonathon Volzke, *Garden Grove Police Sued Over Gang-Suspect Photos*, ORANGE COUNTY REG., May 20, 1994, at B4 (noting that

both fifteen-year old honor students and were not gang members.⁸³ The police suspected them solely based on their ethnicity and their baggy, hip-hop style clothing.⁸⁴ Months later, one girl again was stopped and accused by police of being a gang member.⁸⁵ The photographs finally were purged from the police files as part of a settlement after the ACLU filed a class action lawsuit on their behalf (as well as others).⁸⁶

The Garden Grove case was not unique. Numerous minority youth in Orange County previously had complained of being stopped and photographed by police because of their ethnicity or dress. Police justified such stops as necessary antigang measures.⁸⁷

The broad net wielded by some police departments can lead to a huge portion of the minority community being declared gang members. Los Angeles police classified 47% of the young African American males in the city as belonging to a gang⁸⁸ while Denver police labeled more than two-thirds of the young African American males in the city as gang members.⁸⁹

taking photographs of suspected gang members was a routine practice in several Orange County cities, and that the photos usually were placed in a regional computer database). At a minimum they would be kept in the Garden Grove police files for two years. *See id.* (noting comments of the Garden Grove police captain who drafted the "field interview photograph" policy that photographs were kept for two years unless police obtained evidence that the person was a gang member).

83. *See* Doreen Carvajal, *Suit to Challenge Gang-File Photography*, L.A. TIMES, May 19, 1994, at B1.

84. *See* Davan Maharaj, *Rights Suit Involving Police Photos Is Settled*, L.A. TIMES, Dec. 12, 1995, at A1.

85. Carvajal, *supra* note 81.

86. *See* Maharaj, *supra* note 84. The plaintiffs also received money damages and a written apology. In addition, the police agreed to new procedures for taking such photographs and collecting information from "field interviews" for gang-related files. *Id.*

87. *See* Doreen Carvajal, *Police Photo Policies Focus of Controversy*, L.A. TIMES, May 22, 1994, at A1.

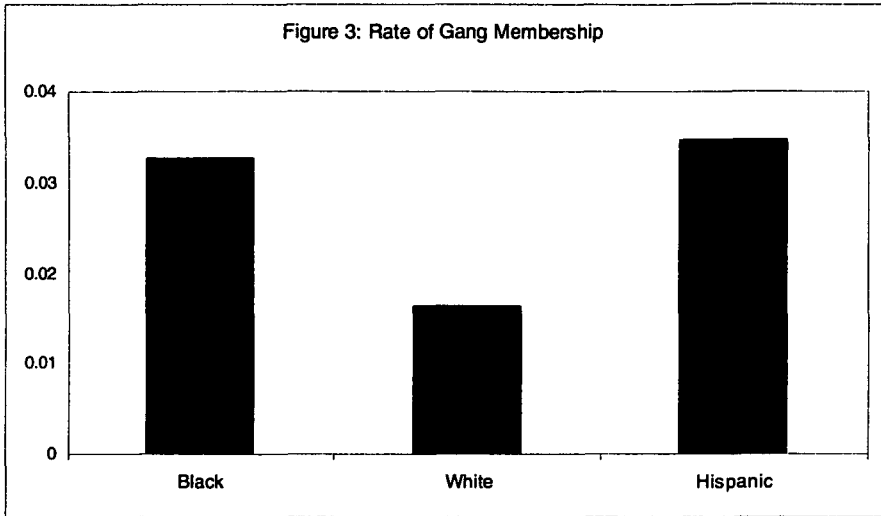
88. *See* REINER, *supra* note 63, at 121.

89. *See* Dirk Johnson, *2 of 3 Young Black Men in Denver Listed by Police as Suspected Gangsters*, N.Y. TIMES, Dec. 11, 1993, § 1, at 8 (noting that the number included in the gang database represented two-thirds of the population of Black males aged twelve to twenty-four). The numbers are especially startling since Blacks comprised only 5% of the city's population, yet accounted for more than half of those on the gang database. *Id.* Hispanics were also disproportionately represented. In the wake of widespread criticism of the racial composition of the database, the Denver police department

The lopsided portion of minority males on gang databases is inconsistent with self-reported youth gang membership. A recent National Longitudinal Youth Survey asked almost 9000 youth of middle and high school age whether they had been a member of a gang during the past twelve months. The survey found that Black and Hispanic youth joined gangs at a somewhat higher rate than Whites, although only a small percentage of each group claimed gang membership. In the 1999 survey of youth between the ages of fifteen and seventeen, an average of 2.8% of Blacks, 2.9% of Hispanics, and 1.3% of Whites responded that they had belonged to a gang during the period since their last interview.⁹⁰ This is shown in Figure 3.

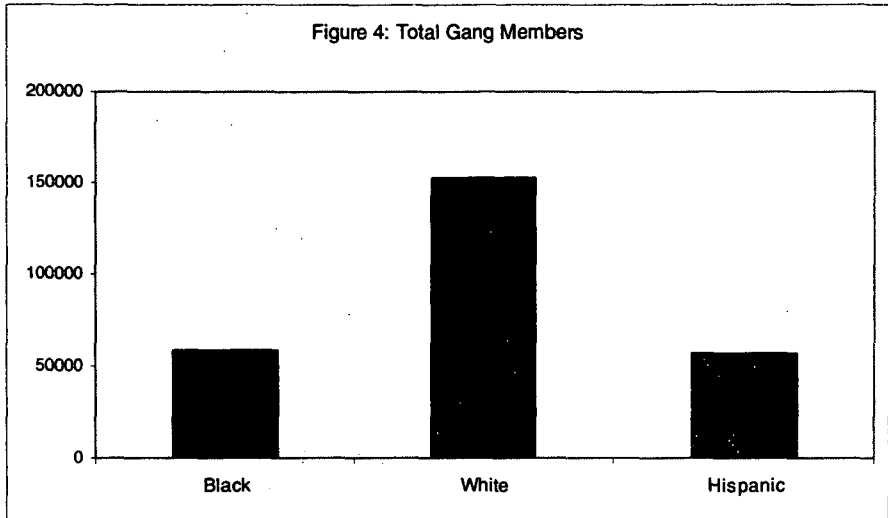
removed more than half of the names. See Christopher Lopez, *City Lops 3,747 Off Gang List*, DENV. POST, Jan. 20, 1994, at A1. Nonetheless, minority youth still comprised a disproportionate number of the remaining 2820 names on the list. See *id.* (noting that of those still included in the database roughly 40% were Black and 40% were Hispanic).

90. Data extracted by authors from U.S. Dep't of Labor, Bureau of Labor, *National Longitudinal Youth Survey, Survey Year 1997*, available at <http://www.bls.gov/nls/nlsy97.htm>. Listed percentages were the average of the percentages in each age group claiming gang membership. For Whites, these were 2.1% at age fifteen and 1.4% at ages sixteen and seventeen. For Blacks, these were 2.9% at age fifteen, 3.2% at age sixteen, and 3.7% at age seventeen. For Hispanics, these were 2.5% at age fifteen, 2.8% at age sixteen, and 5.1% at age seventeen. The size of the survey sample for each age cohort was relatively small, especially for Blacks and Hispanics. This, combined with the low percentage of gang membership, indicates that individual yearly variations should be viewed with caution.



The picture changes, however, if the total number of gang members of each ethnicity is considered. Applying the above percentages to the total youth population of each ethnicity in the relevant age group indicates that the number of White gang members exceeds the number of Black and Hispanic gang members combined.⁹¹ This is shown in Figure 4.

91. Authors' calculations. Population statistics are from the OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, JUVENILE POPULATION OF THE UNITED STATES: 1999, at <http://ojjdp.ncjrs.org/ojstatbb/ezapop/asp/specific.asp> (last visited Jan. 22, 2004). White gang members totaled 152,586, Hispanic gang members totaled 57,162, and Black gang members totaled 58,687. *Id.*



These findings are consistent with older studies. A survey of Philadelphia youth conducted in the 1970's, for example, found that 12% of Black youth and 14% of White youth living in the city claimed gang affiliation.⁹²

IV. HOMICIDE AND OTHER SERIOUS GANG VIOLENCE

It might be argued that although Whites make up most of the self-described gang members, most of the "serious" gang problems, such as drive-by shootings and other homicides or attempted homicides, are committed by minority males, and thus the domination of minority males in gang databases and the mental image most Americans have of gang members is justified.

Blacks, for example, are both perpetrators and victims of homicide at several times the rate of Whites.⁹³ Poverty and high

92. See Robert J. Bursik, Jr. & Harold G. Grasmick, *The Effect of Neighborhood Dynamics on Gang Behavior*, in *THE MODERN GANG READER* 114 (Malcolm Klein et al. eds., 1995) (citing to the work of Leonard Savitz & Associates).

93. For the year 2000, Blacks committed murder and nonnegligent manslaughter at a rate of 25.8 per 100,000, as compared to a rate of 3.4 per 100,000 for Whites. SOURCEBOOK ONLINE, *supra* note 19, at 309 tbl.3.128,

unemployment are strongly correlated with street crime, especially where such conditions are concentrated in an urban environment.⁹⁴ In terms of the total number of homicides committed, however, there is a rough equivalence between Blacks and Whites—for the year 2002, there were 5,579 Black and 5,356 White murder offenders.⁹⁵ Homicides classified by the police as “gang-related,” on the other hand, are almost always attributed to minorities.

The criteria for classifying an offense as a gang crime vary from jurisdiction to jurisdiction. In Los Angeles, a crime is considered a gang crime if it is “gang-related.”⁹⁶ A crime is considered “gang-related” if the perpetrator or the victim is a gang member, even if the crime is completely unrelated to the individual’s membership in a gang.⁹⁷ If, for example, a gang member kills or is killed by a relative in a domestic altercation, the crime will be classified as a gang crime. Similarly, the sale of drugs by a gang member will be treated as “gang-related” even if the seller was working completely by and for himself. The exaggeration of gang crime under the Los Angeles approach is exacerbated by the overbreadth of the gang database.

available at <http://www.albany.edu/sourcebook/1995/pdf/t3128.pdf> (last visited Dec. 17, 2003). The same year, Blacks were victims of homicide at a rate of 20.5 per 100,000 as compared to a rate of 3.3 per 100,000 for Whites. *Id.* at 308 tbl.3.126, available at <http://www.albany.edu/sourcebook/1995/pdf/t3126.pdf> (last visited Dec. 17, 2003).

94. See Jens Ludwig et al., *Urban Poverty and Juvenile Crime: Evidence from a Randomized Housing-Mobility Experiment*, 116 Q. J. ECON. 655 (2001) (providing families with the opportunity to move from higher-poverty to lower-poverty neighborhoods reduces violent criminal behavior by teens); Robert J. Sampson & Janet L. Lauritsen, *Racial and Ethnic Disparities in Crime and Criminal Justice in the United States*, in *ETHNICITY, CRIME, AND IMMIGRATION* 311, 333–41 (Michael Tonry ed. 1997) (discussing impact of race and community structure on crime).

95. U.S. DEP’T OF JUSTICE, FED. BUREAU OF INVESTIGATION, *CRIME IN THE UNITED STATES*, 21 tbl.2.6 (2002), available at <http://www.fbi.gov/ucr/02cius.htm>.

96. G. DAVID CURRY ET AL., OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, U.S. DEP’T OF JUSTICE, OJJDP FACT SHEET: YOUTH GANG HOMICIDES IN THE 1990’S (Mar. 2001); Megan Garvey & Richard Winton, *Tracking of Gang-Related Crime Falls Short*, L.A. TIMES, Jan. 24, 2003, at A1.

97. 1998 NATIONAL YOUTH GANG SURVEY, *supra* note 67, at 25.

Without accurate records of gang membership, statistics on gang-related crime have limited value.⁹⁸

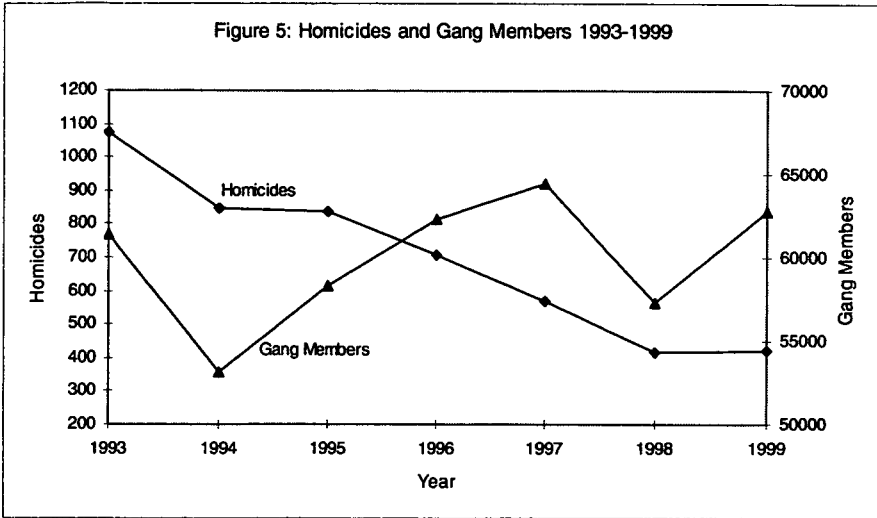
The overbreadth and inaccuracy of gang databases⁹⁹ can make police statistics on the size of the gang population dubious indicators of the seriousness of the crime problem. Consider, for example, the relationship between homicides in the city of Los Angeles and the Los Angeles Police Department's statistics on the number of gang members in the city. Homicides in the city declined sharply from 1077 in 1993 to 420 in 1999.¹⁰⁰ At the same time, however, the LAPD found gang membership to be rising, as shown in Figure 5. The correlation between homicides in the city and gang membership during these years of falling homicide rates was -0.23 .¹⁰¹

98. See discussion *supra* at pp. 948–53; see also Garvey & Winton, *supra* note 96. Some commentators suggest that politicians and police may wish to exaggerate the gang problem in order to increase police funding. See *id.* (reporting remarks of former State Senator Tom Hayden).

99. See Alvarez & Crouse, *supra* note 77 (noting remarks of professor who studied gangs and police operations indicating that the databases are highly unreliable).

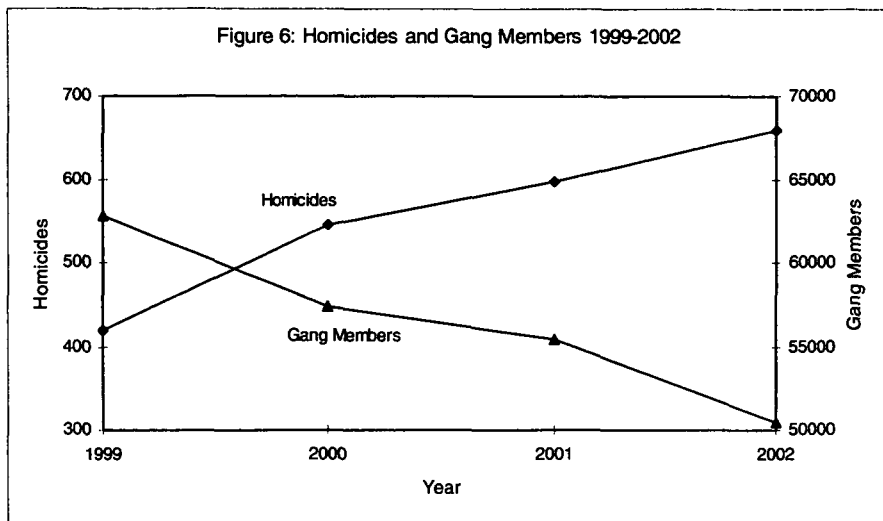
100. Statistics were downloaded from the LAPD web site at <http://lapdonline.org/>. Homicide statistics from the years 1993 to 2001 are from LOS ANGELES POLICE DEPARTMENT INFORMATION TECHNOLOGY DIVISION, STATISTICAL DIGEST 2001 at 1.5. Homicide statistics from the year 2002 are taken from the *Weekly Crime and Arrest Comparison Report: For the Week Ending December 31, 2002*, at http://www.lapdonline.org/general_information/crime_statistics/2002_crime_summary.htm (last visited Oct. 29, 2003.) Gang statistics are from http://www.lapdonline.org/general_information/crime_statistics/gang_stats (There is a separate file for each year.).

101. Authors' calculations using Microsoft Excel.



From 1999 to 2002, homicides in Los Angeles increased from 420 to 658. Gang membership, on the other hand, declined during this period according to police records, as shown Figure 6. The correlation between homicides in the city and gang membership during these years of rising homicide rates was -0.99 .¹⁰²

102. Authors' calculations using Microsoft Excel. Homicide rates in Los Angeles began to drop again in 2003. As of November 1, 2003, there were 422 homicides in the city as compared to 546 on the same date the previous year—a decrease of 22.7%. *Weekly Crime and Arrest Comparison Report for the Week Ending November 1, 2003*, at http://www.lapdonline.org/general_information/crime_statistics/2003_crime_summary.htm (last visited Nov. 8, 2003).



The negative correlation between homicides and the number of gang members in the city does not mean, of course, that a large gang membership reduces violent crime. To the contrary, it is clear that the increase in homicides from 1999 to 2002 was due in part to increases in violence between rival gangs.¹⁰³ Targeting those feuding gangs members, however, is likely to be more productive than declaring war on the over 50,000 youth in the LAPD gang database.¹⁰⁴ A more focused approach can significantly reduce violent crime without labeling a significant portion of African American and Latino youth as gang-bangers.¹⁰⁵

V. GANG-MOTIVATED CRIMES

As noted previously, many jurisdictions label an offense as a gang crime if it is “gang-related,” i.e., if an alleged gang member is the offender or the victim, even if the crime was unrelated to the

103. See Jason Kandel, *2002 Local News: Gang Epidemic; Bratton Tackles ‘Domestic Terrorists,’* DAILY NEWS L.A., Dec. 31, 2002, at N10; Jason Kandel, *Homicides Highest in U.S.; 12% Increase Attributed to Gang Violence,* DAILY NEWS L.A., Jan. 1, 2003, at N4; David Pierson, *New Funding for Anti-Gang Project Sought,* L.A. TIMES, Oct. 29, 2001, at B4.

104. See William Booth, *LAPD Chief Unveils Plan to Rout Gangs,* WASH. POST, Jan. 16, 2003, at A3 (reporting an estimate of 52,000 gang members).

105. See *infra* Part VI (Boston “Operation Ceasefire” initiative demonstrated the effectiveness of such an approach.).

individual's membership in the gang.¹⁰⁶ A more accurate measure of the contribution of gangs to the crime rate is the "gang motivated" approach taken by the Chicago Police Department.¹⁰⁷ Under this approach, an offense is considered a gang crime only if it is motivated by a gang purpose, such as protecting a gang-run narcotics operation, or, most commonly, retaliating against a rival gang.¹⁰⁸ Analysis of homicides classified as gang-related in Los Angeles suggests that only about half of these homicides would be classified as gang-motivated under the narrower Chicago definition.¹⁰⁹

Nevertheless, even under the narrower gang-motivated definition, gang crime remains a serious problem in many cities. Los Angeles and Chicago represent the upper-bounds of the gang problem today.¹¹⁰ In Chicago, gang-motivated homicides accounted for 27% of those homicides where police were able to determine the motive.¹¹¹ Applying that percentage to the 647 homicides committed in Chicago in the year 2002¹¹² produces 175 gang-motivated homicides. In the same year, the city of Los Angeles claimed 350 gang-related homicides.¹¹³ If, as research suggests, half of those homicides were gang-motivated, gang activity accounted for 175 homicides in Los Angeles.

Gang-motivated homicides committed by minority youth in large urban centers shape the image of the gang member for most Americans. The "drive-by" shooting by young African American or Latino males has become the archetypical gang crime in the mind of the public.

106. See 1998 NATIONAL YOUTH GANG SURVEY, *supra* note 67, at 25 (noting that a majority of jurisdictions used the member-based definition).

107. See CURRY ET AL., *supra* note 96 (noting that Chicago uses the gang-motivated definition).

108. See 1998 NATIONAL YOUTH GANG SURVEY, *supra* note 67, at 25 (noting that about one-third of jurisdictions used the motive-based definition).

109. See Cheryl L. Maxson & Malcolm W. Klein, *Street Gang Violence: Twice as Great, or Half as Great?*, in THE MODERN GANG READER, *supra* note 92 at 31, 35.

110. See CURRY ET AL., *supra* note 96 (noting that these cities have the highest rates of gang homicides).

111. *Homicide in Chicago*, JAN. 2003 RELEASE (Chicago Police Dep't/Res. & Dev. Div., Chicago, Ill.), Jan. 2003, available at <http://www.ci.chi.il.us/cp/Statistics/Homicides/Hom02Dec.pdf> (last visited Oct. 29, 2003).

112. *Id.*

113. *Los Angeles Almanac: Gang-Related Crime—City of Los Angeles*, available at <http://www.losangelesalmanac.com/topics/crime/cr03x.htm>.

Drive-by shootings and other extreme forms of gang aggression, however, tend to be concentrated among a relatively small number of feuding gangs and "hard-core" violent gang members. Thus, programs that focus on violent gang members and which try to bring to a halt inter-gang feuds can be more productive than programs which target youth simply for membership in a gang.

VI. OPERATION CEASEFIRE

Boston's Operation Ceasefire, a program implemented in the mid-1990's to deal with gang violence, is instructive. Youth homicide reached its historical peak in Boston in 1990 with over seventy homicide victims under the age of twenty-five.¹¹⁴ In 1992, the nationally heralded Operation Night Light was created in which probation and police officers jointly patrolled high crime areas during the evening to check on curfew and other violations by youth on probation.¹¹⁵ Youth homicide dropped somewhat but remained disturbingly high, averaging about forty-four victims per year from 1991 to 1995.¹¹⁶

In 1995, a diverse working group, including police, prosecutors, probation officers, social workers, and academics, formed to address the youth violence problem.¹¹⁷ The group noted that the victims came from a relatively small universe of youth who were members of gangs that had various quarrels with other gangs.¹¹⁸ Much of the violence was due to long-running feuds, which led the gang members to be on the lookout for their enemies and to carry guns.¹¹⁹ Despite their youth, both offenders and victims tended to have long criminal records.¹²⁰ Seventy-five percent or more of both victims and offenders had been arraigned for at least one offense in

114. OPERATION CEASEFIRE, *supra* note 11, at 12.

115. *See id.* at 11. An earlier antigang program involving a blanket stop-and-frisk policy of black youth in high-crime areas was ineffective and met with community resistance. *See id.* at 9.

116. *Id.* at 12. This was significantly higher than during the 1980s when youth homicides averaged around thirty per year. *Id.* at 12 fig.1-1.

117. *See id.* at 13.

118. *See id.* at 17-18.

119. *See id.* at 11, 29.

120. *See id.* at 20-21.

Massachusetts courts.¹²¹ Of those arraigned at least once, the average number of arraignments was greater than nine.¹²²

The Working Group in Boston identified approximately sixty-one gangs with 1,300 youth as potential perpetrators and victims of gang violence.¹²³ Although most of these chronic offenders were minority youth, they constituted less than 3% of the youth in high-risk neighborhoods,¹²⁴ in sharp contrast to the Los Angeles County gang database, which identified over 100,000 gang members and included almost half of the young black males in the city.¹²⁵

Since much of the serious youth violence was driven by inter-gang feuds, the Boston Working Group focused on those gangs who were actively feuding.¹²⁶ Police arrested the members of feuding gangs for any offense, including minor drug crimes, loitering, public drinking, and probation violations.¹²⁷ Gang members were told why they were being targeted and were informed that they could end the targeting by stopping the violence.¹²⁸

Operation Ceasefire was not a “war against gangs.” Rather than directing enforcement against gangs generally, police focused on gangs engaging in serious violence. Law enforcement offered both a stick and a carrot: act violently and you will be targeted; act peacefully and you will be left alone. The approach proved remarkably effective; after the implementation of Operation Ceasefire, youth homicides dropped by 63%.¹²⁹

121. *See id.* at 20.

122. *See id.* at 21.

123. *See id.* at 22.

124. *See id.*

125. *See* REINER, *supra* note 63, at 121.

126. *See* OPERATION CEASEFIRE, *supra* note 11, at 29.

127. *See id.* at 26–31.

128. *See id.* at 30–31.

129. *Id.* at 58. For a detailed analysis of the impact of Operation Ceasefire, see *id.* at 55–71. A recent RAND study examined an attempt to apply the Operation Ceasefire approach in Los Angeles. Unfortunately, organizational and other factors prevented the full implementation of the Boston approach. See generally GEORGE TITA ET AL., RAND CORP., REDUCING GUN VIOLENCE: RESULTS FROM AN INTERVENTION IN EAST LOS ANGELES (2003), available at <http://www.rand.org/publications/MR/MR1764/MR1764.pdf>.

VII. GANGS, RACE AND SOCIAL CLASS

The overstatement of gang membership by minorities is often matched by a reluctance to view middle-class Whites as gang members. Groups of White middle-class youth who engage in delinquent behavior may not be labeled as gangs even where they have a "gang name" and wear distinctive "gang clothing."

The disinclination to view offenses by White youth as gang-related can be seen in the media's coverage of two highly publicized crimes: the murders at Columbine by two students who belonged to the "Trenchcoat Mafia" and the sexual assaults in Lakewood by students who belonged to the "Spur Posse."

A. Columbine and the "Trenchcoat Mafia"

On April 20, 1999, two heavily armed students wearing black trench coats entered Columbine High School in Littleton, Colorado to carry out a deadly massacre. The main targets were athletes and minorities.¹³⁰ By the time the assault ended, Dylan Klebold and Eric Harris had killed a teacher, twelve students, and themselves.¹³¹

The attack was well-planned.¹³² It was timed to fall on Adolf Hitler's birthday.¹³³ Klebold and Harris were armed with two sawed-off shotguns, a 9mm semi-automatic rifle, and a semiautomatic pistol capable of holding thirty-two bullets.¹³⁴ They also planted more than fifty homemade bombs in and around the school,¹³⁵ including one that detonated long after the shootings had ended.¹³⁶

130. See Azell Murphy Cavaan, *High School Horror; Kids Say Teasing Tough to Endure, but Violence Isn't the Answer*, BOSTON HERALD, Apr. 30, 1999, at 36 (noting that these were the groups that the shooters sought out).

131. *Id.*

132. See *Girl, 18, Has Links to Shooters, Officials Say*, ST. LOUIS POST-DISPATCH (Missouri), Apr. 29, 1999, at A13 [hereinafter *Girl, 18*] (noting statements of authorities that diaries found after the attack indicated it had been planned for a year); Jules Crittenden, *High School Horror; Hate-Filled Diary Shows 'Big Kill' Was Well-Planned*, BOSTON HERALD, Apr. 25, 1999, at 4 (noting the detailed and calculated nature of the plan).

133. See Crittenden, *supra* note 132.

134. Mitchell Zuckoff, *Shootings' Terror Detailed on Tape; 3d Suspect Reported Sought*, BOSTON GLOBE, Apr. 24, 1999, at A1.

135. See *Girl, 18, supra* note 132 (noting the number of bombs); Tom Kenworthy, *Police: Attack Planned in Detail; 15 Dead, 28 Hurt in Rampage*, WASH. POST, Apr. 22, 1999, at A1 (noting that bombs were found inside the

Klebold and Harris were members of a group of students called "the Trenchcoat Mafia."¹³⁷ This group clearly would be classified as a gang under the criteria used by police departments. The group had a gang name and even advertised itself as "the Trenchcoat Mafia" in the school yearbook.¹³⁸ Members of the group referred to themselves as gang members.¹³⁹ The group wore gang clothing—distinctive outfits that identified them all as members of a gang¹⁴⁰—such as black trench coats¹⁴¹ and military garb.¹⁴² Various members

building and in cars in the school parking lot). The bombs included foot-long pipe bombs, smaller grenades, and nail-filled propane cylinders attached to timers. *See id.*; *see also* David Von Drehle & Daniel LeDuc, *Heroism Amid the Terror: Many Rushed to the Aid of Others During School Siege*, WASH. POST, Apr. 22, 1999, at A1 (noting the propane bottle bombs were rigged to explode at intervals).

136. *See* Kenworthy, *supra* note 135.

137. The name apparently was conferred upon the group by popular students as a term of ridicule. The group subsequently embraced the term. *See infra* note 138 and accompanying text.

138. *See* Eileen McNamara, *A Looking Glass for Littleton*, BOSTON GLOBE, Apr. 28, 1999, at B1. The 1998 school yearbook includes a group photograph with the caption "Trenchcoat Mafia," followed by the members' names and a message that includes the phrases "Who says we're different? Insanity's healthy." Klebold and Harris were not in the photograph. Tina Griego et al., *The Dorks, The Loners, The Outcasts: Portrait of the Trenchcoat Mafia*, PRESS J. (Vero Beach, Fla.), Apr. 22, 1999, at A16. For a look at the yearbook picture, *see* BBC NEWS ONLINE NETWORK, *World: Americas Who Are the Trenchcoat Mafia?*, Apr. 21, 1999, at <http://news.bbc.co.uk/1/hi/world/americas/325054.stm>.

139. *See* Jon Morgan, *Dressed in Black, Fans of Hitler; Students Were Aloof, Gave Nazi Salutes, Glorified Death*, BALTIMORE SUN, Apr. 22, 1999, at 1A (reporting statement of a fellow student that the Trenchcoat Mafia "were not really a big gang, but just a group of kids that called themselves a gang"); Lorraine Adams & Cheryl W. Thompson, *Littleton Probe Focuses on Help Given to Killers*, WASH. POST, May 14, 1999, at A1 (reporting that on his web page Harris dubbed the group of friends that joined him in acts of vandalism "more of a gang").

140. *See* Calhoun, *supra* note 73 (reporting on a police manual that provides "clothing of a particular color" as an example of "clothing which is common to gang members").

141. *See* Griego et al., *supra* note 138.

142. *See* Adams & Thompson, *supra* note 139 (noting that members often wore military garb); Bill Hewitt et al., *Sorrow and Outrage; A Colorado Town Endures Terror, Then Tears in an All Too Familiar Scenario*, PEOPLE, May 3, 1999, at 94 (describing the group's "uniform" as camouflage pants tucked inside combat boots); Griego et al., *supra* note 138 (noting that members wore heavy boots); Tom Kenworthy, *Up to 25 Die in Colorado School Shooting*;

had gang monikers, such as "Reb," "Vodka," and "Grunt."¹⁴³ Klebold and Harris used gang hand signs in the form of a Nazi salute.¹⁴⁴

The group also showed the kind of coherence, antisocial behavior, and potential intimidation of others that often are viewed as hallmarks of a gang. The group's founder boasted of their anti-social activities and interest in bomb-making.¹⁴⁵ The group's leader had a fascination with guns.¹⁴⁶ Members walked the school halls in groups of up to ten.¹⁴⁷ Some visited satanic websites at school,¹⁴⁸ confronted teachers, and were removed from classes.¹⁴⁹ Several members flunked out of school, or were suspended or expelled.¹⁵⁰

Two Student Gunmen Are Found Dead, WASH. POST, Apr. 21, 1999, at A1 (reporting that black trench coats and fatigues were the group's trademark).

143. See Adams & Thompson, *supra* note 139 (noting Harris' web page used the nicknames "REB" and "VoDka" to refer to Harris and Klebold, and "Jester," "Imaginos," and "Excaluber" to refer to three other otherwise unidentified people); Griego et al., *supra* note 138 (mentioning the nicknames of some members of the Trenchcoat Mafia).

144. See Morgan, *supra* note 139 (noting that Klebold and Harris celebrated strikes in bowling class by giving a Nazi salute); Mitchell Zuckoff & Lynda Gorov, *Early Signs of Trouble Seen*, BOSTON GLOBE, Apr. 25, 1999, at A1 (documenting the same behavior).

145. Jodi Wilgoren, *Mother's Gift of Black Duster Inspired Name*, FORT-WORTH STAR-TELEGRAM, Apr. 25, 1999, at 29 (reporting remarks of the Trenchcoat Mafia's founder Joseph Stairs that members knew how to manufacture pipe bombs); Zuckoff & Gorov, *supra* note 144 (reporting that the founder had boasted in interviews of the group's anti-social ways and bomb-making predilection). Stairs graduated the year before the Columbine shootings. See *id.*

146. See Julie Cart, *Recalling the Slain and Their Slayers; Shooters: Contrasting Pictures Emerge of Youths Who Erupted in Violence*, L.A. TIMES, Apr. 22, 1999, at A1 (reporting remarks by a student that the unidentified leader of the Trenchcoat Mafia "really liked weapons" and fulfilled a class assignment to create a fictitious company by inventing a weapons manufacturing plant).

147. See Zuckoff & Gorov, *supra* note 144.

148. See Morgan, *supra* note 139.

149. See *id.* (reporting remarks of substitute teacher that he had to "get them out of his classroom" after such confrontations).

150. See Alan Prendergast, *Doom Rules; Much of What We Think We Know About Columbine is Wrong*, DENVER WESTWORD, Aug. 5, 1999, at 7.

Members also made racist threats.¹⁵¹ The group frightened some students,¹⁵² including some of its own members.¹⁵³

Harris and Klebold, in particular, exhibited anti-social and violent tendencies. Both had criminal records.¹⁵⁴ They were fans of Adolf Hitler¹⁵⁵ and espoused racial hatred.¹⁵⁶ Harris wrote a story so disturbing that his teacher reported it to his parents.¹⁵⁷ Harris also threatened to kill a classmate with whom he previously had a minor dispute.¹⁵⁸ His website included threats to kill others,¹⁵⁹ links to sites providing bomb-making instructions,¹⁶⁰ descriptions of four pipe bombs he and Klebold had made,¹⁶¹ and descriptions of past and future acts of vandalism.¹⁶²

Police guidelines label persons as gang members and eligible for inclusion in a gang database if they meet two or three gang

151. See Zuckoff & Gorov, *supra* note 144 (noting remarks by a parent of a slain African American student that his son had been threatened by members of the Trenchcoat Mafia, including Harris and Klebold).

152. See Cart, *supra* note 146 (noting remarks of soccer team member who called the group "scary").

153. See *id.* (noting that one boy left when the members became too violent); Griego et al., *supra* note 138 (noting statement by a former member that she was afraid of Harris and Klebold).

154. See Zuckoff & Gorov, *supra* note 144 (noting their convictions for breaking into a car to steal electronics). Each was sentenced to an eleven month diversionary program. They completed the program just two months prior to the shootings. See *id.*

155. See Griego et al., *supra* note 138; see also Crittenden, *supra* note 132 (noting that one of the suspect's hate-filled diary contained numerous Nazi references).

156. See Zuckoff & Gorov, *supra* note 144 (noting remarks by the father of an African American victim at Columbine that the Trenchcoat Mafia exhibited racism and that Harris and Klebold had made threats to his son).

157. See Prendergast, *supra* note 150.

158. See *id.* (describing the threat that was posted on Harris' web page); see also Zuckoff & Gorov, *supra* note 144.

159. See Prendergast, *supra* note 150 (describing the threats to kill others).

160. See Zuckoff & Gorov, *supra* note 144. The links on the website captured the attention of two researchers studying on-line hate groups for the Simon Wiesenthal Center. However, at the time, the site did not include explicit urgings to kill others so it was not investigated further. *Id.*

161. Adams & Thompson, *supra* note 139.

162. See *id.* Those acts included using eggs, superglue, BB guns, or "large amounts of fireworks" to vandalize the homes of anyone who angered them. *Id.*

characteristics.¹⁶³ These include: admits gang membership,¹⁶⁴ “wears gang clothing,”¹⁶⁵ uses a nickname or “moniker,”¹⁶⁶ is observed using gang signs,¹⁶⁷ and associates with gang members.¹⁶⁸ Members of the Trenchcoat Mafia met all of these criteria. Under police guidelines, the Trenchcoat Mafia would be classified as a gang and the names of its members entered into a gang database.

The killings by Klebold and Harris would be characterized as “gang-related” because they were perpetrated by two gang members.¹⁶⁹ The homicides might even be viewed as connected to the purposes of the gang and thus “gang-motivated” because the killers targeted the gang’s “enemies”—athletes and African Americans.¹⁷⁰

Nevertheless, the killings were never viewed as gang-related in media reports. And, the Trenchcoat Mafia rarely was referred to as a gang. Indeed, the media appeared to go out of its way to find more

163. See Linda S. Beres & Thomas D. Griffith, DEMONIZING YOUTH, 34 LOY. L.A. L. REV. 747, 761 (2001) (listing one set of guidelines for adding names to a gang database); Calhoun, *supra* note 73 (noting criteria listed in the manual for the Aurora Colorado Police Department to determine gang membership). See also Tom Hayden, *LAPD: Law and Disorder*, THE NATION, Apr. 10, 2000 (describing criteria used by the LAPD antigang unit to classify a person as a gang member or associate), available at <http://www.thenation.com/docprint.mhtml?i=20000410&s=hayden> (last visited Dec. 17, 2003). A person could be classified by the LAPD as a “gang associate” by meeting any two of the following criteria and a known “gang member” by meeting any three: (1) admits membership; (2) associates with gang members; (3) corresponds with gang members; (4) is identified as a gang member by another police agency; (5) has tattoos; (6) writes graffiti; (7) wears “gang clothing.” See *id.*

164. See Beres & Griffith, *supra* note 163, at 761 (professes to be a gang member); Hayden, *supra* note 163 (admits membership).

165. See Hayden, *supra* note 163 (wearing undefined “gang clothing”); Calhoun, *supra* note 73 (wearing clothing “common to gang members, e.g., a bandanna, clothing of a particular color or with insignias indicating gang membership”).

166. See Calhoun, *supra* note 73.

167. See Beres & Griffith, *supra* note 163, at 761; see also PARENTI, *supra* note 69, at 121–22.

168. Beres & Griffith, *supra* note 163, at 761.

169. See *supra* note 106 and accompanying text.

170. See Zuckoff & Gorov, *supra* note 144 (noting well-known hostility between athletes and members of the Trenchcoat Mafia).

innocuous descriptions for the group and its members.¹⁷¹ Consider, for example, the following descriptions of the Trenchcoat Mafia: a “group of outcasts,”¹⁷² a “group of disaffected students,”¹⁷³ a “social group,”¹⁷⁴ a “social circle,”¹⁷⁵ a “clique,”¹⁷⁶ and a “club.”¹⁷⁷

Even in those cases where the media used the term gang, efforts were made to soften its impact. Instead of simple references to a “gang” composed of “gang members,” the Trenchcoat Mafia was described as a “gang of ‘outcasts;’”¹⁷⁸ a “loose gang of about a dozen juniors and seniors;”¹⁷⁹ a gang that “attracted sullen boys who

171. See Courtland Milloy, *A Look at Tragedy in Black, White*, WASH. POST, May 2, 1999, at C1 (noting that the media referred to Columbine killers as “members of a ‘clique,’ not a gang”). One television reporter even described one of the Columbine shooters as “a gentleman who drove a BMW.” *Id.*

172. Zuckoff & Gorov, *supra* note 144. Many permutations of the phrase “group of outcasts” also can be found. See, e.g., *Police Keep Wary Eye on Schools: Officers Trained to Recognize Potential Problems Work to Head Off Violence*, DETROIT NEWS, Apr. 23, 1999, at 5A [hereinafter *Police Keep Wary Eye on Schools*] (“group”); Diane Brooks, *Trenchcoats to Doff Their Trademark*, SEATTLE TIMES, May 14, 1999, at B3 (“group”); Cavaan, *supra* note 130 (“dark group”); Helen Gardner, *Similar Tragedy in S. Utah Unlikely, Police Chief Says*, DESERET NEWS (Salt Lake City, Utah), Apr. 24, 1999, at B1 (“dark group of outcast students”); Zuckoff, *supra* note 134 (“outcast group”); *Trenchcoats Set Benefit*, SEATTLE TIMES, May 12, 1999, at B2 (“outcast group of students”); Kenworthy, *supra* note 142 (“disaffected outcasts”); McNamara, *supra* note 138 (“loose confederation of Columbine outcasts”); Adams & Thompson, *supra* note 139 (“loosely organized group of 30 to 40 self-proclaimed high school ‘outsiders’”).

173. Sarah Rodman, *Middle East Club Cancels Concert*, BOSTON HERALD, Apr. 30, 1999, at S24.

174. Jacquelyn Mitchard, *Not All Misfits Are Troublemakers*, OMAHA WORLD-HERALD, May 21, 1999, Living Section, at 41.

175. *Girl, 18*, *supra* note 132.

176. See, e.g., Crittenden, *supra* note 132; Griego et al., *supra* note 138; Toni Heinzl & Melissa Matczak, *Fear Fuels Absences in Schools*, OMAHA WORLD-HERALD, May 1, 1999, at 57; McNamara, *supra* note 138; Zuckoff & Gorov, *supra* note 144; *Fieger Files Colo. Suit for \$250M: He Promises More Lawsuits will Follow Against School, Police and Gun Makers*, DETROIT NEWS, May 27, 1999, at 1D (“local clique”); Eileen McNamara, *To Divide Is Not to Conquer*, BOSTON GLOBE, May 9, 1999, at B1 (“outcast clique”); *Police Keep Wary Eye on Schools*, *supra* note 172 (“the Colorado gunmen’s clique”).

177. Kenworthy, *supra* note 135 (describing Klebold and Harris as members of a “violence-obsessed white supremacist club”).

178. E.R. Shipp, *The ‘Why’ of Littleton*, WASH. POST, May 9, 1999, at B8.

179. Hewitt et al., *supra* note 142.

ridiculed religion and reveled in racism;”¹⁸⁰ a “suburban version of gangs;”¹⁸¹ and “gang wannabes.”¹⁸²

We are not arguing that the Columbine killings should be treated as a gang-related event rather than the work of two disturbed individuals. Rather, our point is that a double standard exists.¹⁸³ 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 or gang-motivated.

B. Lakewood and the Spur Posse

In March 1993, nine youth in Lakewood, California were arrested for raping and sexually assaulting a number of girls, including a ten-year old.¹⁸⁴ The alleged assaults took place over a five-month period.¹⁸⁵

The youth, who ranged in age from fifteen to eighteen, were members of the “Spur Posse,” a group of roughly twenty to thirty

180. Zuckoff & Gorov, *supra* note 144.

181. James J. Traglia, *As You Were Saying. . . ; Presence of Grownups Gives Lifeline to Troubled Children*, BOSTON HERALD, Mar. 5, 2000, at 28.

182. *Police Keep Wary Eye on Schools*, *supra* note 172.

183. See Milloy, *supra* note 171 (noting that some excuses made to explain the actions of the White middle-class teenage killers at Columbine were rejected in other contexts as reasons for violent actions by young Blacks); Ed Chen, *Naming Names—Racism’s Double Standard*, at <http://www.aclunc.org/opinion/990618-littleton.html> (last visited Dec. 19, 2003). See also Kenworthy, *supra* note 135 (noting that after the shooting, the parent of a Columbine student was reported to have remarked, “Would you let the Crips or the Bloods run loose in the school? No, so why was the Trenchcoat Mafia apparently allowed to exist?”).

184. David Ferrell, *8 High School Students Held in Rape, Assault Case*, L.A. TIMES, Mar. 19, 1993, at A1 (noting the arrest of eight members); *9th Youth Charged in Sex Game*, N.Y. TIMES, Mar. 21, 1993, § 1, at 22 (reporting that the ninth member had been arrested).

185. Ferrell, *supra* note 184.

current and former Lakewood High students¹⁸⁶ who engaged in a points for sexual conquests competition.¹⁸⁷ Members received a “point” each time they had sex with a different girl.¹⁸⁸ The members were alleged to have used intimidation or force if they did not get a girl’s consent.¹⁸⁹ Following the initial arrests, sheriff’s deputies reported that other girls had complained of sexual assaults, and the deputies speculated that there might have been scores of victims.¹⁹⁰ Most of those arrested, however, were released and never formally charged.¹⁹¹ Two were sentenced for sexual misconduct.¹⁹²

As in the case of the Trenchcoat Mafia, the members of the Spur Posse easily met police criteria for classification as gang members. They adopted a gang name,¹⁹³ bragged about their membership, associated with gang members (i.e. other members of the “posse”), and wore gang clothing in the form of San Antonio Spurs caps.¹⁹⁴ Spur Posse members also engaged in other gang-like behavior, such as intimidation of others¹⁹⁵ and fighting.¹⁹⁶ Some had criminal

186. *8 Teens Arrested for Sexual Conquest ‘Game’*, CHI. TRIB., Mar. 20, 1993, at 16 (noting school and law enforcement officials description of the group as twenty to thirty boys). The group may in fact have been even larger. See Ferrell, *supra* note 184 (reporting that the group consisted of twenty-five to fifty members).

187. Ferrell, *supra* note 184. Since members only received one point per girl, they were encouraged to have sexual relations with as many girls as possible. *Id.*

188. *Id.*

189. *Id.*

190. Seth Mydans, *7 of 9 California Youths Are Freed in a Case of Having Sex for Points*, N.Y. TIMES, Mar. 23, 1993, at A14.

191. David Ferrell, *New Charges Filed Against Member of ‘Spur Posse’*, L.A. TIMES, June 9, 1993, at B3 (noting that fifteen of the original seventeen Spur Posse cases were rejected by the District Attorney). Two new charges of forcible child molestation stemming from a four-year old incident later were filed against one of those originally charged. *Id.*

192. Sue McAllister, *Birthplace of the ‘Burbs*, L.A. TIMES, Apr. 11, 1999, at K1.

193. The term “posse” has been used by law enforcement to refer to a gang. Howell, *supra* note 57, at 3–4 (noting that some jurisdictions call gangs “crews” or “posses”).

194. David Ferrell, *‘Spur Posse’ Goes on the Defensive*, L.A. TIMES, Mar. 20, 1993, at B1 (noting group members wore San Antonio Spurs caps and associated with each other); *4 Boys Not Charged*, PITTSBURGH POST-GAZETTE, Mar. 24, 1993, at A10 (noting that members wore hats with the San Antonio basketball team logo).

195. Ferrell, *supra* note 184.

records for burglary and assault¹⁹⁷ and some were the targets of other criminal investigations.¹⁹⁸ The sex crimes allegedly committed by the Spur Poses not only were committed by gang members, but were gang-motivated. Spur Posse members could increase their status within the group by earning points for additional sexual conquests.¹⁹⁹

Unlike Klebold and Harris in Columbine, the Spur Posse often was referred to as a gang by law enforcement officials investigating the case.²⁰⁰ Nevertheless, the media also described the Spur Posse in more innocent terms such as a "loose-knit group,"²⁰¹ a "band" of boys,²⁰² a "clique,"²⁰³ and a "high-school fraternity."²⁰⁴

196. See *Teen-age Gang Allegedly Raped for Sport; Police Say Group Awarded Points for Forcing Sex on Girls*, HOUS. CHRON., Mar. 20, 1993, at A12 [hereinafter *Teen-age Gang Allegedly Raped for Sport*] (reporting that students said the group harassed minorities and engaged in fights). One student, who refused to be identified, said the Spur Posse assaulted a friend "because they thought he was Hispanic." *Id.* See also David Ferrell, *One of 9 Students to Be Charged in Campus Sex Case*, L.A. TIMES, Mar. 23, 1993, at A1 (noting that one Lakewood resident labeled Spur Posse members as trouble makers who caused widespread problems in the community).

197. Ferrell, *supra* note 184 (noting juvenile records of two of the arrested Spur Posse members). Two members also were victims of car firebombings but were not injured. *Id.*

198. See *8 Teens Arrested for Sexual Conquest 'Game'*, *supra* note 186 (noting the previous arrests of some members); Ferrell, *supra* note 184 (reporting remarks of the sheriff's deputy that the alleged involvement of some members in other crimes had attracted the attention of law enforcement); Mydans, *supra* note 190 (stating some members had been involved in theft, assault, and robbery).

199. Ferrell, *supra* note 184.

200. *Id.*; Ferrell, *supra* note 194.; *Teen-age Gang Allegedly Raped for Sport*, *supra* note 196; Mydans, *supra* note 190.

201. *8 Teens Arrested for Sexual Conquest 'Game'*, *supra* note 186; *9th Youth Charged in Sex Game*, *supra* note 184. See also Jane Gross, *Where 'Boys Will Be Boys,' and Adults Are Befuddled*, N.Y. TIMES, Mar. 29, 1993, at A1 (referring to the Spur Posse as a "group").

202. David Ferrell & Somini Sengupta, *200 Parents, Students Assail Spur Posse in Lakewood*, L.A. TIMES, Mar. 30, 1993, at B3 (referring to the Spur Posse as a "band of mostly teen-age boys" and "a band of current or former Lakewood High School students").

203. Ferrell, *supra* note 194; Ferrell, *supra* note 196; Ferrell & Sengupta, *supra* note 202; David Gelman & Patrick Rogers, *Mixed Messages*, NEWSWEEK, Apr. 12, 1993, at 28; Jean Seligmann et al., *A Town's Divided Loyalties*, NEWSWEEK, Apr. 12, 1993, at 29; Clarence Page, *Social Sickness*

Interestingly, this view was shared by some Spur Posse members themselves who declared that they were not a gang because “[w]e don’t shoot anybody”²⁰⁵ and because a “gang is a group of guys who stand around with guns smoking pot.”²⁰⁶

As with the Trenchcoat Mafia, the treatment of the Spur Posse exemplifies the double standard used when treating White versus minority youth. Even law enforcement, aware of the criminal propensities of some Spur Posse members, had a difficult time believing a gang would be composed of White suburban youth since the authorities typically associated gangs with Black and Latino youth in the inner cities or recent Asian immigrants.²⁰⁷ It is unimaginable that, had the Spur Posse members been poor African American or Latino youth, they would be referred to by the media as anything other than a gang. And, it is unlikely that members of the group would have become media celebrities who bragged of their sexual exploits on numerous talk shows and in extensive interviews, or that their sexual conquests would have been excused by some as “boys will be boys.”²⁰⁸

The notion that the criminal activities of the Spur Posse were simple youthful indiscretions is belied by the future behavior of group members. In the three years following the scandal, a number of members were implicated in a variety of criminal offenses. One member was convicted of multiple counts of burglary and fraud,²⁰⁹ another member was convicted for assault with a deadly weapon, two members were arrested for attempted murder, and another member was shot to death.²¹⁰

Doesn't Discriminate—Society Does, ORLANDO SENTINEL TRIB., Apr. 15, 1993, at A17.

204. Seligmann et al., *supra* note 203.

205. Ferrell, *supra* note 194.

206. Bill Hewitt et al., *The Body Counters*, PEOPLE, Apr. 12, 1993, at 34.

207. *Teen-age Gang Allegedly Raped for Sport*, *supra* note 196.

208. See Page, *supra* note 203 (noting talk show appearances); Janet Wiscombe, *An American Tragedy: One Spur Posse Mother Struggles to Understand*, L.A. TIMES, Mar. 22, 1996, at E1 (noting how some “swaggering Spur [Posse] members” boasted on television).

209. See Wiscombe, *supra* note 208 (noting that the Spur Posse founder was serving ten years for thirteen convictions for burglary and fraud).

210. See *id.*

C. *Social Class: The Saints and the Roughnecks*

Social class, as well as race, shapes the likelihood that juvenile misbehavior will be viewed as gang-related. In his classic study, "The Saints and the Roughnecks," sociologist William J. Chambliss compared the treatment of two groups of delinquent high school students.²¹¹ One group, the Saints, was comprised of eight young men from "stable, white upper-middle-class families."²¹² The other group, the Roughnecks, was made up of six White boys from lower-class families.²¹³ During the two years of the study, each group engaged in a similar level of delinquent behavior.²¹⁴ But, while the Roughnecks were regarded by the community as troublemakers and frequently were arrested by the police, the Saints were viewed as good boys and not a single Saint was ever officially charged with a crime.²¹⁵

The difference in social class between the Saints and the Roughnecks shaped both the type of delinquent behavior they engaged in and their ability to avoid punishment. Both groups, for example, desired to avoid school as often as possible.²¹⁶ The Saints were able to skip school frequently without detection.²¹⁷ One Saint might obtain the release of another from class by fabricating a meeting of some legitimate activity, such as "drama club."²¹⁸ Since the Saints were regarded by their teachers as good students involved in many school activities, the teachers believed their lies and granted them "legitimate" releases.²¹⁹ The freed Saints would then rendezvous at a getaway automobile and leave the grounds. Their destination was a pool hall or café located a safe distance from the school.²²⁰ On a typical day, about five of the eight Saints were able to escape from their classes.²²¹

211. William J. Chambliss, *The Saints and the Roughnecks*, SOC'Y, Nov.-Dec. 1973, at 24.

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.* at 24, 28.

217. *Id.* at 24.

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

In contrast, the Roughnecks were unable to avoid school attendance without being discovered and punished. Thus, they attended school with "surprising regularity."²²² The Roughnecks were unlikely to be excused from class by suspicious teachers, and lacking cars, they had no safe haven.²²³

On weekend evenings, the Saints would get drunk and drive around a nearby city at high speeds with their lights out, shouting obscenities at women and running red lights.²²⁴ They would steal wooden barriers and warning lanterns from potholes and wait for innocent motorists to drive into the holes. Later, the Saints would erect the stolen wooden barriers on highway curves where they could not be observed by oncoming traffic and wait for unsuspecting motorists to crash into them.²²⁵ The Saints would also vandalize abandoned houses, breaking windows, destroying furniture and urinating on the walls.²²⁶

The Saints were remarkably adept at avoiding apprehension. On those rare occasions when their delinquency was detected, the Saints were able to avoid punishment by apologizing for their actions and pleading for mercy.²²⁷ They were well-regarded by the community and police, so their misdeeds were treated as youthful pranks and their apologies were viewed as sincere.²²⁸

The Roughnecks, on the other hand, were treated as a delinquent gang. Lacking easy access to cars, they hung out near a local drugstore in plain sight of community members and the police.²²⁹ Any misbehavior such as fighting, lewd remarks, or drunkenness was easily observed by others.²³⁰ Thus, although the Roughnecks drank much less frequently than the Saints,²³¹ the Roughnecks were far more likely to be viewed in a drunken condition.²³²

222. *Id.* at 28.

223. *Id.* at 30.

224. *Id.* at 25.

225. *Id.*

226. *Id.*

227. *Id.* at 26.

228. *Id.* at 26–27.

229. *Id.* at 27, 29.

230. *Id.*

231. *Id.* at 25, 27–28.

232. *Id.* at 27–28.

Even if the Roughnecks were not engaged in any delinquent behavior, their poor clothing and manners marked them as troublemakers.²³³ When questioned by authorities, the Roughnecks were unwilling or unable to feign contrition effectively and would not have been believed if they had.²³⁴

Unlike the Saints, the Roughnecks were frequently harassed by the police, even when they had committed no crimes.²³⁵ The police viewed the Roughnecks as criminals and sought to suppress them even when they had no proof of criminal activity by, for example, "trumping up 'loitering' charges."²³⁶ The Roughnecks regarded the police both as unfair for hassling them without cause and as stupid for not apprehending them when they were truly engaged in illegal activity.²³⁷ Each of the Roughnecks was arrested at least once during the period of the study.²³⁸

The disparity in punishment and reputation of the Saints and the Roughnecks cannot be explained by differences in the wrongfulness of their actions. Indeed, the Saints' behavior seems more reprehensible than that of the Roughnecks. Delinquent behavior of the Roughnecks centered on fighting, drinking, and petty theft.²³⁹ Most of the fighting was among themselves, although on a few occasions they fought against other groups of boys.²⁴⁰ Drinking was constrained by lack of funds for alcohol.²⁴¹ The most serious criminal activities of the Roughnecks were thefts, such as shoplifting or looting school lockers.²⁴²

The main crimes of the Saints were reckless drunken driving, vandalism, and playing "pranks" on strangers.²⁴³ Both the wild driving and the pranks involving the relocation of traffic barriers created significant risks of death or serious injury to others. Moreover, the vandalism and pranks of the Saints were expressly

233. *Id.* at 27, 29–30.

234. *Id.* at 29–30.

235. *Id.* at 28.

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.* at 27–29.

240. *Id.* at 27.

241. *Id.* at 28.

242. *Id.* at 27.

243. *Id.* at 24–26.

designed to cause misery to others, unlike the economically motivated thefts of the Roughnecks.

The Saints and Roughnecks offer a cautionary tale with respect to the reliability of crime statistics generally and gang lists in particular. Municipal arrest statistics would have shown a high offense rate among the lower-class Roughnecks and a zero offense rate among the upper-middle-class Saints. If gang lists had been maintained in the city, only Roughnecks would have been considered for inclusion. Gang suppression efforts would be directed against the ill-clad boys hanging out by the local drugstore rather than against well-dressed youth cruising a nearby city in their automobiles.²⁴⁴

D. Conscious and Unconscious Racial Bias

The case of the Saints and the Roughnecks illustrates how class-based bias can produce discrimination even where race is not a factor. The likelihood of inequitable treatment is much greater if the disadvantaged youth is Black or Latino. Minorities are frequently portrayed as violent by the media.²⁴⁵ This is particularly true for youth gangs where the dominant media image of a gang member is a young Black or Latino male.²⁴⁶ Experimental studies suggest that White viewers exposed to media images of violent Black offenders are more likely to hold negative stereotypes of African Americans and to support punitive crime policies.²⁴⁷

Negative media portrayals combine with other factors, such as historical stereotypes and insufficient interracial social interaction, to create unconscious racial bias.²⁴⁸ Recent psychological studies have

244. The Roughnecks were regarded by the community as a gang and the police targeted them for arrest. *Id.* at 27–28.

245. See JODY DAVID ARMOUR, NEGROPHOBIA AND REASONABLE RACISM 40, 75 (1998) (discussing the portrayal of African Americans in the mass media); Franklin D. Gilliam Jr. et al., *Where You Live and What You Watch: The Impact of Racial Proximity and Local Television News on Attitudes About Race and Crime*, 55 POL. RES. Q. 755, 757–59 (2002).

246. See MALCOLM W. KLEIN, THE AMERICAN STREET GANG 40–43, 106–07 (1995).

247. Gilliam Jr. et al., *supra* note 245, at 755; Mark Peffley et al., *The Intersection of Race and Crime in Television News Stories: An Experimental Study*, 13 POL. COMM. 309–28 (1996).

248. See ARMOUR, *supra* note 245, at 75; John F. Dovidio et al., *Implicit and Explicit Prejudice and Interracial Interaction*, 82 J. PERSONALITY & SOC. PSYCHOL. 62, 66–67 (2002); Russell H. Fazio et al., *Variability in Automatic*

demonstrated the continuing endurance of unconscious anti-Black bias even in individuals who harbor no conscious prejudices.²⁴⁹

Gang stereotypes, together with racial and social class biases, increase the danger that antigang measures adopted by schools will unfairly target minority youth. Consider, for example, the case of Union City, California.

E. Gang Sweeps at a Union City High School

On February 22, 2002, police and school administrators entered the cafeteria (and other areas) at James Logan High School in Union City, California.²⁵⁰ Approximately sixty students, who were primarily Hispanic and Asian, were detained and taken to vacant classrooms.²⁵¹ According to the school principal, the "sweep" was a preemptive move motivated by rumors that a gang fight was going to occur during lunch.²⁵² The school principal further claimed that, three days earlier, police had prevented a fight between two rival gangs at a local park.²⁵³

Detained students reported that during the sweep they were placed into two classrooms, Asian students in one and Latino students into the other.²⁵⁴ Over the next two hours, the students were photographed, searched, and interrogated. Backpacks and purses also were searched.²⁵⁵ Administrators confiscated some of the

Activation as an Unobtrusive Measure of Racial Attitudes: A Bona Fide Pipeline?, 69 J. PERSONALITY & SOC. PSYCHOL. 1013, 1015 (1995); Bernd Wittenbrink et al., *Evidence for Racial Prejudice at the Implicit Level and Its Relationship With Questionnaire Measures*, 72 J. PERSONALITY & SOC. PSYCHOL. 262 (1997).

249. See ARMOUR, *supra* note 245, at 121–26; Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 J. PERSONALITY & SOC. PSYCHOL. 5, 15–16 (1989).

250. Harriet Chiang, *Students Sue School Over Gang Sweep*, S.F. CHRON., Jan. 31, 2003, at A30.

251. *Id.*

252. Putsata Reang, *Some Say Gang Sweep in February Smeared Innocent Students*, SAN JOSE MERCURY NEWS, Oct. 6, 2002, at 1B.

253. Daniel Lavoie, *Parents Confront Logan Principal; Montoya Details Events That Led up to February Gang Sweep*, THE ARGUS (Fremont, CA), Oct. 3, 2002 (Local News).

254. Complaint at 8, *Benitez v. Montoya*, (N.D. Cal. 2003) (No. C03-0392).

255. *Id.* at 8–12; Chiang, *supra* note 250.

students' personal property, such as blue and yellow highlighters and photographs.²⁵⁶

Red was claimed to be the color worn by a Latino gang and blue and green the colors worn by an Asian gang.²⁵⁷ There is not, nor was there at the time of the sweep, a prohibition against wearing any of these colors at James Logan High School.²⁵⁸ Moreover, red was one of the school colors.²⁵⁹ Nevertheless, one female student was suspended during the sweep for having a red bandanna and was ordered not to wear red clothing or even red nail polish; days later she was suspended "for wearing a red shirt."²⁶⁰ Other Latino students involved in the sweep were told not to wear red, and at least one Asian student was told not to wear green.²⁶¹ Other students in the school, however, were allowed to wear red clothing without penalty.²⁶²

The incident and alleged gang affiliation was placed in the permanent school records of at least some students.²⁶³ In addition, the photos of all of the students were placed in the Union City police file as possibly gang-affiliated.²⁶⁴ The only "indication" that these students were gang members was the school's contention that the areas where most of the students were found (two tables in the cafeteria) were reported to be a "gang hangout."²⁶⁵ But some students were seized in other areas, and there was no specific indication that any of the students targeted were involved in gang activity.

After the sweep, the school principal refused to ask police to remove from the gang file students who maintained that they were not gang members. He claimed that he could not tell which ones

256. Complaint at 11, *Benitez* (No. C03-0392).

257. *Id.* at 8.

258. *See id.* at 12.

259. *Id.* at 11; Melissa Hung, *You Picked the Wrong Table, Kid*, EAST BAY EXPRESS (California), Nov. 6, 2002 (News/Cityside).

260. Complaint at 12, *Benitez* (No. C03-0392); Hung, *supra* note 259.

261. *See* Complaint at 8, *Benitez* (No. C03-0392).

262. *Id.* at 12.

263. Daniel Lavoie, *Record Cleared for Some in Logan Gang Sweep; Principal Makes Changes After Hearing Parents' Pleas*, THE DAILY REVIEW (Hayward, CA), Dec. 5, 2002 (Local News).

264. *Id.*

265. *See* Hung, *supra* note 259.

were or were not gang-affiliated.²⁶⁶ Under pressure, the school principal eventually removed references to the incident from some students' files.²⁶⁷ However, he did not do so for all students caught up in the sweep.²⁶⁸ None of the photos have been removed from the police gang database, and the city council explicitly rejected calls to do so.²⁶⁹ The ACLU has filed a class action lawsuit on behalf of three of the students.²⁷⁰

The incident shows how racial discrimination in the determination of who is a gang member can lead to actions which seriously violate student rights. The students were restricted in their clothing choices on the basis of their race and unsupported conjectures of their gang connections. Minority students were labeled as gang members and their names were placed in local law enforcement files without evidence. Moreover, the sweeps may have been counterproductive by undermining students' faith in school authorities.²⁷¹

VIII. CONCLUSION

The scope of the gang problem in the nation's schools has been systematically exaggerated by overestimating the number of gang members and by treating gang membership itself, rather than delinquent behavior or violence flowing from gang membership, as the problem. Characterization of youth as gang members has been plagued by discrimination based on race and social class. Unless care is taken, antigang measures adopted by schools may be applied in a manner that disproportionately and unjustly penalizes minority and poor youth. Thus, antigang programs should be narrowly drawn and directed against gang violence rather than against gang membership. Such targeted programs are likely to be more effective and less discriminatory than a broader "war on gangs."

266. Lavoie, *supra* note 253.

267. Lavoie, *supra* note 263.

268. *Id.*

269. *Id.*

270. See Complaint, *Benitez* (No. C03-0392); Chaing, *supra* note 250.

271. Reang, *supra* note 252 (reporting comment that "[s]tudents don't trust administrators who resort to such extreme measures").