DEMONIZING YOUTH

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

Why can't they be like we were?
Perfect in every way!
What's the matter with kids today?[1]

I. INTRODUCTION

Youth in general, and young minority males in particular, often are demonized by legislators, the media, scholars, and the public at large. These attacks reinforce stereotypes and place a particularly heavy burden on young Black and Latino males.[2] Negative images of youth also may inhibit the adoption of the most effective programs to reduce crime, especially in disadvantaged inner-city neighborhoods.[3]

Viewing young minority males as the enemy fosters illegal police conduct like that exhibited by the Rampart CRASH unit. Indeed, the name itself, *Community Response to Street Hoodlums*, evokes images of incorrigible offenders for whom rehabilitation programs are fruitless.[4] Conceptualizing the crime-control mission in military terms—"War on Drugs" and "War on Gangs"—can

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1. Charles Strouse & Lee Adams, *Kids*, *on* BYE BYE BIRDIE (Columbia Records 1960).

2. Other minority groups and females may also be affected. *See* Davan Maharaj, *Rights Suits Involving Police Photos Settled*, L.A. TIMES, Dec. 12, 1995, at A1 (reporting settlement of lawsuit brought by Asian female teenagers who were detained and photographed as suspected gang members by Garden Grove police).

3. *See* Tom Hayden, Commentary, *We Need Peacemakers Like Alex Sanchez Gangs: Respected Leader of Homies Unidos Could Help Steer Youths in the Right Direction*, L.A. TIMES, Jan. 11, 2000, at B11.

4. *See id.*

encourage an "ends justifies the means" attitude.[5] The resulting police conduct can vary from the oft-reported false testifying of officers regarding the circumstances surrounding a stop or search,[6] to the more extreme case of shooting and then framing an innocent man.[7] This same attitude can lead prosecutors and judges to accept questionable police testimony.[8] In addition, it can lead voters to pass draconian anti-crime measures directed against young offenders, such as Proposition 21 ("Prop. 21").

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5. *See, e.g.*, George J. Bryjak, Opinion, *The Militarization of Police Forces*, SAN DIEGO UNION TRIB., Sept. 3, 2000, at G3 (stating that some Rampart CRASH officers viewed themselves more as soldiers out to destroy the enemy than peace officers); Sharon Dolovich, Commentary, *Invasion of Swat Team Leaves Trauma and Death*, L.A. TIMES, Sept. 22, 2000, at B9 (noting troubling trend of using paramilitary units to execute drug warrants in the war on drugs); Tom Hayden, *LAPD: Law and Disorder*, NATION, Apr. 10, 2000, at 6 (decrying paramilitary tactics police have used against inner-city youths under the rubric of a war on gangs and drugs); Hayden, *supra* note 3, at B11 (stating that the "any means are justified" nature of the LAPD's war on gangs is at the heart of the Rampart scandal); *see also* Erwin Chemerinsky, *An Independent Analysis of the Los Angeles Police Department's Board of Inquiry Report on the Rampart Scandal* 34 LOY. L.A. L. REV. 545, 564 (2001) (noting mentality in LAPD that all efforts, including perjury and planting evidence, were justified to remove gangs from the street).

6. *See* Ted Rohrlich, *Scandal Shows Why Innocent Plead Guilty*, L.A. TIMES, Dec. 31, 1999, at A1 (describing belief of some police administrators and legal commentators that police frequently lie to justify an unlawful search for drugs or weapons).

7. *See id.* (describing case of Javier Ovando, who was shot and framed by police for allegedly assaulting them with a machine gun that they had planted on him). Though innocent, Ovando served three years of a twenty-three year sentence before being released in the wake of the Rampart scandal. *See id.*; *see also* Chemerinsky, *supra* note 5, at 549 (noting the Ovando case as an example of the innocent people who were convicted as a result of Rampart officers fabricating evidence against them).

8. *See* ALAN DERSHOWITZ, THE BEST DEFENSE xxi-xxii (1982) (describing the unwritten "rules" of the criminal justice game that allow and encourage police to lie about constitutional violations); Chemerinsky, *supra* note 5, at 628 (noting the prevailing perception emerging from the Rampart scandal that many judges, and especially those who formerly were prosecutors, automatically believe that police officers are testifying truthfully); *see also id.* at 624-31 (advocating placing statutory or ethical duty on judges to report police perjury as necessary to combat false testimony and other misconduct).

II. PROPOSITION 21

Although titled the "Gang Violence and Juvenile Crime Prevention Act of 1998," Prop. 21 was approved by the voters in an initiative referendum on March 7, 2000.[9] Prop. 21 provided several "get tough" measures for participants in gang-related activities.[10] It also transferred from judges to prosecutors the power to decide whether offenders as young as fourteen would be tried as adults or as juveniles for certain serious crimes.[11] An analysis of Prop. 21 is beyond the scope of this Article.[12] It is revealing, however, to examine its "Finding and Declarations."[13] These include:

- "While overall crime is declining, juvenile crime has become a larger and more ominous threat."[14]
- "[F]rom 1983 to 1992 . . . murders committed by juveniles more than doubled."[15]
- "Criminal street gangs have become more violent, bolder, and better organized in recent years."[16]
- "Vigorous enforcement and the adoption of more meaningful criminal sanctions, including [Three Strikes] has resulted in a substantial and consistent four year decline

9. *See* Proposition 21, § 1, *in* CALIFORNIA BALLOT PAMPHLET, GENERAL ELECTION 119 (Mar. 7, 2000) [hereinafter 2000 CALIFORNIA BALLOT PAMPHLET].

10. *See, e.g., id.* §§ 3-4, 6, 11, at 119, 121-22 (codified at CAL. PENAL CODE §§ 182.5, 186.22, 186.26, 190.2 (West Supp. 2001)).

11. *See id.* § 26, at 126-29 (codified at CAL. WELF. & INST. CODE § 707 (West Supp. 2001)); *see also* Demian Bulwa, *Boy, 15, May be 1st Tried as Adult in State; Case Fuels Debate Over Drastic Changes to Juvenile System From Proposition 21*, S.F. EXAMINER, Oct. 5, 2000, at A4 (noting that Proposition 21 gave prosecutors the power to file directly in adult court certain cases against juveniles ages fourteen to seventeen).

12. For a brief summary of some of the most troubling provisions of Proposition 21, see Patricia M. Schnegg, *A Vote of No Confidence in Proposition 21*, L.A. LAW., Mar. 2000, at 11 (describing the serious concerns of the Los Angeles County Bar with various provisions of the proposed law).

13. *See* Proposition 21, § 2, *in* 2000 CALIFORNIA BALLOT PAMPHLET, *supra* note 9, at 119.

14. *Id.* § 2(a).

15. *Id.*

16. *Id.* § 2(b).

in overall crime. Violent juvenile crime has proven most resistant to this positive trend."[17]

- "Gang-related crimes pose a unique threat to the public because of gang members' organization and solidarity."[18]
- "Dramatic changes are needed in the way we treat juvenile criminals, criminal street gangs, and the confidentiality of the juvenile records of violent offenders if we are to avoid the predicted, unprecedented surge in juvenile and gang violence."[19]

In short, the backers of Prop. 21 argue that tougher penalties for youth crime are needed because violent crime by youths, and especially by youths in gangs, is increasing now and will likely increase even more rapidly in the near future. Prop. 21's "finding" of a "predicted, unprecedented surge in juvenile and gang violence" is based on two factual assumptions:

1. The number of juveniles in the "crime-prone ages between 12 and 17" is going to increase significantly in the near future.[20]
2. These youths will be much more dangerous than those of prior generations.[21]

It is far from clear, however, that the ages 12 to 17 are the "crime-prone ages" or that the coming youth cohort is more dangerous than prior cohorts.

III. YOUTH AND CRIME

Are serious violent crimes most likely to be committed by individuals between the ages of 12 and 17? Consider Figure 1, which shows the number of homicide arrests[22] by age in the United States in 1997.[23]

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17. *Id.* § 2(c).
18. *Id.* § 2(h).
19. *Id.* § 2(k).
20. *Id.* § 2(d).
21. *See id.*
22. Homicide arrests, as used in this Article, include arrests for murder and nonnegligent manslaughter.
23. *See* BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE,

Figure 1: Homicide Arrests by Age, 1997

Homicide arrest rates are highest from age 17 to 21 with the peaks occurring at ages 18 and 19. Homicides by youths under the age of 16 are relatively rare. A similar pattern occurs for violent crime generally, as shown in Figure 2.[24] Arrest statistics, moreover,

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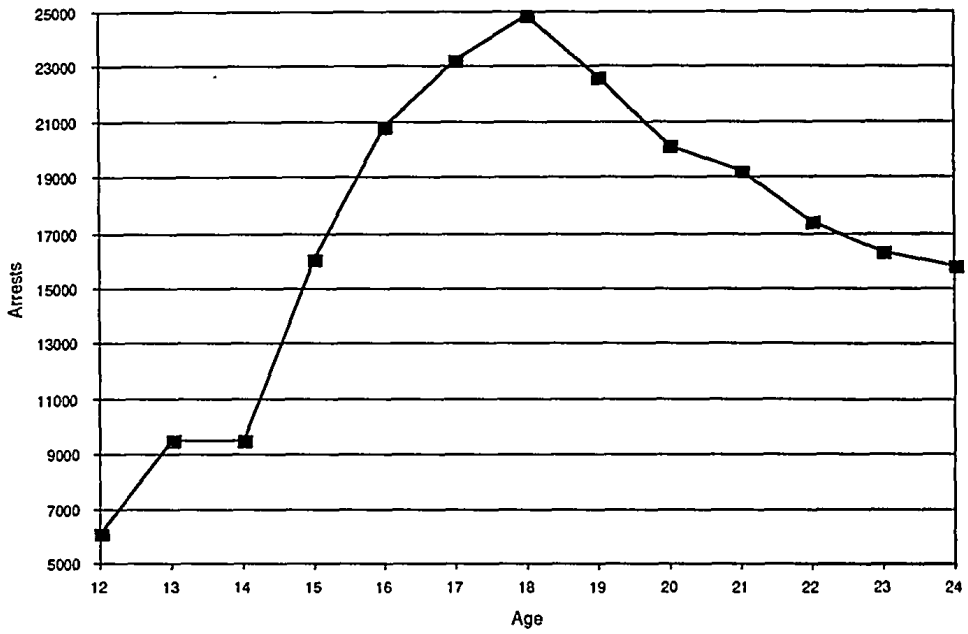
SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 338-39 tbl.4.7 (1998) [hereinafter SOURCEBOOK]. The *Sourcebook* reports data by individual ages for 15-24, but combines ages 10-12 and ages 13-14. Thus, the data point for age 12 in Figure 1 and Figure 2, *infra*, indicates all homicides committed by offenders ages 10-12. The data points for ages 13 and 14 each show one-half the total homicides committed by offenders ages 13-14. This overstates the offense rate for age 13 and understates the rate for age 14.

California statistics are reported in broad age groups rather than individual ages. Nevertheless, it is clear that the offense rate does not peak in the 12-17 age group. In 1998, for example, offenders under the age of 18 accounted for 308 homicide arrests, as compared to 375 arrests for offenders ages 18-19 and 869 arrests for offenders ages 20-29. *See* DIV. OF CRIMINAL JUSTICE INFO. SERVS., CAL. DEP'T OF JUSTICE, CRIME AND DELINQUENCY IN CALIFORNIA 131 tbl.32 (1998) [hereinafter CRIME & DELINQUENCY]. *Crime & Delinquency* is published annually and contains detailed statistical information about crime in California. Except where otherwise indicated, data on California crime in this Article is taken directly from *Crime & Delinquency* for the relevant years or is calculated by the authors using data contained in *Crime & Delinquency*.

24. *See* SOURCEBOOK, *supra* note 23, at 338-39. Violent crimes are: mur-

overstate the extent of youth crime because teenagers tend to commit crimes in groups.[25]

Figure 2: Violent Crime Arrests by Age, 1997



Arrests for violent crimes peak slightly earlier than arrests for homicide, largely due to arrests of youths for aggravated assault. Violent crime arrests are highest from age 17 to 19 with the peak occurring at age 18.

Contrary to the claims of Prop. 21, the most crime prone ages are 17 to 21, not ages 12 to 17. Nevertheless, it is true that 17-year-old youths and, to a lesser extent, 16-year-old youths do commit crimes at a fairly high rate, similar to that of individuals in their early 20s. But the backers of Prop. 21 mislead the public when they lump the crime rates for 16 and 17-year-olds together with the much lower crime rates for 12 to 14-year-olds.

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der and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault. Violent crime statistics are dominated by aggravated assault because there are far more arrests for this offense than for all other violent crimes combined. *See id.*

25. *See* Howard N. SNYDER, U.S. DEP'T OF JUSTICE, JUVENILE ARRESTS 2 (1998) (noting that it is relatively common for many juvenile arrests to result from one crime since youths are more likely to commit crimes in groups).

IV. THE PREDICTED TIDE OF SUPER-PREDATORS

Perhaps more frightening than the projected growth in the number of young teenagers is the prediction that these teenagers will be much more likely to commit serious violent crime than teenagers in the past. The most prominent advocate of this claim is John J. DiIulio, Jr.[26] As youth crime rose in the late 1980s and early 1990s, DiIulio's warning of the emergence of a new, more dangerous type of youthful offender was widely reported in the popular press.[27] DiIulio continued to sound the alarm even as violent youth crime was beginning to decline in the mid-1990s.

DiIulio coined the lurid phrase "super-predators" to describe this new breed of juvenile offenders.[28] The image evoked was one of individuals devoid of humanity: "[A] few years ago, I forswore research inside juvenile lock-ups. The buzz of impulsive violence, the vacant stares and smiles, and the remorseless eyes were at once too frightening and too depressing (my God, these are children!) for me to pretend to 'study' them."[29]

These super-predators lack the normal human desires for affection, companionship, and respect. And unlike other humans, they are impervious to punishment:

> On the horizon, therefore, are tens of thousands of severely morally impoverished juvenile super-predators. . . . They fear neither the stigma of arrest nor the pain of imprisonment. . . . In prison or out, the things that super-predators get by their criminal behavior—sex, drugs, money—are their own immediate rewards. Nothing else matters to them.[30]

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26. *See* John J. DiIulio, Jr., *The Coming of the Super-Predators*, WKLY. STANDARD, Nov. 27, 1995, at 23.

27. *See, e.g.*, Peter Annin, *'Superpredators' Arrive*, NEWSWEEK, Jan. 22, 1996, at 57; David Gergen, Editorial, *Taming Teenage Wolf Packs*, U.S. NEWS & WORLD REP., Mar. 25, 1996, at 68; Richard Zoglin, *Now For the Bad News: A Teenage Time Bomb*, TIME, Jan. 15, 1996, at 52.

28. *See* DiIulio, *supra* note 26, at 23.

29. *Id.*

30. *Id.*

The warnings of DiIulio and others[31] formed the intellectual underpinning of the hyper-punitive approach to crime control that led to legislation like Prop. 21 and "Three Strikes" in California.[32] At the national level, DiIulio's terminology was embraced by U.S. Representative Bill McCollum when he introduced a crime bill, the "Violent Youth Predator Act of 1996,"[33] which would have required adult prosecution of children as young as thirteen for certain offenses.

V. YOUTH CRIME TRENDS

A coming flood of remorseless young plunderers, killers, and rapists who cannot be deterred or rehabilitated certainly is frightening. But how real is the threat?

Figure 3 shows that homicide arrests in California for offenders under 20 years of age more than doubled between 1986 and 1991.[34] Youth homicide arrests then were cut almost in half between 1991 and 1998.[35]

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31. *See, e.g.*, COUNCIL ON CRIME IN AM., THE STATE OF VIOLENT CRIME IN AMERICA (1996) (warning of dramatically increased rates of violent juvenile crime that could spiral out of control by the year 2000).

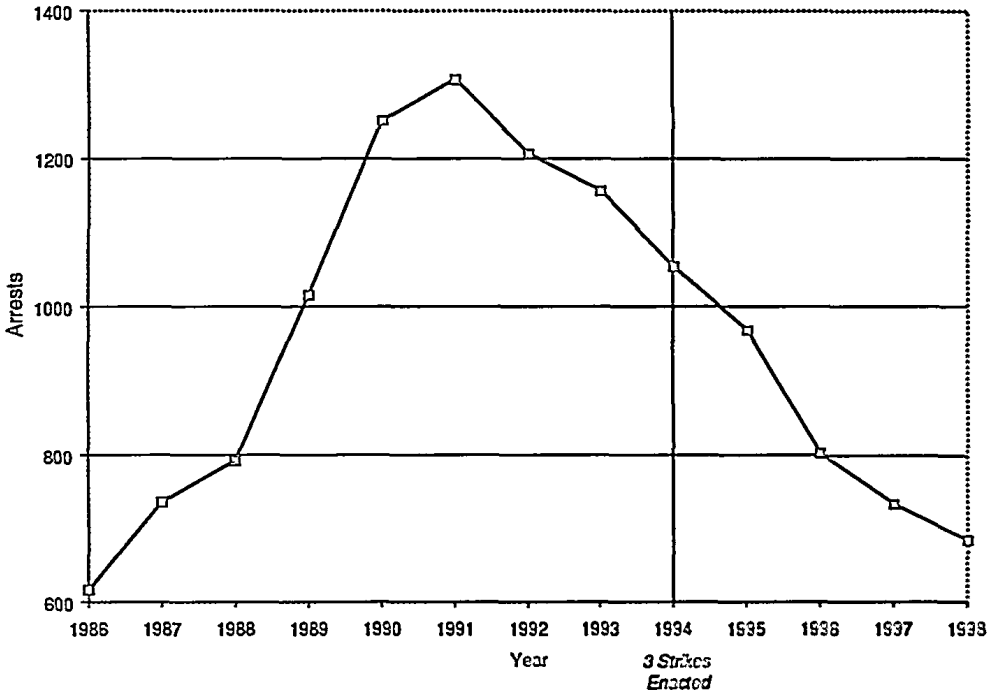
32. *See* CAL. PENAL CODE § 667(2)(A) (West Supp. 1999).

33. H.R. 3565, 104th Cong. § 1 (1996). This title proved controversial. Democrats characterized the term "predator" as dehumanizing hype and demanded the title of the bill be changed. McCollum subsequently titled the bill the "Juvenile Crime Control Act." *See* John J. DiIulio, Jr., *How to Deal With the Youth Crime Wave*, WKLY. STANDARD, Sept. 16, 1996, at 30 (castigating Democrats for forcing the name change); Richard Lacayo, *Teen Crime: Congress Wants to Crack Down on Juvenile Offenders. But is Throwing Teens into Adult Courts—and Adult Prisons—the Best Way?*, TIME, July 21, 1997, at 26 (describing the politics of juvenile crime legislation); *see also* H.R. REP. NO. 105-86 (1997) (juvenile crime bill introduced by McCollum in 1997, entitled "Juvenile Crime Control Act of 1997"). McCollum was not the only politician who embraced DiIulio's imagery. *See* Patrick J. McDonnell, *Highly Touted Theory on Age, Crime Disputed*, L.A. TIMES, June 7, 1997, at B1 (reporting Bob Dole's use of this image during his 1996 presidential campaign); Franklin Zimring, *Crying Wolf Over Teen Demon*, L.A. TIMES, Aug. 19, 1996, at B5 (noting same and the increasing political importance of DiIulio's language and sense of alarm).

34. Six hundred eighteen homicide arrests occurred in 1986, and 1307 in 1991. *See* CRIME & DELINQUENCY, *supra* note 23.

35. Six hundred eighty-three homicide arrests took place in 1998. *See id.*

Figure 3: California Homicide Arrests of Offenders Under Age 20



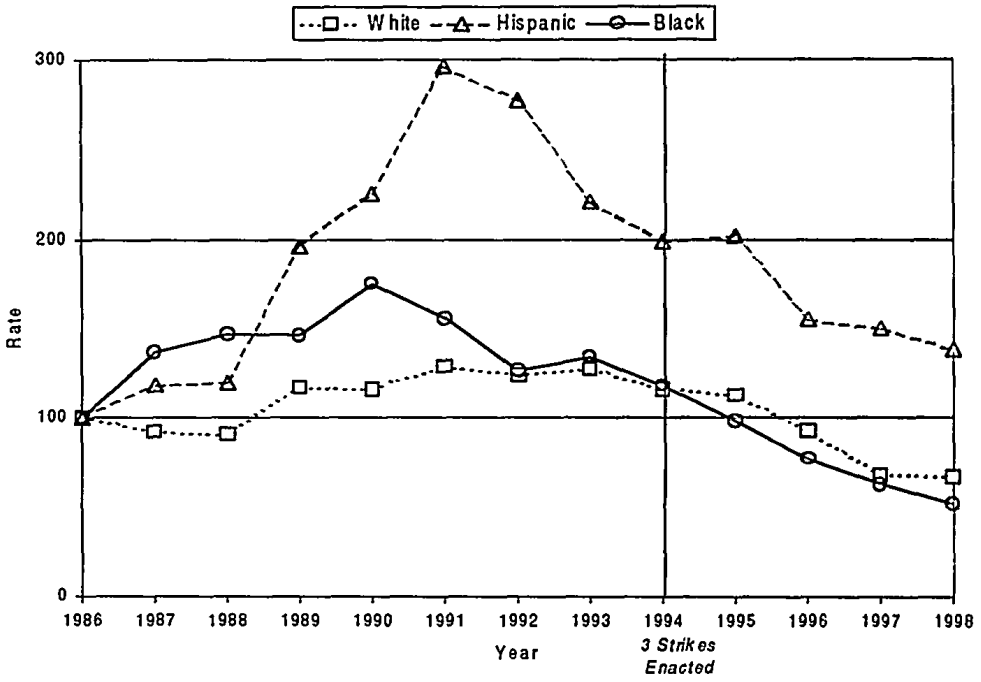
The homicide rate rose and then fell for all youth, but the roller coaster pattern was more pronounced for minorities. Figure 4 shows the relative changes in the youth homicide arrest rate by ethnic group, setting the 1986 rate for each group equal to 100.[36] For young Whites, the homicide rate rose by 29% from 1986 to 1991 and then dropped by 48% from 1991 to 1998. For young Blacks, the homicide rate peaked in 1990 at a rate 75% above the 1986 level and then dropped by 70% from 1990 to 1998. The rate changes were even more dramatic for young Hispanics. The Hispanic youth homicide rate increased by 196% from 1986 to 1991 and then dropped by 53% from 1991 to 1998. Note that the drop in the homicide rate for each group began several years before the passage of the California Three Strikes law in 1994.[37] The drop in the California youth homicide

36. *See id.*

37. For detailed critiques of the claim that Three Strikes deserves credit for the drop in crime in California, see FRANKLIN E. ZIMRING ET AL., CRIME & PUNISHMENT IN CALIFORNIA: THE IMPACT OF THREE STRIKES AND YOU'RE

rate is not unique. Across the nation, offense rates for homicide and for serious crime generally have dropped for youth offenders.[38] In light of these trends, it is hard to justify predictions that the nation stands on the brink of a youth crime explosion.

Figure 4: California Homicide Arrest Rates of Offenders Under Age 20 by Race (1986=100)



VI. PUBLIC PERCEPTIONS OF CRIME AND THE GANG THREAT

Table 1 shows that a majority of the population continued to believe that the crime problem was getting worse years after crime

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OUT 65-84 (1999), and Linda S. Beres & Thomas D. Griffith, *Did "Three Strikes" Cause the Recent Drop in California Crime? An Analysis of the California Attorney General's Report*, 32 LOY. L.A. L. REV. 101 (1998).

38. *See* SNYDER, *supra* note 25, at 1 (stating that juvenile arrests for violent crime declined each year from 1995-98 and that juvenile arrests for murder declined each year from 1994-98); Press Release, United States Department of Justice, Federal Bureau of Investigation, Crime in the United States, 1999 (Oct. 15, 2000) (on file with author) (stating that arrests of youths for violent crimes decreased by eight percent in 1999).

rates began to drop.[39] In 1992, when crime rates were still rising in many areas, eighty-nine percent of the surveyed population believed that crime was getting worse. By 1998, when crime had been dropping for several years in most of the country, the percentage of those polled who believed crime was rising had dropped to fifty-two percent. Still, citizens who believed crime was rising outnumbered those who thought crime was dropping by almost a three to two ratio. And fear of youth crime, fueled by heavily publicized school shootings in Columbine and elsewhere, was rising.[40]

TABLE 1: SURVEY OF THE GENERAL POPULATION

Is There More Crime in the U.S. Than There Was a Year Ago, or Less?		
	More	*Less*
1992	89	3
1996	71	15
1997	64	25
1998	52	35

Fear of youth crime often is focused on gangs. Prop. 21, for example, was justified by a "finding" that youth gangs were a growing

39. *See* SOURCEBOOK, *supra* note 23, at 116 tbl.2.33.

40. *See, e.g.*, KIM BROOKS ET AL., JUSTICE POLICY INST., SCHOOL HOUSE HYPE: TWO YEARS LATER (2000) (describing public perception that school violence is increasing despite government statistics showing that it is declining); Vincent Schiraldi, Commentary, *Juvenile Crime is Decreasing–It's Media Coverage That's Soaring*, L.A. TIMES, Nov. 22, 1999, at B7 (noting that excessive media coverage of extremely rare school shootings may explain the public belief that juvenile crime is increasing); David Shaw, *Kids Are People Too, Papers Decide: By Focusing on the Unusual and the Negative, Critics Say, Journalists Prompt a Distorted View of Reality*, L.A. TIMES, July 11, 2000, at A1 (reporting author Mike Males's remarks that the media coverage of Columbine was "one of the most irresponsible events in the history of institutional America" and has fueled a "baseless panic" of youths that has led to harsh juvenile laws); *see also* David Westphal, *Juvenile Crime is Falling Rapidly, But Public Believes Youth Crime Is Still on the Increase*, NEWS TRIB. (Tacoma, Wash.), Dec. 12, 1999, at A1 (noting remarks by some commentators that juvenile crime has dropped dramatically but that the public believes it is still rising).

threat to the safety of the community.[41] In fact, however, crime rates have dropped most rapidly among Black and Latino youth, the demographic groups reputed to be most dominated by youth gangs.[42] This suggests that criminal gang activity was substantially reduced.

The perceptions of law enforcement officials who deal with crime on a daily basis might be expected to be more accurate than those of the general public. Table 2 shows, however, that despite strong evidence that gang crime had been dropping for years, law enforcement agencies were much more likely to believe that the gang problem was getting worse than to believe it was improving.[43]

TABLE 2: 1997 NATIONAL GANG YOUTH SURVEY OF LAW ENFORCEMENT AGENCIES

	Is the Gang Problem in Your Jurisdiction Getting Better or Worse?		
	Getting Worse	*Staying the Same*	*Getting Better*
1995	49%	41%	10%
1997	35%	45%	20%

The belief that youth gangs "pose a unique threat"[44] and have "become more violent, bolder, and better organized"[45] produces a popular demand for "get tough" policies against gang members. The following is only a partial list of such policies.

- The formation of specialized antigang law enforcement units, like the LAPD's CRASH unit, which lies in the

41. *See* Proposition 21, § 2, *in* 2000 CALIFORNIA BALLOT PAMPHLET, *supra* note 9, at 119.

42. By 1998, homicides by Hispanics in California had dropped fifty-three percent from their 1991 peak. *See* CRIME & DELINQUENCY, *supra* note 23. Homicides by Blacks had dropped seventy percent from their 1990 peak. *See id.*

43. *See* OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, 1997 NATIONAL YOUTH GANG SURVEY 36 figs.17 & 18 (1999) [hereinafter YOUTH GANG SURVEY]. The 1997 survey is the most recent one available.

44. Proposition 21, § 2(h), *in* 2000 CALIFORNIA BALLOT PAMPHLET, *supra* note 9, at 119.

45. *Id.* § 2(b).

center of the police misconduct scandal in the Rampart division.[46]

- Statutes providing for enhanced criminal penalties for crimes committed by gang members.[47]
- Civil injunctions that would enjoin alleged gang members from engaging in ordinarily legal activities such as walking or driving in a car with other alleged gang members.[48]
- Creation of centralized databases of alleged gang members and "associates" for the use of law enforcement officials.[49]
- Police officers stop, question and, if possible, search suspected gang members even if there is no evidence that they are currently committing a crime.[50]

A detailed analysis of these anti-gang policies is beyond the scope of this Article. We will examine briefly, however, the impact of gang databases on young minority males.

VII. GANG DATABASES

During the 1990s law enforcement agencies across the nation increasingly made use of computer-based gang databases.[51] These

46. *See* YOUTH GANG SURVEY, *supra* note 43, at 33 (noting results of 1995 survey indicating large number of responding police and sheriff's departments had specialized units to address the gang problem); David Dotson, Opinion, *The State Crossing the (Blue) Line: How Not to Run the LAPD*, L.A. TIMES, Sept. 26, 1999, at M1 (noting the mission of the LAPD's highly specialized anti-gang CRASH units to wage war on gangs and drugs).

47. *See, e.g.*, CAL. PENAL CODE § 186.22(b) (West 1999).

48. *See* Matt Lait, *Ganging Up on Gangs: L.A. is the U.S. Leader in Injunctions Barring Gang Members From All Manner of Activity*, L.A. TIMES, May 28, 1999, at B2 (describing popularity of such injunctions in Los Angeles and other Southern California communities).

49. *See* Anne-Marie O'Connor, *Massive Gang Member List Now Clouded by Rampart*, L.A. TIMES, Mar. 25, 2000, at A3 (describing CAL/GANG database and other gang tracking systems and databases).

50. *See, e.g.*, Maharaj, *supra* note 2, at A1 (describing Garden Grove police practice of detaining and photographing suspected gang members for inclusion in gang file).

51. *See, e.g.*, Jim Adams, *Officers Share Names to Battle Gangs*, STAR TRIB. (Minneapolis-St. Paul), Feb. 24, 1998, at B1 (describing Minnesota gang

databases contain the lists of alleged gang members and gang associates, together with personal information about each entry. Information entered into a database might include the person's gang membership, gang moniker, home address, identifying marks or tattoos, and even photographs. Remarkably, the information often is gathered from the alleged gang members themselves. Police officers will stop suspected gang members, question them about their gang membership and even take their photographs. Youths stopped and questioned by the police may fear retaliation if they refuse to answer the questions asked or if they deny permission to be photographed.

There are few safeguards against being falsely identified as a gang member. Lists are secret; access is denied to the public.[52] Individuals have no right to know that they have been placed on a list.[53] Police officers are not required to get approval from a judge or magistrate before entering a name on a database.[54] An individual may be entered on a gang database even if he has never been arrested or suspected of a crime.[55] Once entered into a database, it seldom is possible for individuals to get their names removed.[56]

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database); Ellen Lord, *Cops Getting Primer on City's Gangs; Database Teaches Colors, Signage*, CINCINNATI POST, Dec. 22, 1999, at A19 (describing installation of gang database in Ohio city); Renae Merle, *Coryn, Perry Tout New Laws Aimed at Gangs*, SAN ANTONIO EXPRESS-NEWS, June 30, 1999, at B7 (noting creation of statewide anti-gang database in Texas); O'Connor, *supra* note 49, at A3 (describing California gang tracking systems including CAL/GANG).

52. *See* Shawn Hubler, *A Sobering Lesson in Guilt by Association*, L.A. TIMES, Mar. 27, 2000, at B1 (noting that the contents of the tax-financed CAL/GANG database are secret); O'Connor, *supra* note 49, at A3 (reporting remarks of a police practices expert for the ACLU characterizing the CAL/GANG database as a "secret blacklist").

53. *See* Hubler, *supra* note 52, at B1; O'Connor, *supra* note 49, at A3.

54. *See* O'Connor, *supra* note 49, at A3 (reporting that officers can enter names if suspect matches two from list of gang criteria).

55. *See* Hubler, *supra* note 52, at B1 (reporting statements of California Attorney General Bill Lockyer that the criteria for inclusion in the CAL/GANG database were highly problematic and it included persons who had committed no crimes); O'Connor, *supra* note 49, at A3 (reporting statements of LAPD's gang coordinator that CAL/GANG database included persons who had no arrest record).

56. *See* George Ramos, *Youths Offered Way to Get Off Database*, L.A. TIMES, July 25, 2000, at B1. Recently the Los Angeles Sheriff's Department initiated a program where under certain circumstances reputed gang members can get off the state gang database. *See id.* (describing newly developed lim-

The criteria for placement on a gang list are broad. One set of guidelines, for example, provides that names should be added to the list only if two or more of the following gang criteria are met:

- Professes to being a gang member.
- Is deemed a gang member by a reliable source, such as a trusted informant, teacher, or parent.
- Is called a gang member by an untested informant with corroboration.
- Has gang graffiti on his personal property or clothing.
- Is observed, by an officer, using gang hand signs.
- Hangs around with gang members.
- Is arrested with gang members.
- Identifies his gang affiliation when brought to county jail.[57]

Some of the criteria have little probative weight. An individual living in an area with a significant gang presence may find it difficult to avoid "hanging around" with gang members. The problem is particularly tricky because an individual may not know which of his neighbors the police regard as gang members. Other criteria are difficult to evaluate. It is hard to assess, for example, the reliability of the information provided by a teacher, parent, or "trusted informant." It is unclear what "corroboration" is needed to verify the statements of an "untested informant." More important, even if the criteria were sound, there is no independent check on whether a police officer has applied the criteria correctly when adding an individual to the database.

The vague criteria, secrecy of the process, and lack of judicial review create a danger that police officers add many young, minority males to the database simply because they wear hip-hop clothing and live in poverty-stricken, high-crime areas. And there is substantial evidence that this is precisely what has occurred in California.

One 1992 study of the Los Angeles gang database found almost half of the Black men in the county between the ages of twenty-one and twenty-four were on some gang list.[58] A more recent

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ited program).

57. *See* O'Connor, *supra* note 49, at A3.

58. *See* Sheryl Stolberg, *150,000 Are in Gangs, Report by D.A. Claims,*

examination of the 112,000 purported Los Angeles gang members or associates on the state CAL/GANG database found that 62,000 were entered by specialized LAPD antigang CRASH units, including the unit from the scandal-ridden Rampart division.[59] About two-thirds of the persons entered were Latinos and about one-third were Blacks.[60] Only about 2000 Whites were entered on the gang list.[61]

The LAPD argues that the database is useful in the investigation of crimes committed by gang members.[62] Such tools against gang violence are essential, it is argued, because of the large number of gang-related crimes, defined broadly as any crime with a gang member as a perpetrator or a victim, even if the crime was not connected to a gang purpose. During one recent year, the LAPD noted, gang members committed 7600 offenses, including 136 homicides.[63]

These crime figures, while not trivial, are small in comparison with the alleged population of 112,000 gang members and associates in Los Angeles County. If the LAPD's figures are correct and there are 7600 gang crimes and 112,000 gang members, only one crime is committed each year for every fifteen gang members or, put differently, the average gang member commits one crime every fifteen years. Unless gang members are a surprisingly law abiding group, the gang database includes many individuals who have ended their gang involvement or who never were gang members in the first place.

There is little doubt that gangs are an important social problem and that hard-core gang members pose a significant threat to the safety of the community. But gang databases contain many innocent

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L.A. TIMES, May 22, 1992, at A1. Similar practices exist elsewhere. In Denver, for example, two-thirds of the young Black men in the city apparently are on the gang database. A reported 3691 Blacks were on the gang list, a number equivalent to two-thirds of the Black males between twelve and twenty-four in the city. *See* Dirk Johnson, *2 of 3 Young Black Men in Denver Listed by Police as Suspected Gangsters*, N.Y. TIMES, Dec. 11, 1993, § 1, at 8 (noting also that Blacks accounted for only five percent of the city's population but more than fifty percent of the names on the gang list).

59. *See* O'Connor, *supra* note 49, at A3.
60. *See id.*
61. *See id.*
62. *See id.*
63. *See id.*

young minority males, who pose no serious threat to society, together with individuals who are truly dangerous.

VIII. SOME COSTS OF DEMONIZATION

A. Reinforcing Racial Discrimination

The burden of the demonization of youth and youth gangs falls most heavily on minorities, especially young minority males. The names entered on gang databases are almost exclusively those of minorities. Gang membership is so closely associated with minority youth that in some jurisdictions most of the young minority males are considered by the police to be gang members or associates.[64] The close association of gang membership and minority status permits politicians and commentators to "play the race card" indirectly. Public officials may be reluctant to endorse a "war against young minority offenders" or "tougher criminal penalties for young minorities" because of a fear that they will be accused of racism. It is much safer to endorse a "war against gangs" or "tougher criminal penalties for gang members." Gangs become a proxy for race.

Targeting minorities for special scrutiny can undermine the relationship between police and the citizens they serve. As shown in Table 3, Blacks and Hispanics are more than twice as likely as Whites to believe that the police in their community do not treat all races fairly.[65]

TABLE 3

Do the Police in Your Community Treat All Races Fairly or Do They Tend To Treat One or More of These Groups Unfairly? (1999)

	Treat all races fairly	*Treat one or more groups unfairly*
White	67	25
Black	30	63
Hispanic	48	52

64. *See* Johnson, *supra* note 58, at 8.
65. *See* SOURCEBOOK, *supra* note 23, at 111 tbl.2.28.

Demonizing minority youth can create a climate that fosters police misconduct. If young offenders are "super-predators" and if the operation against gangs is a "war," then violating a suspected gang member's constitutional rights or even planting evidence may be viewed as justified. Table 4 shows that Hispanics, and especially Blacks, are far more likely to fear being arrested by the police for a crime they did not commit.[66]

TABLE 4

Are You Sometimes Afraid That the Police Will Stop and Arrest You When You Are Completely Innocent, or Not? (1999)		
	Yes, sometimes afraid	*No, not afraid*
White	16	84
Black	43	56
Hispanic	28	72

It might be claimed that the burden placed on innocent Blacks and Latinos is outweighed by the benefits of reducing crime. Consider, for example, the use of gang lists to help police in crime investigations by creating a database of nicknames, addresses, photographs, identifying marks, and similar items. Even if many of the people named in the database are innocent of any wrongdoing, it might be argued that the harm to them is small. If they commit no crime, a police investigation will absolve them.

Arguments such as these surely underestimate both the burden of being a target of heightened police scrutiny and the likelihood of false conviction.[67] More important, such arguments usually are made by individuals who will never bear such burdens themselves. If databases of gang members are an effective crime fighting tool, then a database of all citizens would be much more effective. The government could take fingerprints, DNA samples, and photographs of all individuals above the age of twelve and enter the information into a national computer system together with each individual's

66. *See id.* at 111 tbl.2.29.

67. *See* Chemerinsky, *supra* note 5, at 549 (noting that thus far approximately 100 convictions have been overturned in the Rampart scandal).

name, address, occupation, and other personal information. With periodic updates, such a database might be a powerful tool in the fight against crime. Most citizens, we suspect, would reject such an invasion of their privacy as repugnant even if such a database would reduce crime.

B. Underutilization of Nonpunitive Approaches to Crime Reduction

Strong criminal sanctions and a high probability of apprehension can help reduce crime. Viewing young offenders as incorrigible super-predators and street hoodlums, however, encourages a focus on law enforcement even when less punitive approaches are a more cost-effective way to reduce crime.

A recent study by RAND, for example, found that giving disadvantaged high school students cash and other incentives to graduate was several times more effective in reducing crime, per dollar spent, than the tougher penalties of Three Strikes.[68] Parental training and therapy for families with very young, school-age children who have begun to "act out" in school was also substantially more cost-effective at reducing crime than Three Strikes.

More broadly, demonizing criminal offenders deflects attention away from the responsibility of society to remedy the social and economic conditions that produce a high crime rate in poor urban neighborhoods. Advocates of "get tough" approaches to crime argue that young persons, however disadvantaged, must be held responsible for their wrongdoing. Fair enough. But the privileged adults who control our nation's social policies should be held equally accountable for their failure to address effectively poverty, poor health care, underfunded schools, racial discrimination, and other social conditions that produce high crime rates.

IX. CONCLUSION

The demonization of youth and especially young minority males fosters abusive police behavior, reinforces racial stereotypes and prevents the adoption of cost-effective, nonpunitive methods of reducing crime. It can also have a devastating impact on innocent,

68. *See* PETER GREENWOOD ET AL., DIVERTING CHILDREN FROM A LIFE OF CRIME: MEASURING COSTS AND BENEFITS 25-27 (1998).

young minority males targeted by police as gang members or associates. Consider for example, the following excerpt from a school essay written by Jesus Daniel Guerrero, a B-student with no history of misconduct who, with an older brother mixed up in gangs, was almost certainly placed on the CAL/GANG database:

> As a child, I would spend countless hours daydreaming of becoming a mighty police officer . . . . But as I entered my junior high school years . . . my dream of becoming a police officer began to fade like sunlight at dusk . . . . I have been scolded, searched, handcuffed, pushed, kicked and wrongfully accused of crimes I did not commit.[69]

69. This essay was reported by columnist Shawn Hubler in *A Sobering Lesson in Guilt by Association*, *supra* note 52, at B1 (italics omitted).