People ex rel. Gallo v. Acuna: Pulling in the Nets on Criminal Street Gangs*

On January 30, 1997, a divided California Supreme Court handed down People ex rel. Gallo v. Acuna,[1] *a landmark opinion that approved the use of civil injunctions to combat street gang activity. This Casenote examines the holdings of* Acuna, *focusing primarily on its holding with respect to which defendants could be bound by the injunction.* Acuna *stated that the injunction was binding on individual defendants without the necessity of proof that each defendant possessed a specific intent to further an unlawful aim embraced by the gang.*[2] *Although the court was clear what qualities defendants need not possess in order to be bound, the court did not set a firm standard for what qualities were actually required. This Casenote concludes that to avoid the threat of guilt by association and to ensure that all defendants under an injunction are justifiably bound, courts should insist upon a showing that each defendant either (1) "actively participates" in a criminal street gang, as this concept has been developed in the Street Terrorism Enforcement and Prevention Act*[3] *and cases interpreting the Act or (2) possesses a specific intent to further an unlawful aim*

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1. 929 P.2d 596 (Cal. 1997), *cert. denied,* Gonzalez v. Gallo, 117 S. Ct. 2513 (1997).

2. *Id.* at 616-18.

3. CAL. PEN. CODE §§ 186.20-196.28 (Deering Supp. 1998). Although the STEP Act itself does not explicitly define "actively participates," case law interpreting the Act does provide such a definition. *See infra* Part V.

embraced by the gang. A showing of either alternative demonstrates that the individual defendant in some way contributes to the public nuisance that it is the injunction's purpose to end. A showing of the former alternative does so by indicating an individual's level of involvement in the gang such that the involvement in itself contributes to the public nuisance.

I. INTRODUCTION

California has a gang problem. In 1993, the California Department of Justice estimated that there could be as many as 180,000 gang members throughout the state.[4] The days when gangs were strictly a phenomenon of major metropolitan areas such as Los Angeles are gone.[5] Amidst the redwood forests of Sonoma County, local sheriff's deputies have estimated that gang membership jumped from 300 in 1991 to 1050 in 1997.[6] Traditionally placid Ventura and Santa Barbara Counties were estimated to have 8000 and 2000 gang members respectively in 1997.[7] As gang membership across the state remains strong, so remains the gangs' involvement in crime.[8] According to the California Legislature, "the State of California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods."[9]

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4. *See* KAREN L. KINNEAR, GANGS: A REFERENCE HANDBOOK 74 (1996) (reporting on the Department of Justice findings). Of the 180,000, the Department of Justice estimated that approximately 95,000 were Hispanic, 65,000 were African American, 15,000 were Asian, and 5,000 were white. *Id.*

5. One expert has estimated that in Los Angeles County alone there were 150,000 gang members in 1992. *See* Malcolm W. Klein, *Framing the Juvenile Justice Problem: The Reality Behind the Problem*, 23 PEPP. L. REV. 860, 861 (1996). Sources indicate that as of April 1997 these numbers had not fallen. *See* Paul Hefner, *Governor Supports Bill to Deter Gang Recruiting*, L.A. DAILY NEWS, Apr. 11, 1997, at N1 (citing estimates of 150,000 gang members in Los Angeles County).

6. *See* Susan Ferriss, *Teen Gangs: The Crazy Life Sweeping Sonoma County "Gangsta" Culture Is Steadily Catching on among Bored Suburban Youths*, S. F. EXAMINER, Mar. 30, 1997, at D1.

7. *See* Scott Hadly, *Santa Barbara Police Join Local Agencies in Gang Crackdown*, L.A. TIMES (Ventura County ed.), Mar. 30, 1997, at B1.

8. For instance, in the City of Los Angeles, gang-related homicides accounted for 34% of total homicides in 1990 and 36% in 1991. *See* IRVING A. SPERGEL, THE YOUTH GANG PROBLEM: A COMMUNITY APPROACH 34 (1995) (describing the upward trend of youth gang violence in several locales, including parts of California). In the City of Los Angeles in 1995, 45% of all homicides were gang-related. *See* G. David Curry & Scott H. Decker, *What's in a Name?: A Gang by Any Other Name Isn't Quite the Same*, 31 VAL. U. L. REV. 501, 501 (1997).

9. CAL. PEN. CODE § 186.21 (Deering Supp. 1998).

California's law enforcement agencies,[10] Legislature, and prosecutorial agencies have responded to the gang problem in a number of ways. The Legislature's most significant response was the 1988 enactment of the Street Terrorism and Prevention (STEP) Act,[11] the goal of which was "to seek the eradication of criminal activities by street gangs."[12] The STEP Act includes a number of provisions to accomplish this goal, including a sentence-enhancement provision for persons convicted of any felony that was committed in association with a criminal street gang.[13] The STEP Act also creates a separate criminal offense for active, participating gang members who willfully assist in any felonious criminal conduct by members of that gang.[14] Courts of appeal have held that each of these two provisions is constitutional.[15]

Prosecutorial agencies have been creative in their response to the gang problem. Some agencies have created special units that concentrate on the prosecution of gang members.[16] Other agencies have cracked down on truancy, prosecuting parents who fail to send their children to

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10. One of the suppressive tactics used by police departments are "sweeps" of suspected gang members. In these sweeps police canvass a neighborhood, questioning anyone they suspect of gang membership. This questioning may turn up outstanding warrants or other causes for an immediate arrest. *See* Susan L. Burrell, *Gang Evidence: Issues for Criminal Defense*, 30 SANTA CLARA L. REV. 739, 742-43 (1990) (describing such sweeps); Klein, *supra* note 5, at 863 (same). Many law enforcement agencies fighting a gang problem have also created special gang units that can serve as expert witnesses in court. *See* Malcolm W. Klein, *What Are Street Gangs When They Get to Court?*, 31 VAL. U. L. REV. 515, 518 (1996). Individuals from these units gain expertise in the behavior of specific gangs whose members are being prosecuted. *See id.*

11. CAL. PEN. CODE §§ 186.20-196.28.

12. *Id.* § 186.21.

13. *Id.* § 186.22(b). Courts have held that unlike subdivision (a) of § 186.22, subdivision (b) punishes a defendant regardless of his knowledge of the gang's prior criminal activity. *See* People v. Gamez, 286 Cal. Rptr. 894, 904 (1991).

14. CAL. PEN. CODE § 186.22(a). The STEP Act further offers a nuisance provision to enjoin a "building or place" used by gang members to commit certain enumerated criminal offenses, *see id.* § 186.22a, creates a separate offense for coercing participation in gang activity, *see id.* § 186.26, and creates a separate offense for anyone who supplies a firearm to a gang member with knowledge that the gang member will use the firearm to commit any of certain enumerated felonies, *see id.* § 186.28.

15. *See* People v. Green, 278 Cal. Rptr. 140, 148-49 (1991) (holding that section 186.22(a) "does not invade the area of protected freedoms and is not unconstitutionally overbroad"); *Gamez*, 286 Cal. Rptr. at 900-05 (affirming the constitutional validity of both subdivisions (a) and (b) of section 186.22).

16. *See* Klein, *supra* note 10, at 518 (describing such gang prosecution units).

school.[17] The most noteworthy, and perhaps effective, method of prosecutorial agencies in the past decade, however, has been the use of the age-old civil injunction.[18] Prosecutors file a complaint with the court, requesting an injunction to abate gang activity in a certain target area, which activity the prosecutors contend constitutes a public nuisance. The injunctions typically enjoin a range of otherwise legal conduct, as well as conduct that is independently proscribed by the Penal Code.[19] Common provisions include prohibitions against possessing various weapons, prohibitions against annoying or harassing residents of the target area, and prohibitions against possessing various instruments that might be used to apply graffiti or break into locked vehicles.[20] Violation of the injunction can result in civil contempt proceedings or criminal misdemeanor charges.[21]

Following the issuance of California's first anti-gang injunction in 1987,[22] the constitutional validity of such injunctions overall,[23] as well as common individual provisions, remained in question for several years. Certain commentators asserted that provisions prohibiting gang members

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17. *See* Burrell, *supra* note 10, at 744 (discussing the Los Angeles District Attorney Office's employment of this tactic).

18. According to the California Supreme Court, an injunction "operates on the person of the defendant by commanding him to do or desist from certain action." Comfort v. Comfort, 112 P.2d 259, 262 (Cal. 1941).

19. *See* People v. Acuna, 929 P.2d 596, 607 (Cal. 1997) (holding that public nuisance injunctions can be valid as to conduct that is not independently proscribed by the Penal Code).

20. All of these prohibitions were present, for instance, in the orders granting preliminary injunction in *People v. Blythe Street Gang*, No. LC020525 (Cal. Super. Ct. L.A. County, Apr. 7, 1993); *People ex rel. City Attorney v. Acuna*, No. 729322 (Cal. Super. Ct. Santa Clara County, Mar. 10, 1993), and *People v. Varrio Posole Locos*, No. N76652 (Cal. Super. Ct. San Diego County, Dec. 11, 1997).

21. *See* People *ex rel.* Gallo v. Acuna, 929 P.2d 596, 607 (Cal. 1997) (validating both of these remedies).

22. *See* People v. Playboy Gangster Crips, No. WEC 118860 (Cal. Super. Ct. L.A. County Dec. 11, 1987) (order granting preliminary injunction).

23. For instance, some authors have suggested that anti-gang injunctions deprive defendants of constitutional procedural protections normally bestowed upon criminal defendants. *See* Mary M. Cheh, *Constitutional Limits on Using Civil Remedies to Achieve Criminal Law Objectives: Understanding and Transcending the Criminal-Civil Law Distinction*, 42 HASTINGS L.J. 1325, 1394-1404 (1991); Christopher S. Yoo, Comment, *The Constitutionality of Enjoining Criminal Street Gangs as Public Nuisances* 89 NW. U. L. REV. 212, 253-66 (1994). At least two courts resisted the swell of anti-gang injunctions issued by courts after 1992 by declining to issue the requested injunctions. Both relied in part on constitutional considerations. *See id.* at 221 (describing orders denying preliminary injunction in People v. "B" Street Boys, No. 735405 (Cal. Super. Ct. Alameda County June 17, 1994) and People *ex rel.* Jones v. Amaya, No. 713223 (Cal. Super. Ct. Orange County Nov. 10, 1993)).

from associating in public view violated freedom of peaceable assembly,[24] provisions prohibiting the wearing of gang clothing and the use of gang hand signs violated the right of freedom of expression.[25] Commentators also assailed other common provisions, such as those prohibiting gang members from annoying or harassing residents, as being vague and overbroad in violation of the right to due process.[26]

The first appellate challenge to anti-gang injunctions came in April 1995, when the Court of Appeal for the Sixth District handed down *People ex rel. Gallo v. Acuna*,[27] an appeal from a preliminary injunc-

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24. *See* Terence R. Boga, Note, *Turf Wars: Street Gangs, Local Governments, and the Battle for Public Space*, 29 HARV. C.R.-C.L. L. REV. 477, 499-502 ("While gang members do not regularly meet for political purposes, the public congregation provision of nuisance abatement injunctions threatens their exercise of the right to peaceable assembly.").

25. *See* Yoo, *supra* note 23, at 239-45; Paul D. Murphy, Comment, *Restricting Gang Clothing in Public Schools: Does a Dress Code Violate a Student's Right of Free Expression?*, 64 S. CAL. L. REV. 1321.

26. *See* Yoo, *supra* note 23, at 251-52; *California Supreme Court to Hear Challenge to San José Anti-Gang Injunction* (visited Feb. 4, 1998) <http://www.aclu.org/news/n102996b.html> (from the American Civil Liberties Union Freedom Network, News & Events newsletter of October 29, 1996).

27. 40 Cal. Rptr. 2d 589 (1995). The order granting preliminary injunction enjoined defendants from:

> (a) Standing, sitting, walking, driving, gathering or appearing anywhere in public view with any other defendant herein, or with any other known "VST" (Varrio Sureño Town or Varrio Sureño Truces) or "VSL" (Varrio Sureño Locos) member;
> (b) Drinking alcoholic beverages in public excepting consumption on lawfully licensed premises, or using drugs;
> (c) Possessing any weapons including but not limited to knives, dirks, daggers, clubs, nunchukas, BB guns, concealed or loaded firearms, and any other illegal weapons as defined in the California Penal Code, and any object capable of serious bodily injury including but not limited to the following: metal pipes or rods, glass bottles, rocks, bricks, chains, tire irons, screwdrivers, hammers, crowbars, bumper jacks, spikes, razor blades[,] razors, sling shots, marbles, ball bearings;
> (d) Engaging in fighting in the public streets, alleys, and/or public and private property;
> (e) Using or possessing marker pens, spray paint cans, nails, razor blades, screwdrivers, or other sharp objects capable of defacing private or public property;
> (f) Spray painting or otherwise applying graffiti on any public or private property, including but not limited to the street, alley, residences, block walls, vehicles, and/or any other real or personal property;
> (g) Trespassing on or encouraging others to trespass on any private property;

tion issued by the Superior Court of Santa Clara County against thirty-eight named individuals of two street gangs operating in the Rocksprings neighborhood of San José. The Sixth District upheld the injunction generally, finding that all of the provisions that enjoined criminal conduct were valid.[28] As for provisions (v) and (w), the two

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(h) Blocking free ingress and egress to the public sidewalks or street, or any driveways leading or appurtenant thereto in "Rocksprings";
(i) Approaching vehicles, engaging in conversation, or otherwise communicating with the occupants of any vehicle or doing anything to obstruct or delay the free flow of vehicular or pedestrian traffic;
(j) Discharging any firearms;
(k) In any manner confronting, intimidating, annoying, harassing, threatening, challenging, provoking, assaulting and/or battering any residents or patrons, or visitors to "Rocksprings", or any other persons who are known to have complained about gang activities, including any persons who have provided information in support of this Complaint and requests for Temporary Restraining Order, Preliminary Injunction and Permanent Injunction;
(l) Causing, encouraging, or participating in the use, possession and/or sale of narcotics;
(m) Owning, possessing or driving a vehicle found to have any contraband, narcotics, or illegal or deadly weapons;
(n) Using or possessing pagers or beepers in any public place;
(o) Possessing channel lock pliers, picks, wire cutters, dent pullers, sling shots, marbles, steel shot, spark plugs, rocks, screwdrivers, "slim jims" and other devices capable of being used to break into locked vehicles;
(p) Demanding entry into another person's residence at any time of the day or night;
(q) Sheltering, concealing or permitting another person to enter into a residence not their own when said person appears to be running, hiding, or otherwise evading a law enforcement officer;
(r) Signal[l]ing to or acting as a lookout for other persons to warn of the approach of police officers and soliciting, encouraging, employing or offering payment to others to do the same;
(s) Climbing any tree, wall, or fence, or passing through any wall or fence by using tunnels or other holes in such structures;
(t) Littering in any public place or place open to public view;
(u) Urinating or defecating in any public place or place open to public view;
(v) Using words, phrases, physical gestures, or symbols commonly known as hand signs or engaging in other forms of communication which describe or refer to the gang known "VST" or "VSL" as described in this Complaint or any of the accompanying pleadings or declarations;
(w) Wearing clothing which bears the name or letters of the gang known as "VST" or "VSL";
(x) Making, causing, or encouraging others to make loud noise of any kind, including but not limited to yelling and loud music at any time of the day or night.
(y) This injunction shall expire one year from today's date or upon the granting or denial of a permanent injunction, whichever shall occur first.

Order Granting Preliminary Injunction, People *ex rel.* City Attorney v. Acuna, No. 729322 (Cal. Super. Ct Santa Clara County Mar. 10, 1993). The text of the order granting preliminary injunction appears in *Acuna*, 40 Cal. Rptr. 2d at 592 n.1.

28. *Id.* at 595.

provisions dealing specifically with speech and with expressive conduct (gang hand signs and clothing), the court held that "[t]he First Amendment strictly forbids such restrictions."[29] The court struck down provisions (a), (e), (i), (k), (m), (n) (o), (q), (r), (s), and (x) as either vague, overbroad, or both.[30] The court modified (c), (k), and (l) to avoid infirmities of vagueness and overbreadth.[31]

Finally, the Sixth District held that of the six named defendants who appealed whether they should be bound by the injunction, one demonstrated an inadequate foundation to impose civil liability upon her.[32] To bind a defendant to an anti-gang injunction, "[t]here must be some personal, individual participation [by the defendant] in the illegal conduct for that conduct to be restrained."[33] The court found that the prosecution had not made such a showing in the case of one of the defendants, Blanca Guzman, against whom the only evidence was that she had dressed Sureño-style, claimed gang membership, and was seen in both Rocksprings and in a rival gang's neighborhood.[34]

The California Supreme Court upheld the Court of Appeal's determination that the gangs' activities in Rocksprings constituted a public nuisance.[35] However, the court reversed the judgment of the Court of Appeal insofar as it invalidated provisions (a) and (k) of the preliminary injunction, the only two provisions that the City of San José chose to appeal.[36] The court also concluded that there was sufficient evidence to bind defendant Blanca Guzman to the injunction's terms.[37]

This Casenote examines the California Supreme Court's review of *Acuna*. Part II of this Casenote gives an overview of the mechanics of an anti-gang injunction, including the statutory provisions that come into play. Part III offers a brief history of the development of anti-gang injunctions in California and offers conflicting arguments about whether these injunctions have successfully curbed gang-related crime and nuisances. Part IV reviews the California Supreme Court's decision in

29. *Id.* at 596.
30. *See id.* at 597-600.
31. *See id.*
32. *See id.* at 600-03.
33. *Id.* at 602.
34. *Id.*
35. *See* People *ex rel.* Gallo v. Acuna, 929 P.2d 596, 614-16 (Cal. 1997).
36. *See id.* at 607-16.
37. *See id.* at 617-18.

Acuna, exploring the implications of the court's various holdings. Part V zeroes in on the court's analysis of who may properly be bound by an anti-gang injunction. In its analysis, the *Acuna* court observed that it was the gangs, acting their membership, that created the public nuisance in Rocksprings.[38] All of the gangs' "members," the court seemed to say, were properly bound by the injunction. In determining who met a satisfactory definition of gang membership for purposes of this injunction, the court simply deferred to the City of San José's checklist approach for documenting gang members. The court did not analyze under what circumstances one's "membership" in a gang necessarily dictates that he is contributing to the public nuisance.[39] This Casenote concludes that the *Acuna* court lost sight of the underlying cause of action—an action to abate a public nuisance. An individual might be bound by an anti-gang injunction under *Acuna*'s apparent standard with no showing that he ever contributed to, or threatened to contribute to, the public nuisance in question.

Part V then recommends a sensible standard for whom an injunction may bind that avoids the perils of guilt by association, yet at the same time keeps law enforcement's hands untied in their battle to eliminate gang-related crimes and nuisances. Under this standard, courts should insist upon a showing that each defendant either (1) "actively participates" in any criminal street gang, as this concept has been developed in the STEP Act[40] and cases interpreting the Act, or (2) possesses a specific intent to further an unlawful aim embraced by the gang. A showing of either alternative demonstrates that the individual defendant in some way contributes to the public nuisance which it is the injunction's purpose to end. The first alternative does so by indicating an individual's level of involvement in the gang such that the involvement strengthens the gang's power and perpetuates the gang's force as a public nuisance.

II. The Mechanics of the Anti-Gang Injunction

Anti-gang injunctions involve a web of provisions from California Civil, Penal, and Civil Procedure Codes. The prosecuting agency typically alleges in the complaint that the gang and its members have occupied and used a certain target area in a manner that constitutes a

38. *Id.* at 618.
39. *See id.*
40. CAL. PEN. CODE §§ 186.20-196.28 (Deering Supp. 1998).

public nuisance under Civil Code sections 3479 and 3480.[41] Section 3479 defines a nuisance as:

> Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay stream, canal, or basin, or any public park, square, street, or highway . . . .[42]

Civil Code sections 3480 and 3481 divide the class of nuisances into public and private. A public nuisance is one which "affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal."[43]

A complaint for injunctive relief may also refer to the California Penal Code's standard for a public nuisance. Section 370 of the Penal Code combines the characteristics of Civil Code sections 3479 and 3480, but, as the California Supreme Court pointed out, adds a "distinctively public quality."[44] It requires that the activity "interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons."[45] In *Acuna*, the California Supreme Court meshed the relevant provisions of the Civil and Penal Codes to arrive at a standard for what constitutes a public nuisance:

> The proscribed act may be anything which *alternatively* is injurious to health *or* is indecent, *or* offensive to the senses; the result[] of the act must interfere with the comfortable enjoyment of life *or* property; and those affected by the act may be an entire neighborhood or a considerable number of persons, and as amplified by Penal Code section 371 the extent of the annoyance or damage on the affected individuals may be unequal.[46]

The interference mentioned under this standard must be "substantial and unreasonable" to qualify as a public nuisance.[47] A prosecutorial agency

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41. *See, e.g.*, Complaint for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction to Abate a Public Nuisance, at 3-4, People v. Varrio Posole Locos, No. N076652 (Cal. Super. Ct. San Diego County Nov. 24, 1997) (No. N076652).
42. CAL. CIV. CODE § 3479 (Deering Supp. 1998).
43. *Id.* § 3480.
44. People *ex rel.* Gallo v. Acuna, 929 P.2d 596, 604 (Cal. 1997).
45. CAL. PEN. CODE § 370 (Deering Supp. 1998).
46. *Acuna*, 929 P.2d at 604 (quoting People *ex rel.* Busch v. Projection Room Theater, 550 P.2d 600, 603 (1976)) (original emphasis from *Busch* omitted in *Acuna*).
47. *Id.* at 604-05.

filing a complaint for injunctive relief should cite to, or at least be mindful of, *Acuna*'s meshing of these provisions.

After setting forth the proper standard for what constitutes a public nuisance, a typical complaint will then paint a portrait of how the gang's activities meet this standard.[48] The points and authorities in support of the injunctive relief may cite to specific instances of conduct that form the nuisance.[49] These instances are provided in the declarations accompanying the complaint, often attested to by law enforcement personnel or residents of the target neighborhood.[50]

The complaint may name the gang as the sole defendant,[51] it may name individual defendants in addition to the gang,[52] or it may name only individual defendants.[53] The prosecuting agency's decision will probably depend on strategy. Naming only the gang seems to offer law enforcement flexibility and may lower the costs of bringing the injunction. Rather than build a case against each gang member the

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48. *See, e.g.*, Complaint for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction to Abate a Public Nuisance, at 4-5, People v. Varrio Posole Locos, No. NO76652 (Cal. Super. Ct. San Diego County Nov. 24, 1997).

49. *See, e.g.*, Points and Authorities in Support of Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction to Abate a Public Nuisance, at 4-5, People v. Varrio Posole Locos, No. NO76652 (Cal. Super. Ct. San Diego County Nov. 24, 1997).

50. In *Acuna*, the City of San José filed 48 declarations in support of its plea for injunctive relief. *See Acuna*, 929 P.2d at 601. It takes a significant amount of time for law enforcement and prosecutorial agencies to acquire and compile all the information that goes into the declarations. In the City of Oceanside's action against the Varrio Posole Locos, the City took a full year to get its evidence together before it came to court. Telephone Interview with Susan Mazza, Special Assistant District Attorney for the County of San Diego (Apr. 29, 1998).

51. *See, e.g.*, Complaint for Preliminary and Permanent Injunction to Abate a Public Nuisance, People v. Blythe Street Gang No. LC020525 (Cal. Super. Ct. Los Angeles County Feb. 22, 1993). *Acuna* specifically ratified a prosecuting agency's option to name only the gang and not individual gang members. *See Acuna*, 929 P.2d at 618. The agency would sue the gang as an unincorporated association, which under the Code of Civil Procedure may sue or be sued. *See* CAL. CIV. PROC. CODE § 369.5 (Deering Supp. 1998). The Corporations Code defines an "unincorporated association" as "any partnership or other unincorporated organization of two or more persons, whether organized for profit or not, but does not include a government or governmental subdivision or agency." CAL. CORP. CODE § 24000 (Deering 1997). The criteria courts apply to determine whether an entity is an unincorporated association are (1) that the group share a common purpose, and (2) that the group function under a common name under circumstances where fairness requires the group be recognized as a legal entity. Barr v. United Methodist Church, 153 Cal. Rptr. 322, 327-28 (1979).

52. *See, e.g.*, Complaint for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction to Abate a Public Nuisance, People v. Varrio Posole Locos, No. N076652 (Cal. Super. Ct. San Diego County Nov. 24, 1997).

53. *See, e.g.*, Complaint for Temporary Restraining Order, Preliminary and Permanent Injunctions to Abate a Public Nuisance, People v. Acuna, No. 729322 (Cal. Super. Ct. Santa Clara County Feb. 26, 1993).

prosecution intends to bind, the prosecution would only have to build a case against the gang as a whole. Notwithstanding these possible advantages, naming only the gang may present problems if a gang member claims that he or she did not have notice of the injunction. Due process requires that in order to hold a person amenable to an injunction, he must have notice of it.[54] If the prosecution names the gang member and serves him with process, the gang member will have a weak notice defense.

Once the prosecution makes a successful showing that the gang's activity constitutes a public nuisance, Civil Code section 3494 authorizes "any public body or officer" to abate the nuisance.[55] Civil Code section 3491 defines the statutory remedies for a public nuisance in California as indictment or information, civil action, or abatement.[56] Drawing upon this authority, courts impose the injunction.

If a defendant violates the injunction, the prosecution has the option of bringing criminal misdemeanor charges under Penal Code section 372. Penal Code section 372 provides that any person who maintains or commits any public nuisance is guilty of a misdemeanor.[57] Each violation is a separate offense. The defendant's violation of the injunction would presumably be strong evidence that he is maintaining or committing a public nuisance for purposes of section 372.

Rather than bring a misdemeanor charge under section 372, the prosecution will more than likely prosecute the defendant for contempt of court. Again, each violation would be a separate offense. Assuming the prosecution decides to bring contempt charges, it then has two options.[58] First, it might bring an action under Code of Civil Procedure section 1209, which provides that "[d]isobedience of any lawful judgment, order, or process of the court" is a contempt of the authority of the court.[59] The prosecution would apply to the court that issued the original injunction for an order to show cause. If after considering the application the court finds reason to believe the defendant violated the injunction, the court would issue the order, ordering the defendant to

54. *See In re* Lennon, 166 U.S. 548, 554 (1897).
55. *See* CAL. CIV. CODE § 3494 (Deering 1984).
56. *See id.* § 3491.
57. *See* CAL. PEN. CODE § 372 (Deering Supp. 1998).
58. *See* People v. Gonzalez, 910 P.2d 1366, 1373 (Cal. 1996) (observing that the contempt of a valid court order may be punished in two ways).
59. *See* CAL. CIV. PROC. CODE § 1209(a)(5) (Deering Supp. 1998).

give the court any legal reason why he should not be found guilty of contempt.[60] Issuing the order has the effect of commencing a separate action in the court.

Defendants sued under Code of Civil Procedure section 1209 are not entitled to a jury trial.[61] If the prosecution carries its burden of proof at the hearing, the defendant will be punished under Code of Civil Procedure section 1218, which states that a contemnor may be punished by a fine of not more than $1,000, or he may be imprisoned in county jail not more than five days, or both.[62] The court may also order the defendant to pay the prosecution its attorneys' fees and costs.[63]

If a defendant violates a valid injunction, the prosecuting agency's other option is to bring contempt charges under Penal Code section 166(a)(4). This provision makes it a misdemeanor to engage in "[w]illful disobedience of any process or order lawfully issued by any court."[64] Persons prosecuted under section 166(a)(4) have a state constitutional and statutory right to a jury trial,[65] which would be tried in municipal court, not the court that issued the original injunction. If the prosecution successfully carries its burden of proof at trial, the contemnor is guilty of a misdemeanor. Under Penal Code section 19, persons guilty of a misdemeanor may be punished by a fine of not more than $1,000, or they may be confined in the county jail not more than six months, or both.[66] The prosecution cannot recover attorneys' fees and costs.

The prosecuting agency's choice of whether to pursue contempt charges under Code of Civil Procedure section 1209 or Penal Code section 166(a)(4) may be influenced by several factors. The advantages to bringing charges under section 1209 are (1) the burden of proof against the defendant is only a preponderance of the evidence, (2) attorneys' fees may be recoverable, and (3) the contemnor possesses no right of appeal—review of the contempt charge is only by extraordinary writ,[67] and (4) civil prosecution of juveniles forces parental involve-

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60. *See Gonzalez*, 910 P.2d at 1373 (describing the effect of an order to show cause).

61. Mitchell v. Superior Court. 783 P.2d 731, 740 (Cal. 1989) ("It has long been established that the Code of Civil Procedure contempt statute triggers neither a state constitutional nor statutory right to a jury trial."); CAL. CIV. PROC. CODE § 1218 (Deering Supp. 1998) ("[T]he court or judge" tries the contempt.).

62. CAL. CIV. PROC. CODE § 1218.

63. *Id.*

64. CAL. PEN. CODE § 166(a)(4) (Deering Supp. 1998).

65. *Mitchell*, 783 P.2d at 740.

66. CAL. PEN. CODE § 19 (Deering Supp. 1998).

67. *See* People v. Gonzalez, 910 P.2d 1366, 1373 (Cal. 1996) (stating that a contemnor under Code of Civil Procedure section 1209 may seek review of the contempt

ment. The prosecution may also opt for section 1209 if it would prefer a bench trial in superior court, most often before the judge who issued the original injunction, rather than a jury trial in municipal court with an unfamiliar judge. Because the California Supreme Court recently rejected the collateral bar rule,[68] a defendant being tried in municipal court under section 166(a)(4) may collaterally challenge the validity of the original injunctive order he is charged with violating. Of course it is likely that most municipal court judges will uphold the order, simply in deference to the superior court judge who issued the order and who might work down the hallway.

One of the distinct advantages to bringing the contempt charge under section 166(a)(4) is the potential to include as part of a defendant's probation terms a Fourth Amendment waiver, as well as a pure stay away order to include the *entire* target neighborhood.[69] The probationary period would last thirty-six months and violation of probation receives no jury trial. Other advantages to bringing the contempt charge under section 166(a)(4) are the longer jail term and speedy trial. The length of the jail term may be an important consideration if the defendant is considered a particular menace.

Rather than seek jail time at all, some prosecutors may pursue more creative punishments. Jule Bishop, an assistant city attorney for the City of Los Angeles, seeks such punishments as community service, completion of a drug and alcohol rehabilitation program, or requiring that the defendant obtain his general equivalency diploma.[70] Ms. Bishop is particularly inclined to offer these alternative punishments for offenders who have never been incarcerated, or who are not the main shot-callers in the gang. She would prefer not having an individual's violation of a "quality of life" crime be a means to introduce him to county jail.[71]

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judgment only by extraordinary writ).

68. *See id.* at 1375-76.

69. If the defendant lives in the target neighborhood, courts will not allow a pure stay away as one of the terms. Courts will also be less inclined to include such a term if the defendant has close family members in the target neighborhood.

70. Telephone Interview with Jule Bishop, Assistant City Attorney for the City of Los Angeles (May 9, 1998).

71. *Id.*

III. ANTI-GANG INJUNCTIONS IN CALIFORNIA: THEIR HISTORY AND SUCCESS

A. History

Before taking on the gangs themselves, law enforcement agencies in California first directed their abatement power against gangs to enjoin gang-related graffiti. During the early 1980s, the City of Los Angeles secured court orders against members of three street gangs, declaring the members' proliferation of graffiti a public nuisance.[72]

The first modern anti-gang injunction, focusing on the entirety of a gang's conduct, was issued by the Los Angeles Superior Court on December 11, 1987, against the Playboy Gangster Crips.[73] The provisions of this order were limited to acts that were already illegal under the Penal Code.[74] No other prosecutorial agency pursued civil abatement remedies thereafter until October 1992, when the City of Burbank was awarded an injunction against eighty-eight alleged members of the Barrio Elmwood Rifa gang.[75] The court's order included what some might consider the most powerful weapon of the anti-gang injunction—a provision limiting the defendants' rights to appear in public with other defendants in the target neighborhood.[76]

The City of Burbank's injunction revived interest in civil abatement as a prosecutorial tool. By October 1996, the Los Angeles County District Attorney's office had obtained anti-gang injunctions in six cities,

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72. *See* Boga, *supra* note 24, at 279-80 (describing these injunctions); Burrell, *supra* note 10, at 743-44 (same).

73. *See* Order Granting Preliminary Injunction, People v. Playboy Gangster Crips, No. WEC 118860 (Cal. Super. Ct. L.A. County Dec. 11, 1987).

74. *See id.*

75. *See* Order Granting Preliminary Injunction, People *ex rel.* Fletcher v. Acosta, No. EC 010205 (Cal. Super. Ct. Los Angeles County Nov. 2, 1992).

76. *See id.* provision (a). Susan Mazza, a special assistant district attorney for the County of San Diego, commented with regard to the City of Oceanside's injunction against the Varrio Posole Locos: "The most important tool we have is the association ban." Gregg Moran, *Fighting Criminal Activity with Civil Law: Use of Injunctions as Policing Tactic on Rise*, SAN DIEGO UNION-TRIBUNE, Dec. 15, 1997, at A1 (quoting Mazza). Residents of the target neighborhoods laud the association ban provision not so much for its crime-reducing effect, but because it prevents gang members from congregating in streets or parks and intimidating pedestrians. The neighborhoods simply have a more peaceful atmosphere. Telephone Interview with Susan Mazza, *supra* note 50.

including Los Angeles.[77] The Santa Clara County District Attorney's office had issued at least two injunctions.[78]

Even as prosecutors' enthusiasm for civil abatement actions mounted, the actions' constitutional validity were being called into increasing doubt.[79] These doubts took on new proportions in July 1995, when the Court of Appeals for the Sixth District decided *People ex rel. Gallo v. Acuna*.[80] Although the court held that injunctions may "properly be used to abate gang-related criminal activity as a public nuisance,"[81] the court eliminated or modified fifteen of the injunction's twenty-four provisions on the grounds that they were overbroad, vague, or an infringement on free speech.[82]

The City Attorney of the City of San José appealed only two of the provisions that the Court of Appeals partially or entirely invalidated—provisions (a) and (k).[83] Provision (a) prohibited defendants from associating in public view with other defendants, and provision (k) essentially prohibited defendants from annoying and harassing the people of Rocksprings.[84] The California Supreme Court, whose opinion is discussed more thoroughly in Part IV of this Casenote, reversed the judgment of the Court of Appeals insofar as it invalidated these two provisions. The court held that provision (a) did not violate First Amendment associational rights, and that neither provision was "overbroad" or "void for vagueness."[85] The Supreme Court also loosened the Court of Appeal's standard for who may properly be bound by the injunction, reversing the Court of Appeal's decision that one of

77. *See* Arleen Jacobius, *Going Gangbusters: Prosecutors Fight Gangs with Injunctions Banning Conduct Such as Using Beepers and Applying Graffiti*, A.B.A. J., Oct. 1996, at 24, 24.

78. *See* Yoo, *supra* note 23, at 219-20.

79. *See generally id.* (calling into question the constitutional validity of several aspects of anti-gang injunctions); Boga, *supra* note 24 (same).

80. 40 Cal. Rptr. 2d 589 (1995).

81. *Id.* at 592.

82. *See id.* at 595-600. The provisions of the injunction are set forth *supra* note 27, and the specific terms that the Sixth District eliminated or modified are listed *supra* notes 29-31 and accompanying text.

83. *See* People v. Acuna, 929 P.2d 596 (Cal. 1997).

84. For the full text of the preliminary injunction, see *supra* note 27.

85. *See Acuna*, 929 P.2d at 608-14.

the defendants was not subject to the injunction's terms.[86] The U.S. Supreme Court denied defendants' petition for certiorari.[87]

The California Supreme Court's decision in *Acuna* was important to prosecuting agencies in two major respects. First, the decision had the effect of depublishing the Sixth District's opinion and stripping its entire precedential value.[88] Second, the tenor of the opinion suggested the Supreme Court's endorsement of equity as a means to combat gang activity. The court spoke strongly of the terror the street gangs perpetuated[89] and on the state's interest in maintaining a civil society.[90] The tenor of the opinion, combined with the court's interpretation of the constitutional issues, boded well for the preservation of anti-gang injunctions in California courts.

The *Acuna* decision touched off a new rush of anti-gang injunctions. By April 1997, state courts had granted nearly a dozen injunctions in ten cities.[91] In July 1997, the City of Los Angeles was awarded an injunction against eighteen alleged members of the Alsace "set" of the 18th Street Gang.[92] The 18th Street Gang, which may be the largest gang in Southern California, is believed to have as many as 20,000 members.[93] Sixty percent of these members are believed to be illegal aliens.[94]

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86. *See id.* at 616-18.

87. Gonzalez v. Gallo, 117 S. Ct. 2513 (1997).

88. According to the California Rules of Court, "[u]nless otherwise ordered by the Supreme Court, no opinion superseded by a grant of review, rehearing, or other action shall be published." CAL. R. CT. 976(d) (1998). After decision, the Supreme Court may order the opinion of the court of appeal published in whole or in part. *Id.*

Because the California Supreme Court has not ordered the Sixth District's opinion in *Acuna* published, the opinion cannot be relied upon by a court. The California Rules of Court provide that any opinion of a court of appeal that is not ordered published "shall not be cited or relied on by a court or a party in any other action or proceeding," except for purposes of res judicata and collateral estoppel. *Id.* 977(a)-(b).

89. *See, e.g., Acuna*, 929 P.2d at 601 ("Rocksprings is an urban war zone.").

90. *See, e.g., id.* at 603 ("Liberty unrestrained is an invitation to anarchy. Freedom and responsibility are joined at the hip.").

91. *See* Arleen Jacobius, *Court Approves Gang Injunctions*, A.B.A. J., Apr. 1997, at 34, 34.

92. *See* Nicole Gaouette, *L.A. to Gang Members: Don't Even Whistle*, CHRISTIAN SCI. MONITOR, Aug. 14, 1997, at A1 (describing the injunction and the 18th Street gang); *Los Angeles Sues Alleged Gang Members* (visited Feb. 4, 1998) <http//www.instanet.com/~vct/LAGANGSUED070497.html> (same).

93. *See* Gaouette, *supra* note 92 (reporting the gang's membership at 20,000); *Los Angeles Sues Alleged Gang Members* (visited Feb. 4, 1998) <http//www.instanet.com/~vct/LAGANGSUED070497.html> (reporting the gang's membership at between 5000 and 20,000).

94. *Los Angeles Sues Alleged Gang Members* (visited Feb. 4, 1998) <http//www.instanet.com/~vct/LAGANGSUED070497.html>.

In another highly publicized case, the City of Oceanside brought the first anti-gang injunction in San Diego County against the Varrio Posole Locos, Oceanside's largest and oldest street gang, as well as twenty-eight individual defendants.[95] The Posole gang is so entrenched in Oceanside's Eastside neighborhood, one detective for the Oceanside Police Department estimated that 75% of residents in the neighborhood have a family member connected to the gang.[96] The preliminary injunction, which San Diego Superior Court Judge John S. Einhorn issued on November 26, 1997, is substantially similar to the injunction in *Acuna*.

Anti-gang injunctions will probably continue to rise across California and may soon be used in other states. A deputy district attorney for the County of San Diego has described the injunction against the Varrio Posole Locos as "a good place to start."[97] Prosecuting agencies in Illinois, Texas, Arkansas, Florida, and Arizona have approached the Los Angeles City Attorney's office for information on anti-gang injunctions.[98] As described below, the success of the injunctions has been and will be an important factor in their proliferation.

B. Success

Prosecuting agencies across the State of California have raved over the effectiveness of anti-gang injunctions. Los Angeles County prosecutors claim that the injunctions in Pasadena and Pico-Union have reduced crime by as much as one-third.[99] Authorities in Burbank, commenting on the injunction in *People ex rel. Fletcher v. Acosta*, reported a total cessation of gang incidents in the target neighborhood only six months after the injunction was issued.[100] San Diego County prosecutors note that in the eighteen months leading up to the superior court's imposition

95. *See* Complaint for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction to Abate a Public Nuisance, People v. Varrio Posole Locos, No. N76652, (Cal. Super. Ct. San Diego County Nov. 24, 1997); Gregg Moran, *Injunction Targets 28 in Gang: Judge's Broad Oceanside Order Is a County First*, SAN DIEGO UNION-TRIBUNE, Nov. 27, 1997, at B14.

96. Declaration of Ruben Sandoval, at 4, People v. Varrio Posole Locos, N76652 (Cal. Super. Ct. San Diego County Nov. 24, 1997).

97. Moran, *supra* note 76 (quoting Deputy District Attorney Terri Perez).

98. Telephone Interview with Jule Bishop, *supra* note 70.

99. *See* Moran, *supra* note 76.

100. *See* Boga, *supra* note 24, at 485.

of the injunction against the Varrio Posole Locos, the gang was believed responsible for ten homicides in the Oceanside area. In the six months since the injunction was imposed, not one homicide has occurred in the Oceanside area in which prosecutors suspect the gang's involvement.[101]

The distinct advantage of civil abatement actions, observers contend, is that such actions stop crime before it happens.[102] They also have the benefit of (1) bringing police and residents together to solve community problems, (2) making unlawful otherwise lawful activity, (3) allowing for group arrests and prosecutions, and (4) creating a list of crimes where police, not victims, will be the only necessary percipient witnesses. The injunctions themselves can be tailored to meet the community's needs, and, as described *supra* Part II, violation of the injunction can be punished civilly or criminally.

The injunctions have had the most success with discrete gangs that occupy a discrete neighborhood.[103] By suing such a gang, word of the injunction spreads immediately among the gang's ranks. When a member is arrested for violating the injunction, news of the arrest similarly hits the streets, creating a chilling effect on other members. Law enforcement and prosecutors do not receive the same chilling effect, however, with large, diffuse gangs whose membership is constantly changing. These gangs do not have the same communication network, so a gang member may never hear of a fellow gang member's arrest. Police officers may also have difficulty remembering the faces of all the members in a large, diffuse gang.

Despite law enforcement's and prosecuting agencies' claims of the success of anti-gang injunctions, and despite the benefits these injunctions seem to offer, not all are convinced of their effectiveness. On May 28, 1993, the American Civil Liberties Union released a report evaluating the effectiveness of Blythe Street Gang injunction.[104] In a cover letter to Los Angeles District Attorney Gil Garcetti and Los Angeles City Attorney James K. Hahn accompanying the report, representatives from the ACLU wrote, "Our report reaches what we believe may be surprising conclusions: Not only did the injunction not lead to a reduction in violent crime and drug trafficking in the Panorama City area as a whole, but crime increased enormously . . . ."[105] The

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101. Telephone Interview with Susan Mazza, *supra* note 50.

102. *See* Jacobius, *supra* note 91, at 34 (referring to statements of Los Angeles District Attorney Gil Garcetti).

103. Telephone Interview with Jule Bishop, *supra* note 70.

104. *See ACLU Report: False Premise/False Promise: The Blythe Street Injunction and Its Aftermath* (visited Feb. 4, 1998) <http://www.aclu-sc.org/blythe.html>.

105. *Id.*

letter continued, "We believe that these conditions were influenced greatly and exacerbated by patterns of crime and drug trafficking that evolved after the Blythe Street injunction."[106]

Los Angeles prosecutors attacked the report as flawed.[107] One assistant city attorney claimed, "The report isn't worth the paper it's printed on."[108] Even if the report supported the conclusions of the ACLU—a question on which this Casenote does not express a view—the injunctions may still have value.

A well-known study conducted in 1969 arrived at what is known as "the broken-window theory."[109] According to this theory, "disorder and crime are usually inextricably linked . . . . [I]f a window in a building is broken *and is left unrepaired*, all the rest of the windows will soon be broken."[110] This theory has application in the context of anti-gang injunctions, because one of the effects of such injunctions is to limit disorderly, although otherwise legal, conduct, such as annoying residents, playing loud music, or using profanity. By limiting disorder, the injunctions in effect limit the number of broken windows that might lead to other, more serious crime.

Studies have also shown that many people, particularly the elderly, fear incivility to the same degree as actual crime:

> When an interviewer asked people in a housing project where the most dangerous spot was, they mentioned a place where young persons gathered to drink and play music, despite the fact that not a single crime had occurred there. In Boston public housing projects, the greatest fear was expressed by

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106. *Id.*
107. *See* Moran, *supra* note 76.
108. Gaouette, *supra* note 92 (quoting Assistant City Attorney Martin Vranicar).
109. *See* James Q. Wilson & George L. Kelling, *Broken Windows*, THE ATLANTIC MONTHLY, Mar. 1982, at 29, 31. As Wilson and Kelling describe, a Stanford psychologist named Philip Zimbardo tested "the broken-window theory":

> [Zimbardo] arranged to have an automobile without license plates parked with its hood up on a street in the Bronx and a comparable automobile on a street in Palo Alto, California. The car in the Bronx was attacked by "vandals" within ten minutes of its "abandonment." The first to arrive were a family —father, mother, and young son —who removed the radiator and battery. Within twenty-four hours, virtually everything of value had been removed. Then random destruction began. . . . The car in Palo Alto sat untouched for more than a week. Then Zimbardo smashed part of it with a sledgehammer. Soon, passersby were joining in. Within a few hours, the car had been turned upside down and utterly destroyed.

110. *Id.* (emphasis in original).

> persons living in the buildings where disorderliness and incivility, not crime, were the greatest.[111]

By limiting disorder, anti-gang injunctions may lower the general fear of residents living in the target neighborhoods, thereby improving their quality of life. This consequence, in and of itself, speaks to the effectiveness of this prosecutorial tool.

IV. THE CALIFORNIA SUPREME COURT'S OPINION IN *PEOPLE V. ACUNA*

The majority opinion in *Acuna* rang with unusual passion. Justice Brown, its author, seemed to enjoy the role of society's champion. Quoting from great Western philosophers and writing in a style that seemed, at times, self-consciously rhythmic, the court validated civil abatement actions as a means to fight street gangs.

The majority opened its opinion by describing the terror the gang known alternatively as Varrio Sureño Town or Varrio Sureño (VST), and the gang known as Varrio Sureño Locos (VSL), spread across the San José neighborhood of Rocksprings. According to the court, "[t]he people of this community are prisoners in their own homes. Violence and the threat of violence are constant. Residents remain indoors, especially at night. They do not allow their children to play outside."[112] The court then transited to a history of the case, summarizing the preliminary injunction itself, how the case proceeded to the Court of Appeal, and the Court of Appeal's decision.[113]

A. The Scope of the Court's Jurisdiction

With this foundation in place, the court began its analysis, considering generally its jurisdiction to enjoin public nuisances. The court's first step along this course was to discuss the origin and nature of actions to enjoin public nuisances.[114] Here, even more than elsewhere, one can observe the opinion's manifesto-like quality. The court wrote, "Often the public interest in tranquillity, security, and protection is invoked only to be blithely dismissed, subordinated to the paramount right of the individual. . . . Liberty unrestrained is an invitation to anarchy. Freedom and responsibility are joined at the hip."[115] The court

111. *Id.* at 32.
112. People *ex rel.* Gallo v. Acuna, 929 P.2d 596, 601-02 (Cal. 1997).
113. *See id.* at 602.
114. *See id.* at 602-05.
115. *Id.* at 602-03.

pronounced that the interests of the community are no less important than the interests of the individual, and it observed that courts have vindicated the rights of the community through public nuisance law since the beginning of the sixteenth century.[116]

Once it had arrived at the current state of public nuisance law, the court drew together relevant sections of the Penal and Civil Codes to set forth a standard for what constitutes a public nuisance. Under this standard, to constitute a public nuisance, the act must be either offensive to the senses, indecent, or injurious to health, and the act must substantially interfere with the comfortable enjoyment of life or property.[117]

Having set forth this standard, the court zeroed in on the scope of its equitable jurisdiction. While American courts once experienced a trend of expanding their jurisdiction towards what some had deemed "government by injunction,"[118] the California Supreme Court brought this expansion to a halt in 1941, when it held that the ultimate legal authority to declare a given act or condition a public nuisance rests with the Legislature.[119] Working, then, under this understanding, the *Acuna* court turned to whether it had the jurisdiction to enjoin an act not independently prohibited by the criminal law. Drawing upon substantial case law, the court held that it did. It stated:

> The Court of Appeal was thus partly accurate in reasoning that "a public nuisance is always a criminal offense," for indeed it is. It is the corollary to that proposition—that the superior court's injunction was valid only to the extent that it enjoined conduct that is independently proscribed by the Penal Code—that is flawed.[120]

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116. *Id.* at 603.
117. *Id.* at 604.
118. *Id.* at 605.
119. *Id.* at 606 (discussing People v. Lim, 118 P.2d 472 (Cal. 1941)).
120. *Id.* at 607 (internal citation omitted). As pointed out by Justice Mosk in his dissent, the majority misread the Court of Appeal's opinion in this regard. *See id.* at 627 n.8 (Mosk, J., dissenting). The Court of Appeal did not conclude that only independently criminal conduct may be enjoined under public nuisance law. If the Court of Appeal had, it certainly would not have taken six pages analyzing whether all 15 of the non-independently-criminal provisions violated the First Amendment, were overbroad, or were void for vagueness. *See* People v. Acuna, 40 Cal. Rptr.2d 589, 595-600 (Ct. App. 1995) (analyzing the constitutionality of these provisions). In fact, the Court of Appeal "merely concluded that the specific noncriminal conduct included within the superior court's order could not be appropriately enjoined under general public nuisance statutes." *See Acuna*, 929 P.2d at 627 n.8 (Mosk, J., dissenting).

Now that the court had established its jurisdiction in equity to enjoin non-criminal conduct, it brought its focus to defendants' constitutional challenges.

B. Defendants' Constitutional Challenges to Provisions (a) and (k)

1. First Amendment

The court first reviewed defendants' First Amendment challenges to paragraph (a) of the preliminary injunction, which enjoined defendants from "[s]tanding, sitting, walking, driving, gathering or appearing anywhere in public view with any other defendant . . . or any other known 'VST' . . . or . . . 'VSL' member."[121] The Court of Appeal had held that this provision violated defendants' First Amendment rights of association.[122] The Supreme Court disagreed, stating that although the Constitution shields from government intrusion a limited right of association, "it does not recognize a generalized right of 'social association.'"[123]

Relying upon U.S. Supreme Court precedent, the *Acuna* court then identified two kinds of associations entitled to First Amendment protections—those with an "intrinsic" or "intimate" value, and those that are "instrumental" to forms of religious and political expression and activity.[124] According to the court, associations with "intrinsic" or "intimate" value have characteristics of "relative smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship."[125] The court held that while gang membership may serve as a source of personal enrichment to some of the defendants, the relationships these defendants maintained did not rise to the level of intimacy required for First Amendment protection.[126]

With regard to the second kind of association that merits First Amendment protection—"instrumental" associations—the court held that "the gang [was] not an association of individuals formed 'for the purpose of engaging in protected speech or religious activities.'"[127] The court

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121. *See id.* at 608-09.
122. *See* People v. Acuna, 40 Cal. Rptr. 2d 589, 595-97 (1995).
123. *Acuna*, 929 P.2d at 608 (quoting Dallas v. Stanglin, 490 U.S. 19, 25 (1989)).
124. *Id.*
125. *Id.*
126. *See id.* at 609.
127. *Id.* at 608 (quoting Board of Dir. of Rotary Int'l v. Rotary Club, 481 U.S. 537, 544 (1987)).

observed that while almost all activity an individual undertakes involves some degree of expression, the gang's associations did not reach the degree of expression sufficient to bring them within the bounds of constitutional protection.[128] Because the court found that the gang members' associations were neither of "intimate" value nor "instrumental" to forms of religious and political expression and activity, the court denied such associations First Amendment protection.

2. *"Overbreadth"*

The court rejected the Court of Appeal's holding that the terms of provision (a) were "overbroad," as that term is understood in the context of First Amendment litigation. The foundation for the "overbreadth" doctrine, the court explained, "is the inhibitory effect a contested statute may exert on the freedom of those who, although possibly subject to its reach, are not before the court."[129] The doctrine is therefore designed to protect third parties who, wanting to avoid the perils of indefinite language, restrict their conduct to that which is unquestionably safe.[130]

The defendants, however, confused the doctrine's purpose and argued that the *terms* of the preliminary injunction suffered from "overbreadth," *as applied to the defendants themselves.*[131] Whether the terms of the preliminary injunction were excessively broad, as applied to the named defendants, was not within the reach of the "overbreadth" doctrine. Instead, as the court noted, this contention would be more appropriately addressed under the constitutional requirement that a superior court decree "burden no more of defendants' speech than necessary to serve the significant governmental interest at stake."[132]

The court resolved the defendants' "overbreadth" challenge with ease. One might wonder if the court would have demonstrated the same ease if, instead of naming individual defendants, the preliminary injunction named only the gang itself, as with the Blythe Street Gang injunc-

128. *See id.* at 609.
129. *Id.* at 610.
130. *See id.*
131. *See id.*
132. *Id.* at 611. The court did address this constitutional requirement later in its opinion, *see id.* at 614-16, as will be discussed *infra* Part IV.D.

tion,[133] or named the gang as well as individual defendants, as with the Varrio Posole Locos injunction.[134] If the gang were one of the defendants, then third parties might restrict their conduct, unsure whether a court would rule them "members" of the particular gang.[135] An example would be a young person who fraternizes with bona fide gang members and who has a gang-affiliated tattoo as an emblem of pride for his neighborhood, and does not know if this fraternization and tattoo qualify him in the court's eyes as bound by the injunction.[136]

3. "Void for Vagueness"

The court next considered whether provisions (a) and (k) of the preliminary injunction were "void for vagueness." According to the court, the underlying concern of the "void-for-vagueness" doctrine is the due process requirement of adequate notice.[137] Everyone is entitled to be informed of what the State commands or forbids.[138] The risk of vague laws, beyond their failure to provide adequate notice, is their "potential for arbitrary and discriminatory enforcement."[139]

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133. *See* Order Granting Preliminary Injunction, People v. Blythe Street Gang, No. LC02025 (Cal. Super. Ct. L.A. County Apr. 7, 1993) (naming the Blythe Street Gang as the sole defendant). Perhaps in part because of these "overbreadth" concerns, the Los Angeles City Attorney's office no longer sues only the gang without naming individual defendants. *See* Telephone Interview with Jule Bishop, *supra* note 70 (remarking on this policy).

134. *See* Order Granting Preliminary Injunction, People v. Varrio Posole Locos, No. N76652 (Cal. Super. Ct. San Diego County Dec. 11, 1997) (naming the Varrio Posole Locos, as well as 28 individual defendants).

135. *See infra* notes 195-98 and accompanying text (discussing the ambiguities of what constitutes gang membership).

136. Consider this real-life example: In February 1998 San Diego County prosecutors brought civil contempt charges against David Englebrecht and Juan Banuelos, both of whom were named individually as defendants in the Varrio Posole Locos injunction. The two men were observed in public together, in violation of the association ban. Also in the men's company was Mark Neenan, documented by the City of Oceanside as a Posole gang member but not named in the injunction. Prosecutors chose not to bring contempt charges against Mr. Neenan. However, they did prosecute Mr. Englebrecht and Mr. Banuellos not only for their association with one another, but also for their association with Mr. Neenan. *See* Application for Order to Show Cause Re Contempt, People v. Varrio Posole Locos No. N76652 (San Diego Super. Ct. San Diego County Feb. 20, 1998); Declaration of Ruben Sandoval in Support of Application for Order to Show Cause Re Contempt, and in Support of Contempt, People v. Varrio Posole Locos, No. N76652 (San Diego Super. Ct. San Diego County Feb. 20, 1998). How is a person in Mr. Neenan's shoes, whom police document as a gang member but who is not named in the injunction, to know whether he should restrict his conduct?

137. *Acuna*, 929 P.2d at 611.

138. *Id.*

139. *Id.* at 612.

The court identified two principles as guides for applying the "void-for-vagueness" doctrine in particular cases.[140] First, context is crucial. Putting otherwise vague language in its proper context may give the language constitutionally sufficient concreteness.[141] Second, no words possess the precision of mathematical symbols. Thus, no more than a "reasonable degree of certainty" of what a law requires or prohibits is necessary in order for the law to pass constitutional muster.[142]

With this framework in place, the court examined provision (a), which prohibited association with "any other known 'VST' . . . or 'VSL' . . . member."[143] The Court of Appeal had found this provision "void for vagueness," arguing that it might apply in a circumstance in which a defendant was engaged in one of the prohibited activities with someone known to the police but not known to the defendant to be a gang member.[144] The Supreme Court rejected this argument and concluded that the element of a gang member's personal knowledge was implied in the provision.[145]

The court then examined provision (k), which enjoined defendants from "confronting, intimidating, annoying, harassing, threatening, challenging, provoking, assaulting and/or battering any residents or patrons, or visitors to 'Rocksprings' . . . known to have complained about gang activities."[146] The Court of Appeal had found this provision impermissibly vague, in part because of the knowledge requirement.[147] Applying the same reasoning that it did with respect to provision (a), the Supreme Court found that a gang member's personal knowledge was implied.[148]

The Court of Appeal had also found that provision (k) failed to sufficiently define the words "confront," "annoy," "provoke," "challenge," and "harass."[149] The Supreme Court disagreed, observing that similar words had previously been upheld against claims of vagueness

140. *See id.* at 612-13.
141. *See id.* at 612.
142. *See id.* at 612-13.
143. *See id.* at 613 (quoting this portion of provision (a)).
144. *See* People v. Acuna, 40 Cal. Rptr. 2d 589, 598 (1995).
145. *See Acuna*, 929 P.2d at 613.
146. *See id.* (quoting this portion of provision (k)).
147. *See Acuna*, 40 Cal. Rptr. 2d at 599.
148. *See Acuna*, 929 P.2d at 613.
149. *See Acuna*, 40 Cal. Rptr. 2d at 599.

by the U.S. Supreme Court.[150] Moreover, interpreting these words in the context of the instant lawsuit left "little doubt as to what kind of conduct the decree seeks to enjoin."[151] The court provided specific examples of that conduct, such as gang members threatening to cut out the tongue of a young girl if the girl's mother talked to the police.[152]

Given the court's expansive ability to place words in "context," the court might have upheld other provisions that the Court of Appeal had struck down, but which were not appealed. For instance, the Court of Appeal struck down provision (r) of the preliminary injunction, which prohibited "[s]ignalling to or acting as a lookout for other persons to warn of the approach of police officers."[153] The Court of Appeal reasoned, "This paragraph fails to define 'signaling.' It also fails to explain how police will distinguish between those activities designed to alert defendants to police presence, and those which might have other, innocent intentions. It thus suffers from vagueness."[154] Putting provision (r) into context, however, there is a "reasonable degree of certainty" (if not plain certainty) of what activity the provision is meant to curtail—lookouts for drug dealing. Whether the signaling takes the form of a whistle, a wave of the hands, or the beam of a flashlight, there is, in the words of the Supreme Court, "little doubt as to what kind of conduct the decree seeks to enjoin."[155]

C. The STEP Act

The court rejected the defendants' contention that the STEP Act[156] is the exclusive means of enjoining criminal street gangs and thus preempts use of the general public nuisance statutes.[157] Although the Act includes a nuisance provision, the provision provides that "[n]othing in this chapter shall preclude any aggrieved person from seeking any other remedy provided by law."[158] According to the court, this

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150. *See Acuna*, 929 P.2d at 613 (referring to Madsen v. Women's Health Center, Inc., 512 U.S. 753, 760 (1994)).
151. *Id.*
152. *See id.* at 613-14.
153. *See Acuna*, 40 Cal. Rptr. 2d at 600.
154. *Id.*
155. *See Acuna*, 929 P.2d at 613.
156. CAL. PEN. CODE §§ 186.20-196.28 (Deering Supp. 1998).
157. *Acuna*, 929 P.2d at 614.
158. CAL. PEN. CODE § 186.22a(d). The STEP Act's nuisance provision is directed to every "building or place" used by gang members as a nuisance. *Id.* § 186.22a(a). The provision has received little interpretation at the appellate level since its enactment in 1988. In Deering's 1998 supplemental pocket part, the provision had only one annotation. *See id.* § 186.22a, Notes of Decision.

language demonstrates that the Act clearly contemplates remedies in addition to the Act to abate criminal gang activities.[159]

D. The Limits of the Preliminary Injunction

1. Substantive Limits

The court next analyzed the scope of the preliminary injunction as a matter of public nuisance and constitutional law. The question of scope, as it pertained to public nuisance law, was whether the activity enjoined under the preliminary injunction reasonably fell within the statutory definition of "public nuisance," as set forth by Civil Code sections 3479 and 3480.[160] The court found that it did, and in support of this finding described the lawless, hooligan-like atmosphere that the defendants perpetuated in Rocksprings.[161]

The question of scope, as it pertained to constitutional law, was whether provisions (a) and (k) of the preliminary injunction complied with the standard announced by the U.S. Supreme Court in *Madsen v. Women's Health Center, Inc.*[162] by "'burden[ing] no more speech than necessary to serve' a significant government interest."[163] The court held that both provisions were in compliance with *Madsen*.

As for provision (a)—the association ban provision—the court reasoned that because it is the collective conduct of gang members that makes them such a threat and because the prohibitions enumerated in provision (a) were not easily divisible, the preliminary injunction's inclusion of all the prohibitions did not go beyond what was required to abate the nuisance.[164] Moreover, the provision's ban on defendants' speech was minimal, as the record demonstrated that the defendants engaged in no expressive activities that were not either "unlawful or inextricably intertwined with unlawful conduct."[165] Finally, as for the aspect of provision (a) that prohibited a gang member from associating

159. *Acuna*, 929 P.2d at 614.
160. *See id.* at 614-15. The language of Civil Code sections 3479 and 3480 is discussed *supra* notes 42-43 and accompanying text.
161. *See Acuna*, 929 P.2d at 614-15.
162. 512 U.S. 753 (1994).
163. *Acuna*, 929 P.2d at 615 (quoting *Madsen*, 512 U.S. at 765).
164. *See id.*
165. *Id.*

with even a single fellow gang member (as opposed to two, three, or more gang members), the court deferred to the trial judge, who was "in a better position" to make such a determination.[166] The court also emphasized that gang members may associate freely out of public view, that provision (a) only constrained defendants' associations inside the target area, and that line-drawing of any nature would involve "irreducible arbitrariness."[167]

The court had an easier time with provision (k), which essentially prohibited gang members from intimidating people that the defendants knew had complained about the gangs' conduct. Because the conduct proscribed by provision (k) consisted of threats of violence and violent acts themselves, such conduct was not worthy of First Amendment protection under U.S. Supreme Court and California Supreme Court precedent.[168]

The court's analysis of the constitutional standard announced by *Madsen* bodes well for future scrutiny of other provisions found in anti-gang injunctions. If the court is willing to defer to the trial judge and also to refrain from line-drawing because of its "irreducible arbitrariness," the *Madsen* standard has little bite.

2. *Those Bound by the Preliminary Injunction*

The final matter for the court to determine was who could properly be bound by the preliminary injunction. The defendants contended that under *NAACP v. Claiborne Hardware Co.*,[169] they could not be bound by the injunction except on proof that each possessed "a specific intent to further an unlawful aim embraced by that group."[170] The court distinguished *NAACP*, however, and refused to apply the "specific intent to further an unlawful aim" standard.[171] In *NAACP*, many of the defendants, who were members of a local chapter of a the NAACP, neither took part in nor ratified the isolated acts of violence by other members that were the basis of the plaintiff's claim for business losses.[172] By contrast, the *Acuna* court observed, the gang-affiliated

166. *Id.* at 616.
167. *Id.*
168. *See id.* The U.S. Supreme Court has held that "[t]he First Amendment does not protect violence." *See id.* (quoting NAACP v. Claiborne Hardware Co., 458 U.S. 886, 916 (1982)).
169. 458 U.S. 886 (1982).
170. *Acuna*, 929 P.2d at 616 (quoting *NAACP*, 458 U.S. at 925-26).
171. *See id.* at 916-17.
172. *NAACP*, 458 U.S. at 924.

youths in the instant matter created and sustained an urban war zone in Rocksprings.[173]

The *Acuna* court did find as controlling precedent the U.S. Supreme Court cases of *Milk Wagon Drivers Union of Chicago, Local 753 v. Meadowmoor Dairies, Inc.*[174] and *Madsen v. Women's Health Center, Inc.*[175] In *Drivers Union*, the trial court issued a preliminary injunction restraining all union conduct, both peaceful and violent, arising out of a labor dispute.[176] Over the union's protest that the decree violated its members' First Amendment rights by enjoining acts of peaceful picketing, the Court upheld the injunction and stated that courts may "enjoin acts of picketing in themselves peaceful when they are enmeshed with contemporaneously violent conduct which is concededly outlawed."[177]

The U.S. Supreme Court in *Madsen* upheld an injunction that prohibited congregating and picketing within thirty-six feet of an abortion clinic.[178] The injunction was directed not only at the anti-abortion organizations themselves, but at allied organizations and "their officers, agents, members, employees and servants."[179]

According to the *Acuna* court, *Drivers Union* and *Madsen* thus stand for the proposition that "in a proper case," an organization and its members are enjoinable without meeting the "specific intent to further an unlawful aim" standard applied in *NAACP*.[180] This was such a proper case, the court held, as the conduct prohibited in provisions (a) and (k) was integral to the public nuisance that afflicted Rocksprings and did not implicate protected First Amendment conduct.[181]

Having determined that this was a proper case to dispense with the "specific intent to further an unlawful aim" standard, the court then set about devising its own standard for who may be bound. As described *infra* Part V, the standard the court arrived upon, as well as the court's reasoning, are difficult to grasp. The court first established that

173. *Acuna*, 929 P.2d at 917.
174. 312 U.S. 287 (1941).
175. 512 U.S. 753 (1994).
176. *Drivers Union*, 312 U.S. at 291.
177. *Id.* at 292.
178. *Madsen*, 512 U.S. at 759.
179. *See id.* at 759 n.1.
180. *Id.*
181. *Id.*

injunctions can run to groups or its individual members.[182] It then stated:

> For present purposes, it is enough to observe that there was sufficient evidence before the superior court to support the conclusions that the gang and its members present in Rocksprings were responsible for the public nuisance, that each of the individual defendants either admitted gang membership or was identified as a gang member, and that each was observed by police officials in the Rocksprings neighborhood.[183]

The court effectively found the City of San José checklist for documenting gang members sufficient to identify who might properly be bound by the injunction.

Under this standard, the court concluded that although three of the defendants who chose to contest entry of the preliminary injunction were not shown to have committed acts comprising specific elements of the public nuisance, such individualized proof was not necessary based on a showing that it was the gang, acting through its individual members, that was responsible for the conditions in Rocksprings.[184] The court accordingly bound all three defendants, even though the only evidence against one of them was that she had dressed Sureño-style, claimed gang membership, and was observed in the Rocksprings neighborhood and in a rival gang's neighborhood.[185] The only evidence against the other two was that each had admitted gang membership on one occasion, and each were suspected of, but never arrested for, a possible drug offense.[186]

V. GUILT BY ASSOCIATION

The *Acuna* court relied upon *Drivers Union* and *Madsen* to hold that, "in a proper case," an organization and its members are enjoinable without the *NAACP* showing that each member possessed "a specific intent to further an unlawful aim embraced by the group."[187] Argu-

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182. *See id.* at 618. The court stated, "Because the City could have named the gangs themselves as defendants and proceeded against them, its decision to name individual gang members instead does not take the case out of the familiar rule that both the organization and the members through which it acts are subject to injunctive relief." *Id.*

183. *Id.*

184. *See id.*

185. *See id.* (binding defendant Blanca Guzman); *see also id.* at 632-33 (Mosk, J., dissenting) (discussing the evidence against defendant Blanca Guzman).

186. *See id.* (binding defendants Miguel Moreno and Rafael Ruiz); *see also id.* at 633 (Mosk, J., dissenting) (discussing the evidence against Miguel Moreno and Rafael Ruiz).

187. *See id.* at 616-17 (quoting NAACP v. Claiborne Hardware Co., 458 U.S. 886, 925-26 (1982)).

ably, the facts of *Drivers Union* and *Madsen* are sufficiently distinguishable that they, like *NAACP*, should have weak precedential force.[188] Even granting the meaning the *Acuna* court attached to *Drivers Union* and *Madsen*, neither case actually proposed an alternative standard to *NAACP*. The *Acuna* court was therefore left to adopt its own standard. The court opened its analysis by making the empty observation that it was the gang, acting through its membership, that created the public nuisance in Rocksprings.[189] For the court, "membership" in the gang, however defined, was enough to bind one to the injunction. To determine membership, the court simply adopted the City of San José's standard for documenting gang members.

To be documented as a gang member in San José, an individual need only be seen in the target area and (1) admit gang membership or (2) be identified as a gang member.[190] A person could be identified as a

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188. *Drivers Union* is distinguishable from *Acuna* because the question of *who* should be bound was not in issue in *Drivers Union*. *See* Milk Wagon Drivers Union of Chicago, Local 753 v. Meadowmoor Dairies, Inc., 312 U.S. 287 (1941). Rather, the question was *what conduct* the trial court could enjoin. *See id.* at 292 ("The question which thus emerges is whether a state can choose to authorize its courts to enjoin acts of picketing in themselves peaceful when they are enmeshed with contemporaneously violent conduct which is concededly outlawed."). Those bound by the injunction were easy to identify—they were card carrying union members. By contrast, identifying who is a "gang member" is fraught with ambiguities. *See infra* notes 192-95 and accompanying text (describing these ambiguities). Therefore, *Drivers Union* appears to have little relevance in making tough decisions about who should be bound by an injunction.

Madsen is also distinguishable from the facts of *Acuna*. Although one of the issues in *Madsen* was who could be bound by the injunction, the focus was different. *See Madsen*, 512 U.S. at 775-76 (1994). The focus was not on whether the named parties may be bound, but on whether parties acting "in concert" with named parties may be bound. *See id.* *Madsen* is also distinguishable because the chore of identifying who should be bound in that case was easy. The injunction reached only those who had protested at the clinic and who had threatened to protest at the clinic, and those who might later act in concert with them. *See id.* at 758-59 & n.1. So, all defendants were either already identifiable by their past commission of the proscribed conduct or their threats to commit the proscribed conduct (the named parties), or they were identifiable upon their actual commission of the proscribed act (the unnamed parties acting in concert with named parties). The potential defendants in *Acuna* were not so easily identifiable. Under *Acuna*'s standard, it is not the commission of the proscribed acts that determines who should be bound, it is membership in the gang. To illustrate: possession of a beeper by a gang member may be enjoined by an anti-gang injunction, but the possessor is subject to the injunction because of his gang membership, not simply because of his possession.

189. *Acuna*, 929 P.2d at 618.

190. *Id.* at 623 n.1 (Mosk, J., dissenting) (providing the criteria of the City of San José).

gang member if he satisfied two or more of the following: (1) wore clothing or tattoos indicating gang affiliation or used gang hand signs; (2) was named by two or more members of a gang as a member; (3) actively participated in a gang crime; (4) was identified by a reliable informant as a gang member; or (5) was observed associating with gang members two or more times.[191] So, for instance, an individual could be identified as a gang member if he was seen with another purported gang member on two or more occasions and if he wore clothing associated with the gang, such as baggy trousers.

The problem with this standard for identifying who may be bound by the injunction is that it loses focus of the underlying cause of action—the public nuisance that the gang, acting through its members, creates. The California Supreme Court has held that an "injunction is not the proper remedy to prevent a person from doing an act which he has never undertaken or threatened to undertake."[192] The California Supreme Court has also held that to hold a defendant responsible for a nuisance, it must be proved that he is responsible for the conditions constituting the nuisance.[193] So, with respect to anti-gang injunctions, only individual defendants who have contributed to the public nuisance or who have threatened to contribute to the public nuisance should be bound by the injunction. This class of persons seems broader than the class of persons swept up under the *NAACP* "specific intent" standard.[194] An individual may contribute to a public nuisance, as determined by a court, even though the prosecution cannot prove that the individual ever had a specific intent to do so.

For instance, suppose the prosecution is able to prove that an individual's non-criminal participation in the gang contributed to the gang's blight on the neighborhood. However, the prosecution cannot *prove* that this individual ever had a specific intent to further an unlawful aim of the gang, because the prosecution does not have evidence of any unlawful acts committed by the individual. If the court looks beyond the specific intent standard, and instead looks at what

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191. *See id.*

192. City and County of San Francisco v. Market St. Ry. Co., 213 P.2d 780, 785 (Cal. 1950) (quoting 14 Cal. Jur. 208 (1945)). Put somewhat differently, the California Supreme Court has also stated, "The complaint . . . discloses . . . not one illegal act on the part of the [defendants]. A court of equity will not restrain any person from doing that which the law authorizes that person to do." Dammann v. Hydraulic Clutch, 187 P. 1069, 1070 (Cal. 1920). If this language is applied to anti-gang injunctions, the result is that if an individual has not contributed to the public nuisance and is only doing that which the law authorizes him to do, his conduct may not be enjoined.

193. Neuber v. Royal Realty Co., 195 P.2d 501, 519 (Cal. 1948), *overruled on other grounds by* Porter v. Montgomery Ward & Co., 313 P.2d 854, 856-57 (Cal. 1957).

194. *See Acuna*, 929 P.2d at 616-17 (discussing the *NAACP* standard).

activities and behavior in fact constitutes the public nuisance, this individual should be bound by the injunction.

The *Acuna* court failed to make a connection between how an individual satisfying San José's criteria for gang membership necessarily contributes to the public nuisance it was the injunction's purpose to prevent. For instance, why, at face value, does a person who once admitted gang membership necessarily contribute to the public nuisance? The court's failure to make this connection was a grave oversight. As Justice Chin in his part-dissent explained:

> Whether a court can enjoin individuals based on group membership depends on the nature of the group and the implications of membership under the circumstances. In the case of some groups, membership evidences a common purpose. . . . But the Sureño street gangs at issue in this case have fluid membership, no organizational structure, and no express purpose except perhaps to compete with members of rival Norteño gangs.[195]

The gist of Justice Chin's observations is that an individual's "membership" in a street gang is not a guarantee that the individual contributes to the public nuisance perpetuated generally by fellow gang members. Justice Chin's observations ring especially true when a city identifies membership in a gang under liberal criteria, as did the City of San José.

Social scientists support Justice Chin's theory on the loose implications of "gang membership."[196] One commentator has noted:

> Even if there is agreement on exactly what a gang is, the concept of "membership" is elusive. By all definitions, gangs are loosely structured; they don't issue membership cards or hold weekly meetings. Law enforcement officials admit that there are many different levels of gang membership. Thus, to simply identify a person as a "gang member" conveys little about that person's true level of involvement or activity.[197]

This commentator added that many members join gangs not for criminal motivations, but for recognition, protection, and brotherhood.[198]

Considering the range of involvement one can have in a criminal street gang, it is evident that borrowing the City of San José's standard for

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195. *Id.* at 621 (Chin, J., dissenting in part and concurring in part).

196. *See, e.g.*, GEORGE W. KNOX, AN INTRODUCTION TO GANGS 20 (1991) (nothing that gangs have varying membership expectations); SPERGEL, *supra* note 8, at 83-85 (identifying "types" of gang members); Klein, *supra* note 10, at 520 (labeling a defendant's gang status, at bottom "a judgment call").

197. *See* Burrell, *supra* note 10, at 750 (footnotes omitted).

198. *Id.*

documenting gang members and using it in the context of anti-gang injunctions for determining who should be bound is deficient in two respects. First, the standard does not define gang membership by criteria that are necessarily significant to determining who contributes to the public nuisance. Second, the standard does not require current participation in the gang's activities.[199] Depending on the City of San José's internal policies for undocumenting former gang members, it may have been years since a documented gang member contributed to the public nuisance.

In applying such a liberal standard for who may be bound by an anti-gang injunction, perhaps the court was not appreciating the implications of such a standard on individual defendants, both from a personal and from a constitutional perspective. From a personal perspective, the effect of being bound may be immense. Unlike the union members in *Drivers Union*[200] who were prohibited from picketing, and unlike the anti-abortion demonstrators in *Madsen*[201] who were given noise and buffer restrictions, the defendants of an anti-gang injunction are typically prohibited from engaging in a range of otherwise legal conduct (at least in open view in the target area) that is inseparable from one's quality of life. A defendant may find himself unable to fix his garage door because he cannot possess a screwdriver, unable to hold a job as a deliveryman because he cannot possess a beeper, and unable to play in the local softball tournament because he cannot possess a baseball bat. The preliminary injunction against the Varrio Posole Locos in San Diego County named a father and his son as individual defen-

199. The City of San Jose's standard is much like the City of Oceanside's in this respect. Once an individual has been documented as a gang member in the City of Oceanside, the individual must remain inactive in the gang for five years to become undocumented. Testimony of Detective Ruben Sandoval, Hearing for Order to Show Cause Re Contempt, People v. Varrio Posole Locos, N76652 (San Diego Super. Ct. San Diego County Apr. 17, 1998). Any field contact where the individual is observed in a gang setting, which includes association with other gang members, restarts the "documentation point." *Id.* An individual's incarceration in county jail or prison tolls the five-year period. *Id.* Clearly a person can retain his status as a documented gang member for years after he has stopped contributing to the public nuisance afflicting the target neighborhood.

200. 312 U.S. 287 (1940).

201. 512 U.S. 753 (1994).

dants.[202] Presumably the association ban provision applies equally to the two of them, as it would to all other defendants.

From a constitutional perspective, the *Acuna* standard may deprive particular individual defendants of fundamental liberty interests. The California Supreme Court has stated, "Personal liberty is a fundamental interest, second only to life itself, as an interest protected under both the California and United States Constitutions."[203] The court continued, "It is beyond dispute that a principal ingredient of personal liberty is 'freedom from bodily restraint.'"[204] Freedom from bodily restraint means more than the right to go where one chooses, but also includes being free to use all one's faculties, to live where one wants, and to earn a livelihood by any lawful calling.[205] A law interfering with this liberty "can be upheld only under the police power, and . . . the police power can be rightfully exercised only when the statute in question is for the protection of the public safety, the public health, or the public morals."[206] If binding a particular defendant does not contribute to public safety, perhaps that defendant's constitutional liberty interests are being infringed.

The *Acuna* standard is therefore pragmatically and constitutionally deficient in drawing a connection between who may be bound and the public nuisance sought to be cured. As proposed earlier,[207] this connection can be maintained if the injunction binds only those individual defendants who have contributed to the public nuisance or who have threatened to contribute to the public nuisance. Certainly those who meet the *NAACP* "specific intent to further an unlawful aim" standard[208] contribute to the public nuisance. Whether one's member-

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202. *See* Order Granting Preliminary Injunction, People v. Varrio Posole Locos, No. N76652 (Cal. Super Ct. San Diego County Dec. 11, 1997) (naming Richard Jaime and Richard Jaime, Jr. as defendants). A reporter who attended the TRO hearing described this exchange: "As the hearing came to a close, prisoner Richard Jaime asked the judge if the TRO meant that he could not associate with his son, also in chains. If nonplussed, [Judge] Einhorn didn't show it. 'Duly noted,' he deadpanned." Logan Jenkins, *Ganging upon Bad Eggs Good for All?*, SAN DIEGO UNION-TRIBUNE, Nov. 28, 1997, at B1.

203. *In re* Roger S., 569 P.2d 1286, 1289 (Cal. 1977) (quoting People v. Olivas, 551 P.2d 375, 384 (Cal. 1976)).

204. *Id.* (quoting Meyer v. Nebraska, 262 U.S. 390, 399 (1923)).

205. *See Ex parte* Drexel, 82 P. 429, 430 (Cal. 1905).

206. *Id.*

207. *See supra* notes 188-89 and accompanying text.

208. NAACP v. Claiborne Hardware Co., 458 U.S. 886, 925-26 (1982) (setting forth this standard).

ship in a gang, in and of itself, can contribute to the public nuisance requires an examination of the effects of gang membership.

Law enforcement officials have remarked that it is the combination of gang members that makes street gangs so dangerous.[209] An individual acting alone does not wield the same power as he would with the organizational support of a gang.[210] Indeed, the California Legislature, in its enacting the STEP Act, stated, "It is the intent of the Legislature . . . to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and *upon the organized nature of street gangs*, which together, are the chief source of terror created by street gangs."[211]

If gangs draw power from their numbers, then at some point a person's mere participation in a gang contributes to the harm and public nuisance the gang creates. According to one assistant city attorney for the City of Los Angeles, "If a guy is out on the corner exhibiting himself as a gang member, with tattoos or clothing or whatever, that's enough to tighten a gang's stronghold on a neighborhood. Really, that's enough. It reminds everyone around who's in charge."[212]

Of course, "gang members" vary in their degree of commitment. Only gang members who attain a certain level of visibility and involvement in the gang would have any realistic effect on the gang's negative impact on a community. If gang membership can be sufficient to bind someone to an injunction, a court must have some standard that interprets a gang member's level of involvement.

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209. Speaking about the Varrio Posole Locos, Susan Mazza, an special assistant district attorney for San Diego County, stated, "People in the neighborhood say that when many of these boys are alone, they're OK. It's the group activity we're trying to break up." *See* Moran, *supra* note 76 (quoting Mazza). Ruben Sandoval, who has qualified as a gang expert in municipal and superior courts throughout Southern California, attested in his declaration in support of the City of Oceanside's complaint against the Varrio Posole Locos that "gatherings of Posole gang members are . . . dangerous and must be disrupted. My experience indicates that when Posole gang members loiter or are in groupings, they are armed and plotting criminal activities. These gatherings need to be dispersed to prevent further acts of crime." Declaration of Ruben Sandoval, at 2, People v. Varrio Posole Locos, No. N76652 (Cal. Super. Ct. San Diego County Nov. 19, 1997).

210. The declaration of Officer Michael Niehoff, which the *Acuna* court quoted in its First Amendment analysis, is informative on the power that gang membership confers on an individual. Niehoff attested, "[T]he gang entity provides protection to the individual members, allowing them to establish areas where they can conduct their illegal activities. The protective shield of the gang has allowed individual members to commit such crimes as narcotics trafficking that result in personal gain." People v. Acuna, 929 P.2d 596, 615 (Cal. 1997).

211. CAL. PEN. CODE § 186.21 (Deering Supp. 1998) (emphasis added).

212. Telephone Interview with Jule Bishop, *supra* note 70.

Many jurisdictions have a checklist of criteria, as did the City of San José, for documenting gang members.[213] San José's standard was quite liberal, and many jurisdictions require more to identify one as a gang member. For instance, in the City of Oceanside, a person is not identified as a gang member simply because of a self-admission—the individual must also meet one of the City's other five criteria.[214] This more stringent checklist still does not ensure that all those meeting it necessarily contribute to the public nuisance. While Oceanside's checklist may require more evidence of mere "membership," it still lacks any indicia of the level of an individual's current involvement in the gang.

Checklists that require criminal or disorderly conduct, such as those found under South Dakota,[215] North Dakota,[216] and Florida[217] stat-

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213. According to one survey of representatives from 254 organizations and agencies dealing with gang problems, the most frequent elements used to define a gang member were symbols or symbolic behavior, self-admission, identification by others, and association with gang members. *See* SPERGEL, *supra* note 8, at 24 (summarizing this survey).

214. The Oceanside Police Department applies the following criteria for identifying an individual as a member of a criminal street gang: (1) admissions or claims of gang membership; (2) arrested while participating with other gang members; (3) wears clothing, or has tattoos or other insignia that is associated with a particular gang; (4) close association with other gang members confirmed through contacts; and (5) reliable information puts subject with gang. In order to be documented as a gang member, an individual must meet two of the five criteria. *See* Declaration of Colin McCaughey, at 5, People v. Varrio Posole Locos, No. N76652 (Cal. Super. Ct. San Diego County Nov. 18, 1997).

215. Under South Dakota's Riot and Unlawful Assembly Act, a "street gang member" is a person who engages in a "pattern of street gang activity" and meets two or more of a list of criteria similar to that of San José's. *See* S.D. CODIFIED LAWS § 22-10-14(2) (Michie 1997). A "pattern of street gang activity" is defined as "the commission, attempted commission or solicitation by any member or members of a street gang of two or more felony or violent misdemeanor offenses on separate occasions within a three-year period for the purpose of furthering gang activity." *Id.* § 22-10-14(3).

216. Under North Dakota's anti-gang statutes, to "[p]articipate in a criminal street gang" means "to act in concert with a criminal street gang with intent to commit or with the intent that any other person associated with the criminal street gang will commit one or more predicate gang crimes." N.D. CENT. CODE § 12.1-06.2-01(4) (Supp. 1997).

217. Under Florida's Street Terrorism Enforcement and Prevention Act, as originally enacted, a "criminal street gang member" is a person "who engages in a pattern of criminal street gang activity and meets two or more of" a list of criteria similar to that of San José's. *See* FLA. STAT. ANN. § 874.03 (West Supp. 1994). A 1996 amendment to subsection 874.03(2) changed this wording to read "who is a member of a criminal street gang as defined in subsection (1) and who meets two or more or more of [the

utes, may shed light on an individual's level of involvement in the gang, but may be underinclusive for purposes of anti-gang injunctions. Legitimate gang members who contribute to the public nuisance perpetuated by the gang may exist, but they would not meet the definition of "gang member" under their state statutes because they had never been caught participating in the requisite criminal or disorderly conduct. As is evident, any kind of checklist approach to identifying who should be bound by an anti-gang injunction has flaws. What a court needs is a flexible standard that still somehow identifies a level of commitment to a gang that indicates contribution to the public nuisance.

Such a standard is available under California's STEP Act[218] and cases interpreting the Act. Although the STEP Act does not technically define "gang membership," and although it does not criminalize mere gang membership, the Act does identify a level of commitment to a street gang that was viewed as legislatively significant. The Act provides that "[a]ny person *who actively participates in any criminal street gang* with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by . . . ."[219] The key language is "actively participates." Courts of appeal have held that to qualify as an active participant under this statute, "a defendant must have a relationship with a criminal street gang which is (1) more than nominal, passive, inactive or purely technical and (2) the person must devote all, or a substantial part of his time and efforts to the criminal street gang."[220]

Two recent courts of appeal cases have further developed this standard. In *People v. Castenada*,[221] defendant Castenada appealed his conviction for participation in a criminal street gang in violation of Penal Code section 186.22(a). Castenada argued that the evidence was insufficient as a matter of law to establish he actively participated in the gang.[222] To prove Castenada was an active participant, prosecutors offered evidence that (1) at the time of Castenada's arrest for violation of section 186.22(a), he was also arrested for and later convicted of two robberies that were for the benefit of the gang, (2) police had observed him in the fourteen months before his arrest in the company of other

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same criteria]." *See* FLA. STAT. ANN. § 874.03(2) (West Supp. 1997).

218. *See* CAL. PEN. CODE §§ 186.20-196.28 (Deering Supp. 1998).

219. *See id.* § 186.22(a) (emphasis added).

220. People v. Gamez, 286 Cal. Rptr. 894, 902 (1991); People v. Green, 278 Cal. Rptr. 140, 146 (1991); People v. Rodriguez, 26 Cal. Rptr. 2d 660, 664 n.2 (1993).

221. 73 Cal. Rptr. 2d 200 (1998).

222. *Id.* at 201.

gang members on at least four occasions, and (3) in the fourteen months before Castenada's arrest, he admitted on three occasions that he "kicked back" with the gang, which according to the prosecutor's gang expert were admissions of gang membership.[223]

The Court of Appeal for the Fourth District affirmed Castenada's conviction under this evidence. The court rejected Castenada's argument that "active participation" requires a leadership role.[224] On the question whether Castenada devoted "all or a substantial portion of his time" to the gang, the court rejected his argument that such a determination cannot be made without quantifying the amount of time he spent with the gang. A "substantial" amount of time, according to the court, does not mean any particular amount or percentage. Instead, "substantial" means "true or real; not imaginary."[225]

Another recent case that helps flesh out the "active participation" standard is *People v. Robles*.[226] In *Robles*, defendant Robles was charged with felony carrying a loaded gun on his person while an active gang member, in violation of Penal Code section 12031, subdivisions (a)(1) and (a)(2)(C).[227] Robles successfully moved to reduce the charge to misdemeanor carrying a loaded gun on his person in violation of section 12031 subdivisions (a)(1) and (a)(2)(f) on the ground that the evidence was insufficient to establish that he was an active gang member.[228] Section 12031 explicitly borrows Penal Code section 186.22(a)'s standard for "active participant," making active participation in a gang the difference between committing a felony and a misdemeanor.[229]

To prove Robles was an active participant in La Mirada Locos, a criminal street gang, prosecutors offered evidence that (1) Robles admitted he was "jumped in" as a member of the gang, and (2) Robles admitted he "hung around" with members of the gang.[230] The prosecution offered no evidence that Robles engaged in gang activities with

223. *Id.*
224. *Id.* at 202.
225. *Id.* at 202-03 (quoting THE AMERICAN HERITAGE DICTIONARY 1791 (3d. ed. 1996)).
226. 71 Cal. Rptr. 2d 877 (1998).
227. *Id.* at 878.
228. *Id.*
229. *Id.* at 879.
230. *Id.*

members of La Mirada Locos. In fact, evidence showed that defendant went "back and forth" between La Mirada Locos and an entirely different gang.[231]

The Court of Appeal for the Second District affirmed the trial court, holding that the evidence was insufficient as a matter of law that Robles was an active participant in La Mirada Locos.[232] Although the court found in favor of Robles, it noted in dictum that active participation *does not* require "willful promotion, furtherance or assistance in felonious criminal conduct by gang members with knowledge that gang members engage in or have engaged in a pattern of criminal gang activity."[233]

The "actively participates" standard has advantages. First, it has already survived "vagueness" challenges at the appellate level.[234] Second, it offers flexibility. Courts can look beyond the checklist approach of local cities and instead apply a "totality of the circumstances" analysis. Third, the "actively participates" standard has already been interpreted at the appellate level, providing trial courts with some benchmark for its application. Fourth, the standard has already been applied in certain crimes outside the STEP Act, such as it has with Penal Code section 12031. Fifth, the standard includes a temporal requirement, as the participation must be current. Finally, and most importantly, the "actively participates" standard speaks to a person's level of commitment to a gang that indicates the person's participation contributes to the public nuisance at hand.

In naming individual defendants to an anti-gang injunction, many prosecuting agencies already require more evidence against each defendant than is necessary simply to document the defendant as a gang member. For instance, the City Attorney's office for the City of Los Angeles has a policy that it will not name a defendant in his individual capacity unless the City has documented three gang-related contacts in the previous eighteen months.[235] The District Attorney's office for San Diego County claimed that it provided evidence against the individual defendants "above and beyond" what was required simply to document them as gang members.[236] For prosecuting agencies such as these, satisfying the "actively participates" standard will require little, if any, adjustment.

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231. *Id.*
232. *Id.* at 882.
233. *Id.* at 881.
234. *See* People v. Green, 278 Cal. Rptr. 140, 146 (1991) ("[W]e see little likelihood that the phrase will permit arbitrary law enforcement or provide inadequate notice to potential offenders."); People v. Gamez, 286 Cal. Rptr. 894, 902 (1991).
235. Telephone Interview with Jule Bishop, *supra* note 70.
236. Telephone Interview with Susan Mazza, *supra* note 50.

Drawing all this together, to avoid the threat of guilt by association and to ensure that all defendants under an anti-gang injunction are justifiably bound, courts should insist upon a showing that each defendant either (1) "actively participates" in a criminal street gang, as this concept has been developed in the STEP Act[237] and cases interpreting the Act, or (2) possesses a specific intent to further an unlawful aim embraced by the gang. A showing of either alternative demonstrates that the individual defendant in some way contributes to the public nuisance which it is the injunction's purpose to end.

VI. CONCLUSION

One commentator has observed that the 1980s were the FBI's finest hour. After years spent infiltrating the Italian Mafia and gathering intelligence, the FBI "pulled in the nets" and crippled the Mafia's power.[238] The end of this century could be the finest hour for California's law enforcement agencies. Civil abatement actions have the capability to unlock street gangs' strongholds on urban neighborhoods across the state.[239] By keeping gang members from combining, by taking away the tools and means by which they conduct their criminal activities, and by putting them in jail, injunctions may do for California what legislation, special prosecuting units, and gang sweeps could not.

The California Supreme Court in *People ex rel. Gallo v. Acuna*[240] ensured that anti-gang injunctions will have longevity in California, absent any disruption from the nation's highest court. Although *Acuna* addressed only two provisions of the injunction in question, the tenor of the opinion and its narrow interpretations of the "vagueness" doctrine and the *"Madsen" test*[241] test bode well for constitutional scrutiny of other common provisions.

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237. CAL. PEN. CODE §§ 186.20-196.28 (Deering Supp. 1998).

238. *See* WILLIAM KLEINKNECHT, THE NEW ETHNIC MOBS 17 (1996).

239. Recent statistics from the Orange County District Attorney's Office are encouraging. The D.A. tallied 39 gang-related homicides across the county in 1997, down from 42 in 1996 and 70 in 1995. The number of gang members logged in the county's data base dropped for the first time in a decade, down from 24,191 in 1996 to 18,768 in 1997. *See* Jeff Collins, *Crime by Gangs on Decline, DA Says*, THE ORANGE COUNTY REGISTER, Feb. 11, 1998, at A1.

240. 929 P.2d 596 (Cal. 1997).

241. *See supra* Part IV (discussing the court's interpretations of the "vagueness" doctrine and the *Madsen* test).

In all the frenzy of anti-gang injunctions, one should not overlook the impact such injunctions have on the constitutional liberties of those whom they bind. The *Acuna* court may have done just that, employing a standard that is not rooted in precedent or practical experience. Trial courts entertaining anti-gang injunctions in the future should insist upon a showing the each named defendant either contributed to or threatened to contribute to the public nuisance at hand. The prosecution could demonstrate that a defendant contributed to the public nuisance if it (1) offers evidence of specific instances in which the defendant had contributed to the nuisance, or if it (2) offers evidence that the defendant had realized a level of involvement in the gang such that the involvement strengthened the gang's power and perpetuated its force as a public nuisance.

EDSON MCCLELLAN

APPENDIX A
PEOPLE V. VARRIO POSOLE LOCOS, No. 76652
(CAL. SUPER. CT. SAN DIEGO COUNTY FILED NOV. 24, 1997)
INFORMATION IN SUPPORT OF PLAINTIFF'S REQUEST FOR A PRELIMINARY INJUNCTION*

Defendant	Tattoos or Other Physical Expressions of Gang Membership	Admissions of Gang Membership	Arrests in the Presence of Other Gang Members	Occasions Observed in the Presence of Other Gang Members	Other Indicia of Gang Membership	Most Recently Reported Evidence of Gang Membership (excluding tattoos)
Sergio Arroyia	1 tattoo 1 time with belt buckle	12 times	2 times (including a homicide)		Observed 3 times throwing gang signs	8/8/97
Manuel Avila	3 tattoos	7 times	2 times			5/10/97
Ignacio Banuelos	4 tattoos	5 times		2 times (on one occasion was drinking beer with another gang member)	Observed loitering in front of a gang hangout	4/25/97
Juan Banuelos	3 tattoos	8 times	1 time (probation violation)		Present at the scene of a shooting between Posole and a rival gang	9/28/96
David Englebrecht	1 tattoo	2 times				8/8/97
Eric Michael Flores	4 times with belt buckle	4 times				8/9/97

* This information does not include sealed declarations regarding defendants' juvenile criminal activity or sealed declarations attested to by residents of the target neighborhood.

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APPENDIX A CONT'D

Defendant	Tattoos or Other Physical Expressions of Gang Membership	Admissions of Gang Membership	Arrests in the Presence of Other Gang Members	Occasions Observed in the Presence of Other Gang Members	Other Indicia of Gang Membership	Most Recently Reported Evidence of Gang Membership (excluding tattoos)
José Gallardo	4 tattoos 1 time wearing gang t-shirt	6 times	2 times	3 times		4/23/97
Juan Gamino		2 times	1 time	1 time		2/14/97
Roman Garcia	2 tattoos 1 time gang insignia on shoe	5 times			1 time observed throwing hand signs Victim of a gang-related shooting	8/8/97
Richard Jaime	3 tattoos	2 times	4 times		Arrested for assault with a deadly weapon	11/97
Richard Jaime, Jr.	1 tattoo	4 times			1 time observed throwing gang signs	8/8/97
Juan Luevanos	1 tattoo	10 times				2/28/97

APPENDIX A CONT'D

Defendant	Tattoos or Other Physical Expression of Gang Membership	Admissions of Gang Membership	Arrests in the Presence of Other Gang Members	Occasions Observed in the Presence of Other Gang Members	Other Indicia of Gang Membership	Most Recently Reported Evidence of Gang Membership (excluding tattoos)
Manuel Manriquez	2 tattoos 1 time with belt buckle	7 times		"numerous occasions"		8/8/97
Danny Massett	1 tattoo 1 time with belt buckle	5 times				5/4/97
Juan Carlos Medina	More than 5 tattoos 3 times with belt buckle	5 times		At least 15 times	Present at the scene of a murder of a Posole gang member Present at the scene of a shooting between Posole and rival gang	Observed in the presence of other gang members in 1997
Roberto Medina	2 tattoos	3 times	1 time		Contacted with three other Posole members after a fight with a rival gang	8/9/97

A3

APPENDIX A CONT'D

Defendant	Tattoos or Other Physical Expression of Gang Membership	Admissions of Gang Membership	Arrests in the Presence of Other Gang Members	Occasions Observed in the Presence of Other Gang Members	Other Indicia of Gang Membership	Most Recently Reported Evidence of Gang Membership (excluding tattoos)
Thomas Medina	1 tattoo	7 times				8/18/97
Armondo Morales	3 tattoos	12 times		2 times (Beer cans around Morales and other gang members on one occasion. Smoking pot on other occasion.)		8/9/97
Jessee Moreno	3 tattoos			3 times		3/12/97
Alex Robles	4 tattoos	3 times			Contacted with another gang member throwing gangs signs, loitering, and blocking traffic	1/8/97
Julio Rodriguez	4 tattoos	4 times				1/8/97
Abel Salgado	2 tattoos	2 times	3 times (including a homicide)	2 times	Present at a party during a homicide	11/13/97

APPENDIX A CONT'D

Defendant	Tattoos or Other Physical Expression of Gang Membership	Admissions of Gang Membership	Arrests in the Presence of Other Gang Members	Occasions Observed in the Presence of Other Gang Members	Other Indicia of Gang Membership	Most Recently Reported Evidence of Gang Membership (excluding tattoos)
Miguel Sandoval	3 tattoos		1 time		Arrested for assault with a deadly weapon and brandishing a firearm in a threatening manner Arrested for engraving gang insignia on the wall of the Oceanside Police Dept. Jail	11/22/95
Octavio Serna	2 tattoos	4 times	2 times (drinking beer with other gang members on one of the occasions. Apparently drinking beer with gang members on the other.		Present at the scene of a shooting between Posole and a rival gang	1/17/97

APPENDIX A CONT'D

Defendant	Tattos or Other Physical Expressions of Gang Membership	Admissions of Gang Membership	Arrests in the Presence of Other Gang Members	Occasions Observed in the Presence of Other Gang Members	Other Indicia of Gang Membership	Most Recently Reported Evidence of Gang Membership (excluding tattoos)
Mario Soto	4 tattoos	6 times	2 times	1 time	Present at the scene of a shooting between Posole and a rival gang	10/11/96
Javier Trujillo	1 time with belt buckle	1 time		3 times		11/30/95
Pedro Valverde	6 tattoos	5 times	2 times (including a drunk driving arrest)	2 times		10/18/96
Paul Wallis	7 tattoos	5 times		4 times		5/16/97