

**STEP it Up:**  
**The Rise of Conservative Anti-Gang Legislation in California**

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*This thesis is dedicated to the four exceptional historians from whom I gained my*

*love of history:*

*Deirdre Bryson*

*Kate Mullen*

*Anne Schaefer*

*The Madre ☺*



## **TABLE OF CONTENTS**

<i>Prelude.....</i>	<i>4</i>
<i>Historical Background/Historiography.....</i>	<i>10</i>
<i>A Roadmap to Understanding STEP.....</i>	<i>21</i>
<i>The Process of Policy Making.....</i>	<i>28</i>
<i>Implementation.....</i>	<i>49</i>
<i>Conclusions.....</i>	<i>55</i>

### **ACKNOWLEDGEMENTS**

### **BIBLIOGRAPHY**

## CHAPTER 1

### *PRELUDE:*

On February 7<sup>th</sup>, 1988, after eating dinner with a friend, Karen Toshima lay dead from a fatal gunshot wound to the head, another victim of a gang gunman's stray bullet. The tragic circumstances surrounding Karen Toshima's death were neither unique nor uncommon. In the preceding seven years, hundreds of innocent citizens, caught in the crossfire of escalating gang violence, had also died in Los Angeles. However, Toshima's location and profile set her death apart from previous victims. Toshima died in the affluent predominantly white neighborhood of Westwood near the University of California, Los Angeles. Filled with fashionable eateries, shops, and movie theatres, Westwood had not seen a homicide of any kind in four years. Furthermore, the victim, a successful 27-year-old graphic artist, hardly fit the 'standard' profile of those killed in gang gun battles: she was Asian-American, not Black or Hispanic—the usual gang demographics to garner media attention—and without ties to any gangs or gang neighborhoods. Ms. Toshima did not live near the typical 'gang hot spots' nor was she in one when she was fatally shot. The Westwood shooting became a major flashpoint in the public debates over the causes and remedies of gang violence and fueled the passage of anti-gang Street Terrorism Enforcement and Prevention legislation of 1988.

The reaction to Ms. Toshima's death came in waves. First, in response to the massive public outcry, the city tripled police patrols in Westwood the weekend following the shooting, proposed a \$25,000 reward for her killer, and insisted on zero tolerance for gang violence in previously unaffected white sectors of the city. These actions drew sharp



criticism from predominantly Black and Hispanic communities. They argued that although gang activity and violence pulsed daily in their neighborhoods, no police response resembling the reaction to Ms. Toshima's death had been mounted. Many questioned why this incident, tragic as it was, warranted such frenzied media attention and bold police action when similar events occurred regularly in poorer areas of Los Angeles at staggering rates. Public anxieties and emotionally based responses to gang violence drove public policy in the wake of the Toshima case.

Even reporters took note of the differential treatment of gang violence when just ten days later across town from where Toshima was shot, 67-year-old Alma Lee Washington was killed. Sitting in her wheel chair at the door of her small two-bedroom home, a gang member's bullet struck her just above her right eye. A shooting death in South Central Los Angeles stood no chance of making the evening news. Nor did it gain serious coverage in the *Los Angeles Times* or the *Los Angeles Herald Examiner*, beyond brief death notices remembering Washington as "an innocent victim of gang rivalry."<sup>1</sup> No one offered a reward for her killer. Margaret Carlos, writing in *Time Magazine*, aptly noted, "Death may be the great equalizer, but in Los Angeles some deaths are more equal than others."<sup>2</sup>

In the months following the Toshima and Washington shootings, California passed the most comprehensive package of gang legislation in both the state's and the nation's history. The Street Terrorism Enforcement and Prevention Act (STEP) was the first legislation of its kind to criminalize gang activities and enhance prison sentences for

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<sup>1</sup> Nieson Himmel. "Woman, 67, Slain in Home in Gang-Related Shooting." *Los Angeles Times*, February 10 1998, Home Edition, A1.

<sup>2</sup> Margaret B. Carlson. "The Price of Life in Los Angeles." *Time Magazine*, February 22<sup>nd</sup> 1988.



gang members. More boldly still, the law also made parents liable for certain acts of their children. This study examines the political, social, and ideological factors that gave birth to the policy and traces its development in the 1990s. It sees STEP as a product of larger trends in criminal justice, including the imposition of fixed sentences, tougher juvenile punishments, and the decided shift away from rehabilitation. Finally, this study assesses the intended goals of the STEP legislation and how public officials' understanding of the legislation and its intent changed over time in response to its implementation.

The repercussions of the STEP Act reached far beyond California. Emulated many times over in the years following its passage, STEP influenced gang policy across the country. The fixed sentences and mandatory enhancements handed out to gang members reflected growing frustrations with indeterminate sentencing and a juvenile justice system perceived as ineffective and far too forgiving. The act responded to public outcries for action in the face of mounting fears about crime and a diminishing sense of security. In many respects STEP can be understood as part of a broader upper class and white middle-class attack on groups perceived to belong to a self-perpetuating "underclass." In the late 1980s, many Americans blamed marginalized groups for their poverty and exclusion, and expected them to care for themselves without disturbing or burdening mainstream society.

Such legislation would have been inconceivable just two decades before, but the rising crime rate would have been equally inconceivable. Both the Democratic and Republican parties agreed by 1980 that an explosion of crime had begun in the early



1970s. The crime rate would only begin to taper off in the early 1990s.<sup>3</sup> What most troubled officials, however, was not just the amount of crime, but the new face of crime. Where before, violent crime occurred mostly in the inner cities, by the late 1970s and 80s this was no longer so—crime had spread into white suburbia. The media’s “sympathetic portrayal of individual victims...let down by an uncaring, ineffectual system... transformed perceptions of crime and further reduced the sense of distance from the problem that the middle classes once enjoyed.”<sup>4</sup>

The creation of STEP was part of a broader shift towards conservative crime control ideology specifically, and a broader ideological shift towards conservatism in general. The questions discussed include: What lay at the root of rising gang violence, if it was, in fact new at all? Los Angeles had harbored gang havens in the decades preceding 1988; what social and political climate made 1988, the year legislators enacted STEP, ripe for change? More generally, why were harsher punishments and a seemingly unilateral renunciation of rehabilitation the primary response to crime in general, and gangs in particular? How did the public’s perception of crime and gangs change over time?

To address these questions this paper analyzes the historical context that gave rise to STEP’s passage. It will analyze the original language of the legislation as it was first passed in 1988, drawing upon interviews with the proponents of the legislation, and the various versions of the bill itself as the California legislature crafted it. Finally, this paper will explain the legislation’s implementation and the reaction to it through close critical

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<sup>3</sup> David Garland, *The Culture of Control* [Chicago: University of Chicago Press, 2001], 85.

<sup>4</sup> Garland, *The Culture of Control*. 157.



evaluation of periodicals, personal interviews, and subsequent scholarship. This extended timeline enables us to assess both the legislation's successes and failures within a historical perspective.

The STEP Act reflects the triumph of conservative ideology and a weakening of liberal approaches to crime control, like prevention and rehabilitation. The legislation's language indicates the increasing prevalence of conservative thought as officials harnessed very real public fear to support increasingly disciplinary solutions. The STEP Act also characterizes gangs, as highly organized syndicates comprised of murdering psychopaths, and it faults the underclass for generating such delinquents. Furthermore, the evolution of the written act in the California legislature, its implementation, and the Act's representation in the media all reflect the rejection of liberal alternatives to controlling crime, such as rehabilitation, crime prevention programs, and social welfare programs to aid individuals mired in poverty and failed by the system.

Past scholarship has certainly addressed a shift towards an increasingly punitive approach to crime, but previous evaluations of STEP specifically limited themselves to identifying the problem and then jumping to the success or failure of STEP's implementation.<sup>5</sup> An examination of the actual process of policymaking illuminates both the strengths and weaknesses of classically conservative approaches to the issue of gangs specifically and crime control in general. This discussion of the process furthers our understanding of why even liberals accepted adoption of conservative premises. This study argues that the progression of STEP from a proposed idea, to a bill, to legislation that legislators extended past multiple sunset clauses, resulted from several larger modern

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<sup>5</sup> Beth Bjerregaard, "Anti-Gang Legislation and its Potential Impact: The Promises and Pitfalls." *Criminal Justice Policy Review* [2003] Vol 14. 171-192.



political and social trends concerning crime control. These trends include the vilification of the underclass and working poor, a resistance on part of the government and middle to upper classes to support social assistance programs, rampant public fear, and the dilution of liberalism.

## CHAPTER 2

### ***HISTORICAL BACKGROUND:***

In the 1970s and 1980s, growing public concerns about urban poverty and urban crime drove debates over how best to address crime control, the underclass, and welfare policy. These debates and public concern set the stage for STEP's emergence. The failure of Lyndon Johnson's War on Poverty in the 1960s combined with stagflation in the 1970's dramatically altered public perceptions of the poor and 'handouts.' The economic downturn, fueled by deindustrialization, favored professionals but diminished opportunities for well-paying secure blue-collar work. Conservative ideology blamed lower classes for their own plight and faulted social assistance for compounding laziness and funding a culture of crime and indecency. Contrarily, liberals viewed the growing population of poor individuals without hope of improving their situation, an underclass outside of the American dream, as evidence of failure on the part of the system. Instead of blaming the poor for increased crime, liberals faulted society for excluding them from quality education, healthcare, and job opportunities that provided hope and stability.

During the 1970s, a distinct reorganization of politics and economics relegated a growing population of individuals, increasingly non-white minorities, to an 'underclass.' The term underclass, originally applied to class dynamics in the United States by Swedish economist Gunnar Myrdal in the 1960s, distinguished a segment of the population entrenched in poverty with no real hope of social mobility, a population outside the



sphere of the "American Dream."<sup>6</sup> At the height of the 1970s recession "non-whites were laid off at nearly twice the rate of whites," and even once the market began to turn around blacks were "called back to work more slowly."<sup>7</sup> The same population that politicians would later charge generated the most gang members not only began to grow significantly, but found fewer escape routes out of poverty. *Time* magazine expressed distress over the grim reality that "by most of society's measures—job prospects, housing, education, physical security—the underclass is hardly better off and in some cases worse off than before [Lyndon Johnson's] War on Poverty."<sup>8</sup>

Changes in the economy exacerbated the growing inequality of wealth in the 1970's as industrial manufacturing sharply declined. Previously individuals with high school educations could find steady work at a living wage in the job markets, but now companies shipped those jobs overseas or to nonunion regions in the Sunbelt. For individuals with higher education the job market offered opportunity, however it left the rest of the population in the lurch. *Time* Magazine observed, "some people who had begun to struggle out of the underclass were abruptly thrown back."<sup>9</sup> The industrial sector became relatively smaller, highly specialized and technical, unattainable to millions of uneducated or low-educated job seekers. The labor market became increasingly stratified. College graduates, the majority of which were white males, occupying highly paid jobs and predominantly female workers dominating low paid, part-time jobs.<sup>10</sup> These measures resulted in a dichotomy, David Garland argues, where the highly educated

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<sup>6</sup> "The American Underclass". *Time* Magazine, August 29 1977.

<sup>7</sup> "The American Underclass."

<sup>8</sup> "The American Underclass."

<sup>9</sup> "The American Underclass."

<sup>10</sup> Garland, *The Culture of Control*. 82.



“strata could command high salaries...[but] at the bottom end of the market were masses of low skilled poorly educated, jobless people—a large percentage of them young, urban, and minority.”<sup>11</sup> Not coincidentally, young, urban, African Americans and Latinos dominated the gangs discussed so often in the media. This dynamic proved a dangerous combustible departure from the mass job security of the postwar era.

Conservatives saw unemployment as a natural product of the market and argued that welfare programs encouraged laziness and weakened self-reliance in impoverished populations who only had themselves to blame for their plight. Lyndon Johnson’s Secretary of Labor, Daniel Patrick Moynihan, submitted a report, *The Negro Family: The Case for National Action*, that spelled out and helped to bolster the culture of poverty theory. Conservatives employed select pieces of Moynihan’s report to highlight the futility of providing social support, sidestepping Moynihan’s ‘call to national action.’ The phrase ‘culture of poverty’ refers to a lifestyle and morality unique to the underclass, the ideology views social conditions as determining economic conditions as opposed to the other way around. This understanding argued “the rise in single-mother families was not due to a lack of jobs but rather to a destructive vein in ghetto culture.”<sup>12</sup> Moynihan pointed to the growing number of black children raised by single mothers and absent fathers, a family construct that constituted, in his view, a “tangle of pathology...capable of perpetuating itself without assistance from the white world.”<sup>13</sup> This pathology would come to encompass “delinquency, joblessness, school failure, crime, and fatherlessness

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<sup>11</sup> Garland, *The Culture of Control*. 82.

<sup>12</sup> Kay S. Hymowitz, “The Black Family: 40 Years of Lies” *City Journal*, [Summer 2005], [http://www.city-journal.org/html/15\\_3\\_black\\_family.html](http://www.city-journal.org/html/15_3_black_family.html).

<sup>13</sup> Daniel Patrick Moynihan. *The Negro Family: The Case for National Action*, [1965]: quoted in Kay S. Hymowitz, “The Black Family: 40 Years of Lies,” *City Journal* [Summer 2005].



that characterized ghetto—or what would come to be called underclass—behavior.”<sup>14</sup>

While Moynihan advocated government support programs to address the pathology, conservatives pounced upon his report, selectively focusing on the cultural roots of poverty and disregarding Moynihan’s call for ‘national action.’ By identifying internal qualities of an underclass as the reason for individuals’ economic and social isolation, conservatives hijacked the report to release the government of responsibility to provide external support mechanisms. In this interpretation, the poor relegated themselves to ghetto lifestyles due to weak moral fiber and a lack of work ethic. The internal corrosion of virtue by way of dysfunctional families suppressed upward mobility, not some fault of the system. Perceiving the poor as responsible for their own poverty carried over to crime control, as culture was understood as the root cause of crime instead of structural failings.

#### **HISTORIOGRAPHY:**

As the 1970s recession ended, a new more violent form of crime emerged with a vengeance, with homicides shooting up to unprecedented levels. The need for new crime control measures seemed unanimous; how to respond, however, became hotly debated. James Q. Wilson, a conservative academic who chaired Nixon’s White House Task Force on Crime in the late 1960s as well as numerous other national commissions and task forces in the 1970s and 1980s, contended that the sharp rise of violent crimes stemmed from “urban gang life, produced disproportionately by a large, alienated, and self-

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<sup>14</sup> Hymowitz, “The Black Family: 40 Years of Lies.”



destructive underclass.”<sup>15</sup> This, Wilson argued, represented a fundamental shift in crime patterns. Wilson mourned the end of an era where alarm systems and confidence in law enforcement proved enough to placate fears and adequately address crime.<sup>16</sup> The new trends proved much more difficult to combat when “innocent people [were] being gunned down at random, without warning and almost without motive by youngsters who afterward show us the blank unremorseful faces of seemingly feral presocial beings.”<sup>17</sup>

According to Wilson such criminals constituted a distinctive group; 6 percent of boys at a given age committed half or more of all serious crimes.<sup>18</sup> These individuals, he claimed, “tend to have criminal parents, to live in cold or discordant families, to have low verbal-intelligence quotient and to do poorly in school, to be emotionally cold and temperamentally impulsive.”<sup>19</sup> Furthermore, Wilson characterized these traits as intrinsic deficiencies, resulting from “heritable traits, prenatal insults, weak parent-child attachment, poor supervision, and disorderly family environment.”<sup>20</sup> By casting these traits as inherent, Wilson implicitly released the state and society of responsibility for any and all fallout. Wilson rejected unemployment, racism, poor housing, poor education, or the lack of other basic social services as roots of the problem. In a startling comparison, Wilson explained that for most law abiding citizens, rolling back government control resulted in perhaps more speeding on freeways and a “few more experiments with fashionable drugs.” As Wilson would have it, however, the underclass with their weak

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<sup>15</sup> James Q. Wilson. “What to Do About Crime.” *Commentary*. Vol. 98 Issue 3. September 1994. 27.

<sup>16</sup> Wilson, “What to Do About Crime.” 30.

<sup>17</sup> Wilson, “What to Do About Crime,” 27.

<sup>18</sup> Wilson, “What to Do About Crime,” 32.

<sup>19</sup> Wilson, “What to Do About Crime,” 29.

<sup>20</sup> Wilson, “What to Do About Crime,” 32.



moral code and lack of self-control, fell into PCP and crack (apparently the 'unfashionable' drugs?) and spiraled into delinquency.

While Wilson asserted that crime rose significantly in the 1970s and 80s due to a corrosion of morality and a departure from basic family values, subsequent scholarship offered different explanations. David Garland, a historian of criminology and punishment, argued that rising crime rates stemmed from what he labeled 'late twentieth century modernity.'<sup>21</sup> He highlighted three significant transformations brought about by late modernity: 1) a capitalist market that widened the gap between the haves and have nots due to increased specialization and advances in technology; 2) changes in suburban and urban demographics; and 3) the restructuring of the family and household.<sup>22</sup> In contrast to Wilson, Garland identified structural changes inherent to modern life as the root cause of increased crime.

According to Garland, a mass exodus of young middle-class families from "decaying inner cities and their social problems" to suburbs deepened already pronounced social divisions.<sup>23</sup> By the 1960s and 70s, black migration from the south to urban centers like Los Angeles and Oakland, coupled with white suburbanization, dramatically expanded ghetto populations.<sup>24</sup> Severe cutbacks in social programs under Presidents Reagan and Bush exacerbated the plight of inner-city residents. Instead of vilifying blacks and other minorities for their limited social mobility, Garland faulted transformations in capitalism and reductions in welfare spending for their limited social mobility.

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<sup>21</sup> Garland, *The Culture of Control*. 77.

<sup>22</sup> Garland, *The Culture of Control*. 77-78.

<sup>23</sup> Garland, *The Culture of Control*. 84.

<sup>24</sup> Garland, *The Culture of Control*. 85.



Reagan and his successors, namely H.W. Bush and Clinton, adopted seemingly contradictory approaches, advocating heavy deregulation of the economy while increasingly cutting back on social programs and heavily regulating the justice system. Conservatives attacked social programs as a drain on society and an insult to hardworking Americans. Public fear remained constant, regardless of statistics showing increases and decreases in crime. Such anxieties led to wide public demands for heavy government investment in crime control.<sup>25</sup> Conservatives succeeded “in representing the problem of immoral behavior as, in effect, a problem of poor people’s conduct.” What was needed, Garland argued was, “a much more specific demand, targeted on particular groups and particular behaviors.”<sup>26</sup> While conservative rhetoric called for all Americans to embrace more traditional morals, public policy targeted welfare recipients, the unemployed, offenders, drug users and immigrants—all demographics ripe for gang activity.<sup>27</sup> By the 1990s negative portrayals of welfare as a social burden had become so entrenched in American politics and the mass media that both major political parties criticized it. In Bill Clinton’s first run for the Presidency he promised to “end welfare as we know it,” and did just that in a major welfare overhaul in the 1996 Personal Responsibility and Work Opportunity Reconciliation Act.

Both Wilson and Garland connected welfare policies to a shift away from nuclear family organization towards single parent households. According to Garland, “By the early 1990s, more than 30 percent of all children were born to unmarried women, a figure that rose to nearly 70 percent in African American communities, where 58 percent of all

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<sup>25</sup> Garland, *The Culture of Control*. 113.

<sup>26</sup> Garland, *The Culture of Control*. 99.

<sup>27</sup> Garland, *The Culture of Control*. 150.



families were headed by a single woman.”<sup>28</sup> Wilson correlated long-term welfare recipients, many of them single mothers, with juvenile delinquency and the proliferation of gangs, reflecting ideology at the heart of the Moynihan Report and the culture of poverty.<sup>29</sup> He argued that welfare offered an easy way out for single mothers who found exploiting the system more attractive than working. These same unmotivated parents spawned a generation of ‘gang-bangers.’

An alternative argument proposed that the environment these children grew up in made the security, prestige, and economic benefits of a gang increasingly attractive.<sup>30</sup> A sense of hopelessness enveloped children whose parent/s had to rely upon government support due to a lack of education, an unfriendly job market, or insufficient minimum wage. Furthermore, rising numbers of welfare recipients could be traced to growing need, not exploitation of the system. In addition, as welfare recipients began to better understand the available services, those services were accessed more frequently. Thus increasing welfare rolls, in this view, did not indicate lazy individuals taking advantage of a system, but an increased awareness and understanding of how to access public services.

Like Garland, Katherine Beckett’s and Bruce Western’s study of the correlation between welfare programs and incarceration faulted structural factors, such as unemployment, poor housing, poor education, and poverty, for increasing rates of juvenile crime and increased prison populations. Beckett and Western proposed that

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<sup>28</sup> Garland, *The Culture of Control*. 83.

<sup>29</sup> Wilson, “What to Do About Crime.” 33.

<sup>30</sup> Elijah Anderson, “Going Straight: The Story of a Young Inner-City Ex-Convict,” in *Mass Imprisonment Social Causes and Consequences*. Ed David Garland. 121-137. London: Sage Publications. 122.



welfare and penal regimes both aimed to address social marginality, the first through social programs and the second through a form of social cleansing.<sup>31</sup> Their data showed that greater government spending on welfare had lowered incarceration rates, while lower welfare spending increased minority incarceration rates.<sup>32</sup> Beckett and Western concluded “that more exclusionary approaches to social marginality,” like STEP, “are especially likely to be adopted by states that house more of those defined in contemporary political discourse as ‘troublemakers.’”<sup>33</sup> Beckett and Western saw ‘get tough’ policies such as STEP as reactive efforts to placate public fear rather than proactive solutions to juvenile crime.

A sense of urgency permeated both right-and left-wing politics. Wilson warned of impending doom if the correct action was not immediately adopted. “By the end of [the 1990s] there will be a million more people between the ages of fourteen and seventeen than there are now. Half...will be male. Six percent of them will become high-rate, repeat offenders—30,000 more mugger, killers, and thieves than we have now. Get ready.”<sup>34</sup> In 1995, John Dilulio, a conservative Democrat, author of numerous crime studies, and later the first director of the White House Office of Faith-Based and Community Initiatives under President George W. Bush, warned that “in five years we can expect at least 300,000 more young murderers, rapists, and muggers on the streets than we have today” regardless of the measures put in place.<sup>35</sup> In a society already riddled with pervasive fear

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<sup>31</sup> Katherine Beckett and B. Western. 2001. “Governing Social Marginality: Welfare, Incarceration, and the Transformation of State Policy” in *Mass Imprisonment Social Causes and Consequences*, Ed. David Garland, 35-51. London: Sage Publications. 46.

<sup>32</sup> Beckett, “Governing Social Marginality.” 46.

<sup>33</sup> Beckett, “Governing Social Marginality.” 46.

<sup>34</sup> Wilson, “What to Do About Crime.” 34.

<sup>35</sup> John J. Dilulio Jr. “Arresting Ideas.” *Policy Review*. Fall Issue 74. 5.



such statements were akin to throwing gasoline on a raging fire, and made it difficult to contemplate alternative responses to crime. Conservative policy makers had cultivated a social and political climate in which legislation like STEP flourished and helped politicians win elections.

Criminologist Beth Bjerregaard examined the link between ‘moral panics’ and STEP legislation. Bjerregaard identified three components of moral panics: 1) an intensified focus on the behavior of threatening population, 2) the demonization of said populations, and 3) variation of fear over time with the most intense alarm occurring around the discovery of the problem.<sup>36</sup> In the 1980s and 1990s, an explosion of media attention to gangs paralleled the growing awareness of law enforcement and politicians of gang violence. Characterizations of gangs by the media and the state fueled the moral panic by continually ‘rediscovering’ the problem and casting gang issues in increasingly sensational terms. “The first thing we have to do is stop talking about them as children—they are psychopaths and murders. They are not youth clubs. They are criminal organizations”<sup>37</sup> Ira Reiner, one of STEP’s authors, warned in June 1987, shortly after STEP’s introduction into the California Legislature. The media, eager for higher ratings, maintained a heightened sense of fear by constantly rediscovering the problem, and depicting the most brutal or heinous acts committed by gangs. The STEP Act itself was consistently referred to in newspapers as California’s “newest anti-gang weapon.”<sup>38</sup>

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<sup>36</sup> Bjerregaard, “Antigang Legislation and Its Potential Impact.” 174.

<sup>37</sup> David Bank. 1987. “Hahn, Reiner Advocate Gang Crackdown.” *Daily News of Los Angeles*.

<sup>38</sup> Michele Fuetsch. 1989. “New Weapon in Gang Wars Compton Police Serve Written Notices of Street Terrorism Act.” *Los Angeles Times*. June 1<sup>st</sup>. Page 1. Home Edition.



Politicians also magnified public anxieties by employing military language, such as 'Operation Hammer' or 'Operation Hardcore,' to describe gang regulation programs.<sup>39</sup>

While past scholarship has certainly examined trends in crime control and broader shifts in liberalism and conservatism, this study seeks to provide a detailed analysis of a particular piece of gang legislation that illustrates how liberalism increasingly accommodated the language and ideology of law-and-order conservatism. Often, to determine a policy's success or failure, previous studies have limited themselves to an evaluation of historical context and implementation. By contrast, this analysis digs deep into the process of the legislation's formation. I argue that STEP was not 'doomed from the start' but that ambiguities in the initial legislation created problems and inconsistencies in how police officers and District Attorneys implemented the law. . Examining the process of drafting the legislation provides insight into the original intent and motivations of STEP's authors and proponents. Gaining a more complete understanding of STEP, from the act's initial conception and drafting to its passage and implementation, helps us to comprehend how and why conservative approaches to crime control and public policy gained ground in the late twentieth century.

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<sup>39</sup> Malcolm W. Klein, and Cheryl L. Maxson. *Street Gang Patterns and Policies*. Oxford: Oxford University Press. 94.

### CHAPTER 3

#### *A ROADMAP TO UNDERSTANDING STEP:*

Despite fair criticisms of the legislation, STEP had several potential and real benefits. First, the legislation responded soundly to the calls of law enforcement and courts for a means to better address gang violence. Law enforcement often found itself at a loss to act, and district attorneys were frustrated trying to adequately prosecute in situations unique to gang behavior patterns and serious crimes. Much delinquent behavior, or behavior that consistently led to delinquency, was technically legal before STEP, only allowing police to intervene legally after youths perpetrated the most overt acts like flashing gang signs and gathering in particular areas.<sup>40</sup> Also, graffiti, once a public nuisance and very minor misdemeanor, considered a simple act of vandalism, became a means to claim territory, advertise for new members, and elicit death threats to rival gang members.<sup>41</sup> Obviously this use of graffiti marked a sharp departure from other, more benign, types of graffiti like tagging that many considered artful (if not still illegal). Prosecutors ran into endless trouble trying to address the violent nature of the gang graffiti since it was next to impossible to determine who was responsible for it unless the individuals were caught in the act.<sup>42</sup> Furthermore, prosecutors could not hold higher gang members responsible for ordering younger members to graffiti. In the bounds of “criminal law you can only charge somebody with actions that they have taken, or under conspiracy, if you can show that there’s some agreement to go out and carry out a

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<sup>40</sup> Bjerregaard, “Antigang Legislation and Its Potential Impact.” 173-174.

<sup>41</sup> Ira Reiner, phone interview by author, February 16 2009

<sup>42</sup> Reiner, interview.



criminal act.”<sup>43</sup> STEP strengthened the law by categorizing gangs as “unincorporated associations.”<sup>44</sup> As such they could be prosecuted on the grounds of vicarious liability in a civil court. Vicarious liability, according to former Los Angeles District Attorney Ira Reiner, “means that one person can be held liable for the acts of a second person.”<sup>45</sup> At the heart of STEP’s lies the intent to hold the gang as a whole responsible for illegal actions, to rightly recognize that gangs derive their power from their organization and sheer numbers.<sup>46</sup>

Gangs made their ability to terrorize manifest as they claimed public parks as their territory. The parks became useless to children and families seeking places of enjoyment. STEP gave prosecutors the tools necessary to make parks legally off limits to gang members violently monopolizing the space. A known gang-member need not provide police with probable cause to be searched; their association with a gang was enough. STEP also assured the public that ‘something was being done.’ Beth Bjerregaard argued that in theory STEP was a useful tool for courts and law enforcement to address a serious public safety issue and to allay public fears.<sup>47</sup>

The legislation went awry partially in the language itself and partially in its implementation. The legislation’s vague language all but invites profiling. This created problems in a society that increasingly incorporated gang-culture into mainstream popular culture, where wearing certain colors, dressing a certain way, or speaking a certain way are no longer concrete indicators of gang membership. In sociologist Elijah

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<sup>43</sup> Reiner, interview.

<sup>44</sup> Reiner, interview.

<sup>45</sup> Reiner, interview.

<sup>46</sup> Reiner, interview.

<sup>47</sup> Bjerregaard, “Antigang Legislation and Its Potential Impact.” 174.



Anderson's case study of a young ex-convict, he noted, "Part of what makes [high traffic areas] attractive for the drug dealers is that people hang out there: it is busy with traffic, and the dealers can blend in with the young people who are simply standing on the corner."<sup>48</sup> Furthermore, it has become increasingly difficult to distinguish between fringe or half-hearted members of gangs and the hardcore members whom society has reason to fear. Indiscriminate use of STEP can result in a breakdown of trust between community members and law enforcement—an essential element of successful gang control.<sup>49</sup>

Another pitfall of the legislation was its failure to recognize that gangs provided useful social services that communities and the government often fail to provide. Notorious gang leader 'Monster' Kody Scott explained he "had no idea of peace and tranquility. From [his] earliest recollections... the economic destitution of [his] parents... to the omnipresent occupational police force" disrupted any semblance of security.<sup>50</sup> A hostile police force compounded the plight of individuals already mired in destitution. By failing to provide the poor with security, creating an environment of fear and distrust, gangs were actually encouraged. For many, gangs were the "clearest vision of stability" they had ever known in an environment of overwhelming volatility.<sup>51</sup> Without hope of improving their situation, individuals looked for other venues through which to find personal pride, esteem, and relative prosperity. Scott recalls, "My clothes, walk, talk, and attitude all reflected my love for and allegiance to my set. Nobody was more important

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<sup>48</sup> Anderson, "Going Straight." 130.

<sup>49</sup> Bjerregaard, "Antigang Legislation and Its Potential Impact." 176.

<sup>50</sup> Monster Kody Scott, *Monster: The Autobiography of an L.A. Gang Member* [New York: Grove Press, 1993], 103.

<sup>51</sup> Scott, *Monster: The Autobiography of an L.A. Gang Member*. 103.



than my homeboys—nobody.”<sup>52</sup> Not surprisingly, “ample evidence [suggests] the growth of gangs in urban communities coincides with the growth of the underclass in these same areas.”<sup>53</sup> If the gang provides stability and a means of survival, the criminal justice system by itself cannot solve the problem.

Anderson explored the deep divide between mainstream society and poor inner city black communities; he explained even “youngsters whose home lives reflect mainstream values—and the majority of homes in the community do—must be able to handle themselves in a street-oriented environment.”<sup>54</sup> The young men Anderson spoke with who did fall into illegal and violent street life “experienced a certain cohesion, bravado, and coming of age” within the drug gangs. As decent role models left urban ghetto communities and meaningful employment also diminished, the adoption of a decent lifestyle became increasingly irrelevant. In Anderson’s assessment, knowing, understanding and embracing the ‘code of the street’ “can be traced to the profound sense of alienation from mainstream society and its institutions felt particularly...by the young. The code of the streets is actually a cultural adaptation to a profound lack of faith in the police and judicial system.”<sup>55</sup>

The young man, Rob, at the center of Anderson’s work “was always intelligent and motivated—this is what made him an upcoming leader in” his drug gang. Rob emerged from prison with a hunger to turn his life around. Rob’s decision to turn his back on street life “confused his old friends, because prison usually enhances one’s prestige on the street, particularly in terms of code values like toughness, nerve, and willingness to

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<sup>52</sup> Scott, *Monster: The Autobiography of an L.A. Gang Member*. 69.

<sup>53</sup> Bjerregaard, “Antigang Legislation and Its Potential Impact.” 175.

<sup>54</sup> Anderson, “Going Straight.” 121.

<sup>55</sup> Anderson, “Going Straight.” 121.



retaliate for transgressions,” as well as reinforcing racial prejudice and general distrust and disdain for the system.<sup>56</sup> Thus, in the absence of programs within prisons to garner trust and support upright lifestyles, sentence enhancements for gang members are more likely to churn out more extreme versions of those who first entered. When Rob made the brave, and uncommon, decision to abandon street life for a legitimate lifestyle, he “stepped into a world where he ha[d] no particular status...as he [made] his transition to a decent life he [lost] something very important on the street—credibility, props (deference), and, ultimately, protection.” Some form of rehabilitation and social support is necessary for STEP to combat gang recidivism.

Conservative approaches to crime control, however, rejected rehabilitation as a goal. To effectively respond to crime’s new form Wilson sided with the right-leaning public over more liberal criminologists, although he conceded “the average person exaggerates the faults of the present system and the gains of some alternatives,” like STEP.<sup>57</sup> His solutions categorically deny external social, political, or economic factors as culprits and instead blame a lack of self-control, poor parenting skills, and the growth of single parent households for higher rates of juvenile crime. Wilson deems comprehensive rehabilitation a waste of time and resources, but recommends drug treatment programs to help extricate juveniles from the cycle of delinquency and gang-life. Wilson’s recognition of the need for drug treatment departs from hard-line conservative approaches to these issues. However, such programs address only one piece of a much larger problem and are ineffective if not combined with other services such as anger management, psychological support, worker training, job placement, and housing assistance.

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<sup>56</sup> Anderson, “Going Straight.” 123.

<sup>57</sup> Wilson, “What to Do About Crime.” 30.



By contrast, sociologist Loic Wacquant gives greater weight to cultural, racial, economic, and other external factors. He refuted the notion that individuals bear sole responsibility in a blameless system. Wacquant explained an incredible reversal that took place over just four decades: prisons that previously housed a 70 percent white population by the early 1980s housed a 70 percent black population.<sup>58</sup> Furthermore, Wacquant contended, “sweeping economic and political forces have reshaped the structure and function of the urban ‘Black Belt’ of mid-century to make the ghetto more like a prison” while the transformation of prisons in the last four decades has resulted in making “the prison more like a ghetto.”<sup>59</sup> In the case of gangs, this dynamic becomes especially relevant. Youths living in an environment with little, if any, economic mobility, often turned to gangs out of a need for protection, acceptance, and opportunity. If lack of control over their own lives and fear for their own safety initially steered youths toward gangs, we should not be surprised that prison reinforced gang membership since these factors are simply compounded in a prison environment. In fact, many gangs now perceive prison time as a right of passage—not a deterrent or punishment, but an expected part of one’s life that will ultimately win respect from peers.

As Wacquant explains, not only does the dynamic of Prison/Ghetto symbiosis increase the marginalization of low socioeconomic classes, but it has in fact become a major, and deemed by some a necessary, component of the post-Keynesian state. The power wielded by prison guard unions and the rise of privatized prisons has created a conflict of interests in which reducing the number of individuals incarcerated suddenly

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<sup>58</sup> Loic Wacquant. 2001. “Deadly Symbiosis: When Ghetto and Prison Meet and Mesh” in *Mass Imprisonment Social Causes and Consequences*, Ed. David Garland, 82-120. London: Sage Publications. 83.

<sup>59</sup> Wacquant, “Deadly Symbiosis.” 83.

seems like an unattractive economic plan. This, coupled with a broad public demand for politicians and law enforcement to 'get tough on crime,' has led to the passage of STEP and similar policies.



## CHAPTER 4

### *THE PROCESS OF POLICY MAKING:*

The public demand for politicians to get tough on crime was not without foundation. Occurring at increasingly frightening levels, gangs and gang violence seemed to expand exponentially. In 1982, gangs committed approximately 200 murders, viewed at the time as a frighteningly high number.<sup>60</sup> In 1986, in Los Angeles County alone, 328 gang related murders were committed.<sup>61</sup> 1987 experienced an 80 percent increase over the astronomical 1986 figure, topping off at nearly 600 homicides.<sup>62</sup> The situation desperately called for action. However, the form this action would take was hardly inevitable.

For James Hahn, then the City Attorney, and Ira Reiner, the Los Angeles District Attorney, it was first-hand observation of violence and the threat it posed to neighborhoods, that encouraged them to act to address violence directly. Understanding the self-confidence of these men in their unique authority garnered from years of practicing law and dealing with gang members in a very specific setting, lends insight into the formation of the STEP policy. Understanding the authors' perception of the root causes of gangs as cultural is crucial to understanding STEP's intent and how conservative ideology infiltrated mainstream approaches to crime control.

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<sup>60</sup> Alex Alonso, "Brief History (African American Gangs)."

<sup>61</sup> Street Terrorism Enforcement and Prevention Act, *California Compiled Statutes*, AB 2000-2036 [2007].

<sup>62</sup> Street Terrorism Enforcement and Prevention Act, *California Compiled Statutes*, AB 2000-2036 [2007].

# THE AUTHORS:

That the response to gangs took the form it did can in large part be attributed to the work of the two attorneys. Gaining a better understanding of the act's authors leads to a better understanding of STEP and why the times were conducive to such legislation. James Hahn, a Democrat and one of the STEP Act's primary authors, held elected office as a City of Los Angeles attorney, and gained an awareness of the damage done by gangs while prosecuting misdemeanors ranging from graffiti to witness intimidation.<sup>63</sup> That was the driving force behind his decision to draft legislation. Hahn felt a personal responsibility to provide policy leadership to his constituents. He shared the collective sense that gangs were "getting more organized, and they were getting more vicious and more violent."<sup>64</sup>

Hahn's genuine sympathy for those most affected by violence drove him to take action, seeing it first and foremost as a way to help poorer areas afflicted with rampant gang violence. Still, Hahn continually stressed the importance of and need for prevention programs. "The real way to deal with [gangs] is to let them die of attrition and they can't keep increasing their numbers," he argued. He therefore included provisions for the funding of prevention programs in the early versions of STEP.<sup>65</sup> These, however, would become casualties of the legislative process; by the end of the STEP's journey through the California legislature, none of the prevention program provisions remained. Instead the act focused almost entirely on sentence enhancements. In Hahn's estimation, this shift

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<sup>63</sup> James Hahn, phone interview by author, January 23 2009.

<sup>64</sup> Hahn, interview.

<sup>65</sup> Hahn, interview.



in focus was a result of a sense of urgency. The “situation was spinning out of control,” he observed, and increasingly gangs “were impacting the quality of life, especially in poorer neighborhoods.”<sup>66</sup> “The longer they’re locked up the longer they’re off the streets,” became the reasoning behind punitive approaches to gangs, pushing prevention into the distant background.<sup>67</sup> While certainly well meaning this track hardly represented a liberal, let alone an avant-garde, approach to crime control.

Hahn explained that he did not espouse a “society made us” approach to gangs.<sup>68</sup> Looking back to his high school days, Hahn recalls “there wasn’t really any outside force to make that happen...The people...in those gangs...just joined because they wanted to be tougher than everybody else.”<sup>69</sup> According to Hahn, this ‘tough guy’ mentality became “worse than any natural disaster in this country” when crack cocaine entered into the mix, and drove homicide rates even higher.<sup>70</sup> Hahn was skeptical that gangs were a symptom of poverty or other social ills and began to veer from his own modern liberal roots. Instead of passionately working to better the situation of the poor by aggressively attacking the symptoms of larger problems, gang legislation narrowed the focus to aggressively addressing gang violence.

Hahn valued direct experience as the basis for making the gang violence policy. Drawing upon real life know-how, Hahn formed his opinions from personal interactions as a young man and then his work with the delinquents themselves in the courtroom. Like many others Hahn rejected abstract, scholarly, expert opinion on crime. This was a

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<sup>66</sup> Hahn, interview.

<sup>67</sup> Hahn, interview.

<sup>68</sup> Hahn, interview.

<sup>69</sup> Hahn, interview.

<sup>70</sup> Hahn, interview.



significant change from the previous era. David Garland observed this dynamic, pointing out that “policy measures are constructed in ways that privilege public opinion over the views of criminal justice experts and professional elites. The professional groups who once dominated the policy-making community are now increasingly disenfranchised.”<sup>71</sup>

Hahn believed his particular understanding of gangs, inaccessible to criminologists or other scholars, enabled him to pen more pertinent, realistic, and effective legislation.<sup>72</sup> His belief carried over to the STEP legislation which did not rely “on established criminological theory and research [leaving] open the possibility that the legislation would ultimately fail in achieving its purpose.”<sup>73</sup> I detected in my interviews with Hahn that he had interacted with the victims of gangs on a daily basis and therefore felt better equipped to address the situation than scholars who lacked such first-hand experience and knowledge of fallout from gang activity.

District Attorney Ira Reiner, Hahn’s predecessor in the City Attorney post and a co-author of STEP, bore similar ideas about gang violence and how to best address the problem. He too cited first-hand experience with gangs as his credential for composing effective solutions. In his experience as both a city and district attorney of Los Angeles, Reiner witnessed the consequences first hand: “You would go into someone’s home, and I did, where there would be bullet holes, say, in the kitchen wall. And where did they come from? Not from inside the house, they’re just random shots that would go into people’s homes. And that was not unusual.”<sup>74</sup> This led Reiner, as it did Hahn, to address the violence in order to do right by his constituents. In his mind, “crime became the number

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<sup>71</sup> Garland, *The Culture of Control*. 142-143.

<sup>72</sup> Hahn, interview.

<sup>73</sup> Bjerregaard, “Antigang Legislation and Its Potential Impact.” 184.

<sup>74</sup> Reiner, interview.



one social issue.”<sup>75</sup> He understood “the gang problem was very serious and gang problems involved, typically, the most serious crimes.”<sup>76</sup>

Like Hahn, Reiner viewed gang members as a far cry from “wayward youths.” All members were equally culpable; he saw little “point in making the distinction between who’s shooting, who’s driving and who’s back at the place where they’re congregating, drinking beer and encouraging others to go out and do the killing.”<sup>77</sup> In part, that was a practical view as much as a philosophical one. As this paper has already discussed, differentiating between a non-member, a fringe member, and a hard-core member consistently proved difficult for police.<sup>78</sup> Reiner admitted, “In any gang there are those who are the shooter and there are those that...haven’t done any shooting...there’s no practical way to distinguish between [the two]...I don’t know that it’s a reasonable basis for making that distinction...it’s all pretty much the same.”<sup>79</sup> Failing to make such a distinction, however, could raise very real issues of fairness, extending to guilt by association. Reiner emphasized how he and the members of the California Legislature worked diligently to carefully draft a bill that did not infringe upon constitutional rights.<sup>80</sup> Interestingly, by lumping all gang members into one category of murderers devoid of emotion or morality, Reiner, unintentionally, made the case for prevention and rehabilitation programs even less relevant.

Reiner believed that incarceration was an essential starting point for combating gangs. As “violent criminals on the street they [were] quite frankly just predators...What

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<sup>75</sup> Reiner, interview.

<sup>76</sup> Reiner, interview.

<sup>77</sup> Reiner, interview.

<sup>78</sup> Anderson, “Going Straight.” 130.

<sup>79</sup> Reiner, interview.

<sup>80</sup> Reiner, interview.



you need to do is remove them from the street...that's the first order of business...Arrest prosecute, convict and incarcerate for as long as possible."<sup>81</sup> This ideology became the crux of STEP. The belief that "You're not going to change attitudes. You change behavior," illuminates Reiner's approach.<sup>82</sup> As far as he was concerned rehabilitation and prevention were a waste of precious time and resources. Reiner, like growing numbers of politicians in the late 1980s, believed, "You don't deal with them by offering them a job... having a recreation center [or]... improving the educational system. Once they're on the street and they're killing, you deal with them only through incarceration."<sup>83</sup> When "dealing with somebody who is armed with a weapon who is killing...you need to incarcerate that person...and then...you can deal long-term."<sup>84</sup> Thus increased sentences became the legislation's engine, its chief strategy to deal with gangs. According to Reiner, the original intent of the bill was to form sentence enhancements to keep gang members in prison as long as legally possible.<sup>85</sup>

In theory these enhancements made sense for hardened gang members, individuals beyond the reach of standard programs; however, since STEP offered no provisions for non-punitive programs, it provided a one-dimensional solution to a multi-dimensional problem. Furthermore, failing to offer preventative or rehabilitative programs to address gangs released society of any responsibility for their existence. Reiner did believe that combating gangs necessitated a multi-pronged approach to address both the immediate violence and the root causes of gangs. He had "no doubt,

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<sup>81</sup> Reiner, interview.

<sup>82</sup> Reiner, interview.

<sup>83</sup> Reiner, interview.

<sup>84</sup> Reiner, interview.

<sup>85</sup> Reiner, interview.



none, that the root causes are cultural...it's hard to, with any certitude, define just what is exactly meant by cultural. But it is cultural."<sup>86</sup> Reiner recognized that "poverty has some impact," on gangs, but only "at the margins. As a principle cause of crime, absolutely not."<sup>87</sup> Reiner pointed out that rising crime rates did not correlate with downturns in the economy to confirm his view.<sup>88</sup> Since the two did not track one another, they were, in his view, wholly independent phenomena.

On the surface his argument appears valid enough, however digging deeper reveals obvious weaknesses. Even during the economic growth of the 1980s, the poorest people experienced none of that improvement. By definition, an underclass implies a group of people so entrenched in poverty, they are largely unaffected by most economic change. This would explain why gangs still exist and sometimes even grow during times of economic growth and why violent crime rates seem independent of the economy's peaks and lows.

Like Hahn, Reiner's rejection of poverty as a root cause of violent crime and gangs did not leave him unsympathetic to the poor. Like a true blue liberal Reiner encouraged efforts to address poverty "because it is the right and decent and moral thing to do."<sup>89</sup> For him, placing the blame of gang violence on poverty was a cop-out, releasing individuals of their responsibility for their own actions. Reiner's and Hahn's sincere concern and sense of obligation to poor communities did not translate into a socio-genesis view of gang violence. Instead their reliance on their experience-based understanding led to fairly conservative perspectives on crime and gang violence. They

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<sup>86</sup> Reiner, interview.

<sup>87</sup> Reiner, interview.

<sup>88</sup> Reiner, interview.

<sup>89</sup> Reiner, interview.



were hardly heartless hard-line policy makers; their position reflected violence and human tragedy they bore witness to that brought them face to face with murder, rape, and terror on a consistent basis. This is the perspective from which they composed STEP.

Both Hahn and Reiner approved of the final draft of STEP signed into law. While Reiner viewed the act as a victory over gangs only improved upon through an increase in the enhancements, Hahn lamented the act's lack of prevention programs. Early drafts did include prevention provisions; however, by the time STEP became law all prevention language was removed. A careful reading of the various drafts and what they communicate both explicitly and implicitly provides insight into the intent and thought process of the authors and legislators. These elements, namely defining gangs and gang members, the legislators understanding of what caused gangs to form, and the language employed to characterize the problem itself, greatly impacted the Act's breadth and meaning.

#### ***DYNAMIC STEPS:***

The STEP Act passed through 13 draft versions between March of 1987 and August of 1988 before finally being signed into law. Analyzing these various drafts, looking at the elements of the legislation that remained the same throughout as well as those that considerably changed, sheds light on the process through which the legislation formed. Legislators struggled with the difficulty of defining exactly what and whom the bill addressed while remaining consistent in its strategy to punish severely. As the California Legislature edited the bill, as the legislation transformed from start to finish, the bill retained the same stated intent despite vastly altered approaches to the problem.



The revisions that took place indicate efforts to simultaneously rein in emotionally charged and vague language and set quite a hard line against gangs. Legislators made three major transformations between the bill's introduction and its signing into law: 1) Designating 'members' as opposed to 'participants' of gangs as liable, 2) characterizing the threat posed by gangs without hyperbole, 3) and, making the length of the sentence enhancements more flexible in length. Legislators weaved together fixed sentences with clauses allowing for judiciary discretion to soften sentences on a case-by-case basis with written justification. The examination of STEP's legislative evolution reveals one major paradox: in order to protect the populace at large, legislators justified the encroachment of gang members' civil liberties.

Even cursory examinations of STEP's drafts clearly indicate a struggle over the most fundamental task: how to define a gang member and a gang. The first five drafts "provide that any person who actively participates in any criminal street gang with knowledge that its members or participants engage in or have engaged in a pattern of criminal gang activity, as designed with the specific intent to promote, further, or assist in any criminal conduct by its members or participants shall be punished..."<sup>90</sup> Since the language states 'members *or* participants' it intimated an implicit difference between them. Yet it did not resolve the difference between a gang member versus a gang participant, and since the bill never defined the distinction between the two it was left to the reader to infer.

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<sup>90</sup> California Legislature, *Assembly Bill No. 2013* [Sacramento March 6 1987]; California Legislature, *Assembly Bill No. 2013* [Sacramento April 23 1987]; California Legislature, *Assembly Bill No. 2013* [Sacramento May 26 1987]. California Legislature, *Assembly Bill No. 2013* [Sacramento June 3 1987]. California Legislature, *Assembly Bill No. 2013* [Sacramento June 9 1987].



The sixth draft sought to clarify this confusion by changing the language to “provide that any 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 furthers, or assists, in any felonious criminal conduct by gang members shall be punished...”<sup>91</sup> Even after the attempt to clarify who was subject to punishment, the language suffered from vagueness. ‘Active participation’ could presumably include anything from conversing with a group of known gang members to spraying graffiti gang symbols to sitting in the car during a drive-by shooting. Certainly some of those activities imply greater culpability than others. However, none conclusively established the criteria for membership in a gang. According to Hahn, he saw the legislation as a powerful tool to combat hardened gang members in cases of homicide and drive-by shootings.<sup>92</sup>

In an attempt to construct language providing prosecutors and law enforcement with increased latitude, the legislature failed to include enough to protect the people or differentiate between hardcore criminals and merely wayward youth. My interviews suggest they did not intend to make such distinctions. Ira Reiner concluded, “There’s no practical way to distinguish” between the two, and “there’s not much point in making the distinction.”<sup>93</sup> One could argue that individuals should avoid gang members at all cost, thus eliminating the confusion. Yet, gang members were still neighbors, siblings, and friends; people independent of gangs associated with them. Furthermore, as Elijah Anderson noted, “Police driving by could not always distinguish between the drug

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<sup>91</sup> California Legislature, *Assembly Bill No. 2013* [Sacramento June 25 1987].

<sup>92</sup> Hahn, interview.

<sup>93</sup> Reiner, interview.



dealers and the kids just hanging out. In fact, adapting to the code [of the street], otherwise law-abiding and decent youths at times develop an interest in being confused with those who are hard-core street, because such a posture makes them feel strong and affords them an aura of protection.”<sup>94</sup> To distinguish between a gang member and a neighbor of the same race and age who dressed and spoke similarly became increasingly difficult in practice.

In addition to the violence, legislators also grappled with characterizing the further effect of gangs and the degree to which they disrupted society. The first three drafts asserted that gang “activities, both individually and collectively, *threaten the very foundation of civilized society* and are not constitutionally protected [emphasis added].”<sup>95</sup> The fourth draft softened the assertion to: gangs, “both individually and collectively, *present a clear and present danger to public order and safety* and are not constitutionally protected [emphasis added].”<sup>96</sup> The language of the first three drafts, despite their eventual revision, offers us historical insight. Garland has written, the 1980s especially witnessed “a collective anger and a righteous demand for retribution rather than a commitment to a just, socially engineered solution.”<sup>97</sup> Though enough legislators eventually felt the original language, casting gangs as a threat to the foundation of civilized society, was too strong to keep. Some legislators felt compelled to color the issue with stark foreboding, strongly implying that inaction would lead to civilization’s undoing.

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<sup>94</sup> Anderson, “Going Straight.” 130.

<sup>95</sup> California Legislature, *Assembly Bill No. 2013* [Sacramento March 6 1987]; California Legislature, *Assembly Bill No. 2013* [Sacramento April 23 1987]; California Legislature, *Assembly Bill No. 2013* [Sacramento May 26 1987].

<sup>96</sup> California Legislature, *Assembly Bill No. 2013* [Sacramento June 3 1987].

<sup>97</sup> Garland, *The Culture of Control*. 10-11.



Such hyperbole would have been perhaps more justifiable if gang crimes were not so self-contained. All of civilization was not at stake, but people in the poorer areas were, especially those caught in cyclical poverty. As James Hahn pointed out, gangs were “absolutely ruining the quality of life” for those who lived in poorer areas.<sup>98</sup> If ‘threats to civilization’ existed, they lay in the lack of decent healthcare, education, housing, and employment that also battered the poor. While perhaps not glamorous enough or starkly threatening to well-to-do Californians to gain headlines, these structural inequalities silently corroded life for poorer Californians. In an age where welfare became a dirty word and many viewed the poor as a self-perpetuating mass of lazy individuals, combating gangs seemed an easier, less objectionable alternative to reaching into the taxpayers’ pockets to support social programs. As Hahn put it, “Nobody really wants to stand up and be involved in a street gang,” equating opposition to STEP with involvement with a gang itself.<sup>99</sup>

The explosive growth of an underclass perpetuated gangs, undermined the American Dream, and condemned entire populations to endless poverty. Extensive scholarship has emphasized that “the growth of gangs in urban communities coincides with the growth of the underclass in these same areas.”<sup>100</sup> This perspective does not minimize the violent and destructive nature of gangs, but it recognizes gangs as a symptom of larger societal problems.

Both the original and the final language conveyed various degrees of urgency to justify bold action. The sense of ‘we are doomed if we do not act now’ justified the broad

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<sup>98</sup> Hahn, interview.

<sup>99</sup> Hahn, interview.

<sup>100</sup> Bjerregaard, “Antigang Legislation and its Potential Impact.” 175.



language and harsh sentences, implying that if prosecutors and law enforcement did not have the necessary tools to act swiftly, terror would prevail. Thus, opposing the legislation became tantamount to supporting terror and the end of civilization. That suggests why there was little serious opposition to the legislation. David Garland provides one possible explanation for such weak opposition: “The prospect of reintegrating the offender is more and more viewed as unrealistic and, over time, comes to seem less morally compelling.”<sup>101</sup>

This sense of urgency and foreboding helps to frame the debate over terms ‘member’ or ‘participant.’ If “members” of gangs really were terrorist threats to civilization, as the title of the legislation suggests, then ‘fringe participants or members’ would seem less likely to exist—half-hearted threats to civilization are few and far between. The act had enough trouble defining a gang member, let alone delving into the complexities of the various degrees of involvement. Gang members ran the gamut from those regularly involved in shootings, to half-hearted members who threw up gang signs but never shot anyone, to neighbors who dressed similarly but were not in gangs at all. Even the marginally less damning language in which gang members presented a “clear and present danger” implies a strong enough sense of alarm. Ultimately this language of urgency was not just an academic matter of rhetoric; through it legislators exacerbated an atmosphere of fear and anxiety that in turn whipped up public support for the legislation and sanctioned vague sweeping provisions.

In tune with the highly alarmist language of the first draft, the fixed sentence enhancements allowed no judicial modification whatsoever. If a gang member committed

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<sup>101</sup> Garland, *The Culture of Control*. 164.



a misdemeanor, regardless of their sentence or circumstances, they had to serve a minimum of 180 days or up to a year in the county jail. Gang members who committed felonies received an automatic three-year enhancement tacked onto their sentences. Theoretically, if a gang member convicted of a felony received a sentence of two years, STEP would more than double the sentence.<sup>102</sup> The fixed sentences put in place had “an absolutist quality designed to reassure a distrustful public that the system will not betray them once the case [went] out of view.”<sup>103</sup> If a gang member convicted of a felony received a life sentence, he or she would not qualify for parole until after serving 15 years. Fixed sentences, once perceived as unjust, in the 1980s also appeared to ensure justice by meting out the same punishment to everyone regardless of case specific circumstances. These measures were all quite stringent, yet in retrospect when asked what he would change about STEP, Ira Reiner responded; “Maybe for some gang crimes I’d make the sentence even greater.”<sup>104</sup>

By the final draft, legislators had navigated towards a strange mesh of indeterminate and determinate sentences; all, however, were longer. In the final draft those convicted of a misdemeanor faced much more serious penalties, either serving between 180 days to one year in county jail or one, two, or three years in state prison at the judge’s discretion. STEP did not compel judges to state their rationale for sentencing misdemeanors. The legislation softened felons’ sentences; instead of an automatic three extra years, an additional one, two, or three years were added onto their sentences “at the court’s discretion. The court shall order the imposition of the middle term of the sentence

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<sup>102</sup> Street Terrorism Enforcement and Prevention Act, *California Compiled Statutes*, AB 2000-2036 [2007].

<sup>103</sup> Garland, *The Culture of Control*. 132.

<sup>104</sup> Reiner, interview.



enhancement unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of sentencing.”<sup>105</sup> This blend of mixed sentencing with judiciary discretion broadened the act significantly. A judge could increase an enhancement past three years if he or she felt it necessary or decrease an enhancement depending on the facts of the specific case. It appears the legislature did its best to provide prosecutors with the tools they demanded while trying to give judges enough flexibility to consider extenuating or unique circumstances of many cases. Policy makers wanted to allow for elasticity while doing “something decisive, to respond with immediate effect to public outrage, to demonstrate that the state is in control and is willing to use its powers to uphold ‘law and order’ and to protect the law-abiding public.”<sup>106</sup>

Despite recognizing STEP’s limitations, legislators flexed their muscles to work towards the eradication of gangs. They allowed a “willingness to deliver harsh punishments to convicted offenders [to] magically [compensate for] a failure to deliver security to the population at large.”<sup>107</sup> Incarcerating gang members removed potentially dangerous individuals from the streets; but it did little address the underlying reasons for continued violence, reduce gang recruitment, or attempt to draw those already in gangs away from the incredibly destructive lifestyle. These would require expensive long-term solutions. Viewed by many as too lenient, such solutions paled in the face of increased punishments.

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<sup>105</sup> Street Terrorism Enforcement and Prevention Act, *California Compiled Statutes*, AB 2000-2036 [2007].

<sup>106</sup> Garland, *Culture of Control*. 132.

<sup>107</sup> Garland, *Culture of Control*. 134.



Many supporters of STEP viewed gang legislation as a 'zero-sum' equation: "anything that hurts offenders *by definition* helps victims."<sup>108</sup> Helping offenders in the meantime through rehabilitation or other support programs produced no direct benefits to most Americans. Franklin Zimring, a criminologist and legal scholar, explored the pitfalls of such an approach, explaining "what happens here is that the symbolic aspects of a status competition where the denunciation of offenders might be seen as supporting the social standing of crime victims is carried over to assumptions that the actual hurt of punishment creates equal and opposite reactions in victims."<sup>109</sup> Assuming the zero-sum relationship exists justified "endless cycles of increased infliction of suffering on counterfeit utilitarian grounds."<sup>110</sup> Through the rise of twenty-four hour news channels, crime dramas, and increasingly inflammatory language surrounding violent crime, victims are "representative character[s] whose experience is assumed to be common and collective, rather than individual and atypical."<sup>111</sup> Therefore, even segments of society largely unaffected by violent crime feel victimized, fueling increasingly punitive policy.

Authority figures reinforced the sense of universal danger despite the claim's inaccuracy. In 1985 President Ronald Reagan, in his state of the union address, asked, "Shouldn't we feel more compassion for the victims of crime than for those who commit crime? ...One does not have to be attacked to be a victim. The woman who must run to her car after shopping at night is a victim. The couple draping their door with locks and

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<sup>108</sup> Franklin E. Zimring. 2001. "Imprisonment Rates and the New Politics of Criminal Punishment" in *Mass Imprisonment Social Causes and Consequences*. Ed. David Garland. 145-149. London: Sage Publications 147.

<sup>109</sup> Zimring, "Imprisonment Rates and the New Politics of Criminal Punishment." 147.

<sup>110</sup> Zimring, "Imprisonment Rates and the New Politics of Criminal Punishment." 147.

<sup>111</sup> Garland, *Culture of Control*. 144.



chains are victims.”<sup>112</sup> This fortified the sense of pervasive fear and propped up the false notion that everyone had reason to fear violent crime. Despite the tenacity of the language with which Ira Reiner spoke of gangs, he admitted, “There was not terror in the streets, except in [certain] neighborhoods. But outside of those very dangerous neighborhoods it wasn’t a terror in the streets mentality but [there were] very serious concerns about violent crime.”<sup>113</sup> Thus the misleading characterization of society as a whole falling victim to gangs encouraged punitive solutions that assured the public ‘something was being done.’ The symbolic power of STEP to display the government’s ability and desire to combat gangs, placate victims, and protect the people took precedence over more expensive, non-punitive, long-term solutions to controlling gangs.

#### *STEP’S CONSTANTS:*

While STEP underwent several changes from its inception to final form, many elements remained unchanged. They, too, yield important information about how legislators perceived the problem of gangs and gang members. Two of the most striking consistencies in the drafts include the explicitly stated intent clause and the urgency clause; the language of both remained exactly the same throughout the legislative process. Every version stated: “It is the intent of the Legislature in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang-related activity and upon the organized nature of street gangs, which

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<sup>112</sup> Ronald Reagan, “Address Before a Joint Session of the Congress on the State of the Union,” February 6, 1985, *The American Presidency Project*, <http://www.presidency.ucsb.edu/ws/index.php?pid=38069>, [March 10, 2009].

<sup>113</sup> Reiner, interview.



together are the chief source of terror created by street gangs.”<sup>114</sup> That intent tells less than appearance suggests. When asked how he understood STEP’s intent, James Hahn asserted, “We didn’t have any hope that we were going to eradicate gangs.”<sup>115</sup> Likewise, Ira Reiner concurred, “Not at all [did we expect to eradicate gangs].”<sup>116</sup> Although members of the Los Angeles gang unit “welcomed [STEP], by itself, they [believed], the law would not eradicate gang violence.”<sup>117</sup>

With the universal acknowledgement that STEP would not eradicate gangs, the legislation’s actual intent differed depending upon who explained it. Both Hahn and Reiner cited sentence enhancements and getting gang members off the streets as a major part of STEP’s intent.<sup>118</sup> However, the two men differed on the profile of individuals STEP targeted. In Hahn’s mind the legislation targeted “hardened gang members,” in an “effort to really deal with the drive-by shootings.”<sup>119</sup> Reiner, however, did not distinguish between the shooter, the individual sitting next to the shooter, or individuals waiting to meet up with the two.<sup>120</sup> While hardly innocent bystanders, individuals who participate in gangs without participating in shootings arguably have different degrees of culpability. Hahn disagreed with Reiner, stating that the legislation’s intent targeted hardened gang members, the individuals who led gang operations. Already in framing the legislation, serious differences of opinion existed over the legislation’s intent. These differences would expand later in implementation.

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<sup>114</sup> California Legislature, *Assembly Bill No. 2013* [Sacramento 1987-1988].

<sup>115</sup> Hahn, interview.

<sup>116</sup> Reiner, interview.

<sup>117</sup> Michele Fuetsch. “New Weapon in Gang Wars Compton Police Serve Written Notice of Street Terrorism Act,” *Los Angeles Times*, June 1 1989, Home Edition.

<sup>118</sup> Hahn, interview; Reiner, interview.

<sup>119</sup> Hahn, interview.

<sup>120</sup> Reiner, interview.



If no one believed STEP alone would bring about the eradication of gangs they did believe it would buttress other attacks to bring about the eventual downfall of gangs. That would occur without prevention programs; by the final draft legislators categorically lined out the provision STEP included to fund them. Many legislators recognized STEP as a one-dimensional response to a multi-dimensional problem. But the realities of an already tight state budget and public resistance to increased taxes stymied provisions for prevention, entirely neglected rehabilitative programs, and in legislator's eyes, these less punitive preventative approaches paled in the face of an enemy presenting "clear and present danger."<sup>121</sup> The urgent language characterized the situation as dire—with no time to implement prevention or worry about rehabilitative programs. The final paragraph of every draft included an urgency statute which stated: "In order to provide the tools necessary for law enforcement to stem the tide of illegal gang warfare without infringing upon the constitutional rights of any individual, at the earliest possible time, it is necessary that this act take effect immediately."<sup>122</sup> From March 6, 1987 until August 30, 1988 that paragraph closed each draft of STEP.

American politics have made a business out of cultivating a sense of urgency to promote legislation—especially when it infringes upon civil liberties. STEP most certainly qualifies as such legislation, a reality not lost on the American Civil Liberties Union who "vehemently oppose[d] the legislation as 'guilt by association' that

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<sup>121</sup> Street Terrorism Enforcement and Prevention Act, *California Compiled Statutes*, AB 2000-2036 [2007]

<sup>122</sup> Street Terrorism Enforcement and Prevention Act, *California Compiled Statutes*, AB 2000-2036 [2007]



jeopardize[d] individuals' constitutional rights."<sup>123</sup> In response, proponents of the bill pointed towards the havoc and chaos caused by the not-so-innocent associations of gangs to justify their positions. By playing upon already prevalent fears with calamitous calls for immediate action, legislators swept aside dissenting views.

#### *PROCESSING THE PROCESS:*

STEP's evolution in its legal framing reflected the injection of conservative ideology into mainstream approaches to crime control. This shift did not translate directly into poor legislation. The idea behind STEP was meant to address very real needs of prosecutors and law enforcement. However, the legislators' stated intent set it up for failure—even the authors did not expect it to eradicate gangs. Furthermore, the employment of loaded language colored any rational objection as supporting gang terror, made evident by newspaper headlines and the language of the act itself: "Threaten the very foundation of civilized society,"<sup>124</sup> "L.A. Gets Behind Anti-Gang Law: ACLU Opposes Bill Banning Membership in Violent Groups,"<sup>125</sup> "You Can Only Take So Much,"<sup>126</sup> and "Parasites on Their Own People."<sup>127</sup> Such language and the urgency propagated by STEP's proponents also created an atmosphere conducive to increasingly conservative punitive responses. It also positioned more expensive long-term solutions as ineffective and overly lenient. Thus, a well-intentioned piece of policy with useful

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<sup>123</sup> Norma Meyer. "L.A. Gets Behind Anti-Gang Law; ACLU Opposes Bill Banning Membership in Violent Groups". *San Diego Union-Tribune*. June 9<sup>th</sup> 1987. A-5.

<sup>124</sup> Street Terrorism Enforcement and Prevention Act, *California Compiled Statutes*, AB 2000-2036 [2007]

<sup>125</sup> Meyer, "L.A. Gets Behind Anti-gang Law."

<sup>126</sup> "You Can Only Take So Much." *Time Magazine* Oct 24<sup>th</sup> 1983.

<sup>127</sup> John Leo. "Parasites on Their Own People." *Time Magazine*. July 8<sup>th</sup> 1985



elements invited revision by conservatives and contained the seeds of failure that would come to fruition in implementation.



## CHAPTER 5

### *IMPLEMENTATION:*

Perhaps STEP's greatest weakness was the ambiguity surrounding its intent, and this certainly came across in its implementation. The act allowed for diametrically opposed readings and practice. The *Los Angeles Times* quoted Red Mason, a member of the Los Angeles police gang unit, in 1989 saying STEP "is for the guy who's been slipping through, the guy who's been riding in the back seat on the drive-by."<sup>128</sup> In stark contrast a 1991 *Los Angeles Times* article, the San Fernando Police Chief Dominic Rivetti assured that "police will target only hard-core gang members who we have been working for months to identify using the STEP criteria."<sup>129</sup> Certainly STEP did include provisions for dealing with gang crimes in lower echelons of violence. However, the lines between fringe members and hardened criminals had been blurred from the outset. Instances occurred where prosecutors turned to STEP to prosecute to the fullest possible extent seemingly just because they could. Louis Printa Hughes was sentenced to a year in prison when he was "caught by police spray painting gang graffiti on a wall in South Central Los Angeles."<sup>130</sup> He had no prior convictions, but had been served with a notice alerting him to the illegality of gang activity. While gang graffiti was one of Ira Reiner's

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<sup>128</sup> Michele Fuetsch, "New Weapon in Gang Wars Compton Police Serve Written Notice of Street Terrorism Act," *Los Angeles Times*, June 1 1989. Home Edition.

<sup>129</sup> Sebastian Rotella. "Gangs Question Their Exile From Park San Fernando: Under a Unique Ordinance, Members Listed as 'Active' Will be Cited for Entering Las Palmas. Critics Call the Move Unconstitutional". *Los Angeles Times*. September 8 1991. Page 3. Valley Edition.

<sup>130</sup> "Southland: Briefly-Graffiti Leads to Prison Term." *Daily News of Los Angeles*. June 20 1990.



original motivations for penning STEP, a yearlong prison sentence struck many as inordinate, unjust, and having no relation to curbing violence.

The recognition of STEP's troubling latitude in practice soon led some enforcers to specify its application. In 1991, Fresno's new police chief Joseph Samuels recognized the need to restructure department protocol, and reassured residents, "the department will no longer single out suspected gang members simply on the basis of the 'colors' they are wearing. An officer must have other reasons to stop and question youths."<sup>131</sup> Before Samuels' appointment to Chief of Police, the general approach to gangs seemed "whatever is done in the name of warring on gangs is OK—that ends justify means."<sup>132</sup> This attitude fostered an escalation dynamic whereby increasing gang violence led law enforcement to implement STEP indiscriminately.

Law enforcement's jaded perceptions of poorer communities contributed to profiling and perpetuated distrust in poorer areas. Beth Bjerregaard "found that police officers, when asked to indicate the locations they most expect to encounter hostile response, put minority areas at the top of the list. There is much evidence that minorities have historically been subjected to disproportionate harassment and excessive use of force by the police."<sup>133</sup> Furthermore, the proliferation of the culture of poverty ideology encouraged a dehumanization of gang members and the communities from which they sprang. Thus, the communities necessitating the most protection and reassurance from police, were put at increased risk of arrest and transgression of civil liberties.

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<sup>131</sup> "Chief Samuels and Gangs: The New Police Chief Will be Under Pressure to Act Hastily and Thoughtlessly. So Far He's Staying Steady". *Fresno Bee*. November 29<sup>th</sup> 1991. Home Edition. Metro Section Page B8

<sup>132</sup> "Chief Samuels and Gangs."

<sup>133</sup> Bjerregaard, "Antigang Legislation and Its Potential Impact." 176.



Furthermore, the seriousness of the offense and the offender's demeanor are the factors most likely to determine police response to juveniles.<sup>134</sup> If youths' confidence in the justice system had already been corroded it could color their encounter with law enforcement perpetuating a cycle of mutual aggression and suspicion. Mutual distrust between poorer communities and law enforcement subverted a system theoretically meant to foster safety and security.

Instances of relatively benign police antagonism hinted at a larger problem—what Ira Reiner dubbed a “cautionary note.”<sup>135</sup> In order to bring crime rates down, the first response became an “aggressive active police presence...sometimes what happens when you have aggressive police presence is abuse of authority by police.”<sup>136</sup> Los Angeles Patrolman Mark Anderson was quoted by the *Los Angeles Times* asking a gang member, “You know how to read right?” while serving him with a gang notice.<sup>137</sup> The same article quoted Red Mason, a member of the Los Angeles Gang Unit, asking another Crip gang member, “You want to go over to Lueders with me?” Lueders, the park he referred to, was located well within Blood territory, which Crips entered at their own risk.<sup>138</sup> Harsh responses to gangs, if not without warrant, paradoxically subverted the security they sought to cultivate, creating an atmosphere of distrust exacerbated by a lack of other programs with which to buttress them.

From the very beginning of STEP, many advocates held that in order to truly have an impact and eradicate gangs something more than incarceration was called for to

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<sup>134</sup> Bjerregaard, “Antigang Legislation and Its Potential Impact.” 176.

<sup>135</sup> Reiner, interview.

<sup>136</sup> Reiner, interview.

<sup>137</sup> Fuetsch, “New Weapon in Gang Wars.”

<sup>138</sup> Fuetsch, “New Weapon in Gang Wars.”



address the root causes of gangs. City Attorney Hahn lamented STEP's lack of some kind of a prevention package from its inception.<sup>139</sup> In practice policy makers and district attorneys increasingly turned to prevention programs as the key form of non-punitive action to supplement STEP. Even as late as 1993, when gang murders were beginning to decline compared to the astronomical figures of the mid 1980s, gangs themselves were still growing. Estimates suggest around 30,000 gang members lived in Los Angeles in 1980.<sup>140</sup> By 1993 that population had risen to approximately 61,300. Despite this large membership growth homicides were down compared to the 1980s.<sup>141</sup> To address the burgeoning membership and continued, albeit lessened, murder rates, Los Angeles Police Chief James Cook orchestrated a program that coupled STEP arrests with prevention. It sought to identify "the most dangerous gang leaders and then [brought in a] coordinated team specifically to handle them."<sup>142</sup> Cook identified the individuals brought in by the Tri-Agency Resource Gang Enforcement Team (TARGET) as "absolutely violence-prone...I feel for the community safety that these hard-core multiple offenders must be removed from the community, then the prevention programs can come in and offer intervention for the less involved fringe members."<sup>143</sup>

Unfortunately the prevention programs Cook referred to were symbolic in nature at best—hardly effective at preventing youths from joining gangs. Los Angeles' primary

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<sup>139</sup> Hahn, interview

<sup>140</sup> Alex Alonso, "Brief History (African American Gangs)," Los Angeles Gangs, <http://www.streetgangs.com/history/history.html>, [May 1, 2009].

<sup>141</sup> "Gang Statistics Archive." The Los Angeles Police Department, [http://www.lapdonline.org/crime\\_maps\\_and\\_compstat/content\\_basic\\_view/31590](http://www.lapdonline.org/crime_maps_and_compstat/content_basic_view/31590), [May 1, 2009]

<sup>142</sup> Andrea Heiman. Westminster Wining Gang Fight Law Enforcement: City-County Team Goes After 'Hard-Core' Offenders, Successfully Prosecuting 25 Gang Leaders in First Year. *Los Angeles Times*. June 3<sup>rd</sup> 1993. Page 1. Orange County Edition.

<sup>143</sup> Heiman, "Westminster Wining Gang Fight."



prevention program was a national curriculum dubbed Gang Resistance, Education, and Training (GREAT). GREAT's older cousin, the Drug Awareness, Resistance, Education (DARE), had already proved "a remarkably failed program with a remarkably positive public relations image."<sup>144</sup> Criminologists Malcolm and Klein pointed out that "the fact that GREAT was modeled on a failed program with a positive image, is, itself, a study in the application of conventional wisdoms in the face of contrary empirical knowledge."<sup>145</sup> The multi-million dollar national effort garnered much support, even in the face of obvious failure to evince change in gang participation. Malcolm and Klein suggested tailoring the program to target children with higher risk of becoming gang members—decreasing students by 90 percent.<sup>146</sup> The program's success was misrepresented by its implementation. By introducing the program to "all seventh graders, not just those deemed more vulnerable to gang recruitment," keeping in mind, "the vast majority of adolescents do not join gangs, program efficiency is not high in any case."<sup>147</sup> Thus GREAT stood a far cry from any form of potent accompaniment to STEP.

A 'prevention provision' became the portion of STEP that received the most media coverage and stirred the greatest controversy. Section 272 of the state Penal Code strapped parents with the legal responsibility to "exercise reasonable care, supervision, protection and control over their minor children."<sup>148</sup> Interestingly enough, the parental responsibility clause was hardly at the crux of the legislation and received little attention

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<sup>144</sup> Malcolm W Klein & Cheryl L. Maxson. Street Gang Patterns and Policies. Oxford: Oxford University Press. 2006. 96.

<sup>145</sup> Klein, *Street Gang Patterns and Policies*. 100.

<sup>146</sup> Klein, *Street Gang Patterns and Policies*. 101.

<sup>147</sup> Klein, *Street Gang Patterns and Policies*. 99.

<sup>148</sup> Street Terrorism Enforcement and Prevention Act, *California Compiled Statutes*, AB 2000-2036 [2007]



until after STEP's passage into law. Instances of parental negligence did exist to justify the provision, including families where both the children and parents involved themselves heavily with gangs.<sup>149</sup> Dr. Kerby Alvy, a child care expert and counselor, justified the legislation saying, "We've got pee wees in gangs—6, 7, 8 years old. These kids are at great risk unless their parents improve the quality of communications with them. It has to start early."<sup>150</sup> Here, Dr. Alvy implied the real problem behind gangs was simply bad parenting, a claim rooted in the culture of poverty theories that blamed the underclass for their plight. The ideology characterizing poverty as the result of culture exploded in implementation; however, it is hardly the first time this doctrine had colored the STEP legislation. To the contrary, the Act was virtually dripping with this approach, as affirmed by its author Ira Reiner.<sup>151</sup> Therefore, in yet another respect, themes that ran through STEP, from its initial conception in the minds of its authors through the legislative process, through implementation, advanced conservative ideology in tandem with liberal ideology's retreat.

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<sup>149</sup> Reiner, interview.

<sup>150</sup> Dennis McCarthy, "Parental Training More Appropriate than Conviction," *Daily News of Los Angeles*, September 26 1989. Valley Edition.

<sup>151</sup> Reiner, interview.



## CHAPTER VI

### **CONCLUSIONS:**

This paper has worked to show the connection between the rise of increasingly punitive crime legislation and the dilution of liberalism, looking specifically at the Street Terrorism Enforcement and Prevention Act. Where once the poor themselves were understood as victims of a failed system, now *they* were perceived as failed or deficient. The STEP Act of 1988 was inextricably linked to conservative perceptions of crime and an understanding of the underclass as a product of a culture of poverty. From the 1960s to the 1980s, a distinct shift had occurred in American politics. The failure of Lyndon Johnson's War on Poverty in the mid 1960s, which hinged upon massive social support programs, the rise of crime rates, and the rise of public fear contributed to the emergence of Reagan's War on Crime and policies such as STEP. An expanding underclass of individuals isolated from general economic growth and prosperity also proved a major contributing factor.

As the poor came increasingly under fire, blamed for their own poverty, a very real sense of urgency emerged as body counts rose at alarming rates. In 1982 approximately 200 gang related homicides occurred in Los Angeles County, a startling number at the time.<sup>152</sup> By 1987 homicides reached an astronomical 590.<sup>153</sup> The sense that gang violence was increasing exponentially was not without merit. Prosecutors and law enforcement found themselves at a loss to adequately deal with issues unique to gangs. The situation called for action. The overwhelming demand for punitive responses to gang

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<sup>152</sup> Alex Alonso, "Brief History (African American Gangs)."

<sup>153</sup> "Gang Statistics Archive." The Los Angeles Police Department.



violence contextualized the drafting of the STEP legislation. Demands for swift aggressive action took precedence over long-term, expensive, non-punitive solutions. Vague language that inadequately defined gang members while heightening already pervasive fear planted the seeds for transgressions of personal liberties in implementation. The Act's loaded language worked to justify increasingly punitive responses, implicitly casting preventive or rehabilitative measures as too soft or even dangerously impotent in the face of domestic terrorists.

The voices of individuals with 'first hand' experience, law enforcement and district attorneys especially, most strongly influenced the shape the responses took. A larger rejection of scholarly and academic opinion pushed criminologists, sociologists, and other experts to the periphery. District attorneys and law enforcement overwhelming moved to address gang violence by increasing sentences and expanding tools available to prosecute and enforce anti-gang legislation. Thus, combating gangs translated specifically into addressing gang *violence*, making the two virtually synonymous. Indeed, the STEP Act's stated intent, "to eradicate *gangs* [emphasis added]," sought to accomplish this goal by harshly punishing *gang violence*.

Warehousing gang members—doing anything and everything to get them off the streets for as long as possible—was perhaps more symbolic than effective, showing something was being done to protect the public and alleviate fear. However, by focusing on punitive responses to gang violence and attributing the root causes of gangs to a destructive culture bred in poverty, legislators failed to address structural factors that contributed to the rise of gangs and *subsequent* gang violence. Locking up gang members did nothing to prevent more youths from joining gangs and failed to act as a deterrent to



violent crimes. Serving time in jail or prison became a stamp of pride and loyalty to many gang members—compounding and reinforcing the problem instead of helping to solve it. In 1980 approximately 30,000 gang members were estimated living in Los Angeles County.<sup>154</sup> In 1993, four years after STEP's passage, that number had jumped to 61,000.<sup>155</sup> While homicides rates had fallen, gang membership continued to rise, suggesting that eradicating gangs and addressing gang violence are not the same. As an anti-gang policy, STEP jailed many gang members but failed to prevent more youths from joining gangs or reduce the number of gang members.

At the same time, STEP contributed to the evolution of a new liberalism, if different in suppositions, indistinguishable in results from conservatism. Both Ira Reiner and James Hahn viewed poverty as a social ill in need of address. They crafted STEP with genuine concern and desire to improve the quality of life for those most affected by gang violence. Yet, neither acknowledged a link between poverty and crime. Their understanding of gangs as a product of a unique and destructive culture categorically invalidated structural support systems attempting to address gangs.

While gang violence today certainly does not exist at the proportions of the 1980s or 1990s, gangs continue to exist, plaguing poorer communities and claiming thousands of lives per year nationally. Though this study remained fairly limited in scope, analyzing the STEP Act as it was passed in 1988, three key changes in the way gang policy had traditionally been developed must take place to effectively address the issue. First, an incorporation of expert opinions, such as criminologists and sociologists, is necessary to

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<sup>154</sup> Alex Alonso, "Brief History (African American Gangs)."

<sup>155</sup> "Gang Statistics Archive." The Los Angeles Police Department.



produce policy as something more than just symbolic but actually effective on a long-term scale.

Second, when hammering out solutions to the very complex and often personal issue of gangs and gang violence an atmosphere conducive to reasonable conversation is of the utmost importance. Both Ira Reiner and James Hahn were good men working toward a policy they truly believed in. They witnessed terrible violence and felt a strong response was necessary. These were not heartless men out to arbitrarily lock people up. Moreover, simply because the ACLU opposed how the act was implemented in specific instances does not mean they somehow supported gang violence. The toxic language demonizing various parties for their approach to the issue solved nothing and convoluted an already perplexing issue. In order to successfully respond to gang violence long-term solutions need to be explored that incorporate punitive measures with effective rehabilitation and prevention. One does not negate or detract from the other. Furthermore, if an approach fails, let it not be a total waste. Learning from past mistakes will help fine tune future programs.

Finally, while gang violence is certainly an issue in need of address, simply focusing on punishing violent gang members neglects the broader issue of gangs themselves and fails to acknowledge gangs as symptoms of larger social ills. Recognizing that gangs provide specific services to their members and are often times a survival strategy for youths with little, if any, hope, should encourage policymakers to address the larger structural issues in place that foster gangs. Infiltrating the mainstream understandings of violent crime and gangs, conservative ideology obstructs the link between the two. Gangs are a symptom of poverty—not a product of a culture of



poverty. Addressing the plight of Americans trapped in cyclical poverty is essential not just to fulfill moral or ethical obligations but also to effectively combat gangs. To address gangs without addressing the poverty that propagates them is analogous to taking painkillers for an infection—the medicine may lessen the symptoms for a short while, but the infection remains, poisoning more and more tissue. While it may provide a sense of security in the short term, incarcerating as many gang members as possible is not a feasible, logical, or effective solution. Therefore, not only should we re-evaluate the approaches to gangs, but the ultimate goal itself. Eradicating gangs should become a piece of the larger effort to seriously combat poverty.



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