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NOTES

GANGS AND LAW ENFORCEMENT: THE NECESSITY OF LIMITING THE USE OF GANG PROFILES

I. INTRODUCTION

Though the problem of youth gangs and gang violence is not new, the last two decades have witnessed an unprecedented increase in youth violence, mostly due to gangs.¹ In Orange County, California, for example, a 1993 report found that the number of gang members charged with violent felonies rose 25% from the previous year, reaching an all-time high.² The number of gang members charged with murder rose 125%, and the estimated gang population doubled since 1989 and rose 743% since 1986.³ Not only is gang membership growing in and of itself, but so is the public's fear and apprehension of increased gang activity and violence.⁴ In fact, a 1991 United States Department of Justice report stated that in jurisdictions with populations of more than 500,000, 55% believed that gangs were a problem and 60% desired research and technical assistance to deal with gangs.⁵ Consequently, in an attempt to control gang violence, many states have implemented statutes specifically targeting gangs,⁶ and police departments have addressed the gang

¹ Jeffery J. Mayer, *Individual Moral Responsibility and the Criminalization of Youth Gangs*, 28 WAKE FOREST L. REV. 943, 944 (1993).

² GANG UNIT, ORANGE COUNTY DIST. ATT'Y, 1993 ANNUAL REPORT 4 (1994).

³ *Id.*

⁴ Mayer, *supra* note 1, at 944 (citing Scott Marshall, "Gangs are Growing by Leaps and Bounds," *Police Differ on Number of Gangs in Metro Area Local or Imported, All Deemed a Threat*, ATLANTA J. & CONST., Aug. 19, 1993, at C1 (perceived expansion of number of gangs in Atlanta area)).

⁵ U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S SUMMIT ON LAW ENFORCEMENT RESPONSES TO VIOLENT CRIME: PUBLIC SAFETY IN THE NINETIES 49 (1991).

⁶ See, e.g., ARIZ. REV. STAT. ANN. § 13-1202 (1956 & Supp. 1992) (criminalizing threat of physical injury to further the interests of a "criminal street gang"); CAL. PENAL CODE §§ 186.20-22 (Deering Supp. 1992) (making active participation in a "criminal street gang" a felony); COLO. REV. STAT. ANN. § 24-33.5-415.3 (West Supp. 1992) (instituting a computerized data base to track identified gang members); FLA. STAT. ANN. § 874.04 (West 1993) (imposing greater penalties for crime committed as part of a "pattern of youth and street gang activity"); GA. CODE ANN. §§ 16-15-3, 16-15-4 (1992) (criminalizing active participation in street gangs); IND. CODE ANN. §§ 35-45-9-1, 35-45-9-3 (West Supp. 1992) (criminalizing participation in street gangs); MINN. STAT. ANN. § 609.229 (West Supp. 1993) (imposing additional penalties on crimes committed with the intent to further gang interests).

problem by introducing a number of different tactics.

One of the tools that law enforcement agencies have created to combat gangs is the gang profile. Gang profiles list criteria, such as attire, territory and identification by an informant, that assist law enforcement officers in identifying gang members. The use of gang profiles, however, is problematic for a number of reasons. These profiles assume the criminality of gangs and gang members and fail to address the social aspects of these groups. As a result, the use of these profiles may cause unconstitutional intrusions upon innocent persons. Moreover, because the criteria of gang profiles are somewhat vague, they may lead to inaccuracies that may also impose hardships on innocent individuals.

This Note will explore the utility of gang profiles in identifying the criminal element of gangs, as well as search for the appropriate role of gang profiles in law enforcement. Section II will outline several definitions of gangs and the public perception of gangs created by the media. The section will also enumerate and analyze gang profile criteria. Section III will discuss several aspects of the limitations in the use of gang profiles. First, Section III will consider the inadequacy of gang profiles in meeting the reasonable suspicion standard for investigatory stops as required by *Terry v. Ohio*.⁷ Second, the section will examine the way courts have treated the use of another such profile, namely, the drug courier profile. Third, the Section will suggest the "profile-plus" alternative as a feasible formula for using gang profiles in law enforcement. In section IV, this Note will conclude that because the exclusive use of gang profiles may not only endanger the Fourth Amendment rights of innocent individuals, but may also hinder the crime-fighting process itself, both law enforcement agencies and courts must require the use of other investigatory tools in conjunction with the use of gang profiles.

II. UNDERSTANDING THE NATURE AND PERCEPTION OF GANGS

A. *The Definition of Gangs*

A precise definition of a gang neither exists nor is attainable because definitions vary depending on the ultimate purpose of the authority creating the definition. Numerous sociological theories, for example, emphasize social units as the defining characteristic of gangs, with violent criminal activity constituting only a minor part of the identity. One description of a gang is a developing and splintering "friendship group of adolescents who share a common interest, with a more or less clearly defined territory."⁸ Another focuses on the psyche of gang members and the social incentives of joining a gang, describing gang members as having developed a defiant, individualistic character — a social character which develops as an "adaptation to the economic, social, and cul-

⁷ 392 U.S. 1 (1968).

⁸ JOHN HAGEDORN, *PEOPLE AND FOLKS: GANGS, CRIME AND THE UNDERCLASS IN A RUSTBELT CITY* 14 (1988). See also WILLIAM F. WHYTE, *STREET CORNER SOCIETY* (1955).

tural conditions common to that group."⁹

This defiant, individualistic character translates into the incentives for joining a gang. One sociologist cites the potential for material gain as the most frequent reason for joining a gang¹⁰ and presents several poignant examples. Street Dog, a fifteen-year-old Puerto Rican gang member stated:

Hey, the club [the gang] has been there when I needed help. There were times when there just wasn't enough food for me to get filled up with. My family was hard up and they couldn't manage all of their bills and such, so there was some lean meals! Well, I just needed some money to help for awhile, till I got some money or my family was better off. They [the gang] was there to help. I could see that [they would help] before I joined, that's why I joined. They are there when you need them and they'll continue to be.¹¹

A fifteen-year-old Irish gang member expressed similar sentiments:

Before I joined the gang, I could see that you could count on your boys to help in times of need and that meant a lot to me. And when I needed money, sure enough they gave it to me. Nobody else would have given it to me; my parents didn't have it, and there was no other place to go. The gang was just like they said they would be, and they'll continue to be there when I need them.¹²

Other incentives for joining gangs also reflect the social nature of gang membership: recreation, refuge and anonymity, physical protection, resistance to living like their parents, and commitment to community.¹³ Based on these factors, it is likely that for poverty-stricken teenagers, social forces are the principal driving factors for gang organization.¹⁴ Nonetheless, these definitions belie the fact that delinquent and violently criminal behavior are elements of many gangs, whether or not gang members desired or sought out such behavior. Moreover, it is the violent behavior that has captured the attention and

⁹ This defiant, individualistic character incorporates seven attributes. Competitiveness emerges from the scarcity of material resources, parental affection, and physical and mental space that exists in the low-income community. This competition within and without the family nurtures mistrust and wariness and, as a result, individuals learn to become self-reliant. These gang members acquire a survival instinct akin to predators trapping prey. Moreover, they experience a social Darwinist world view and find that such behavior is not only tolerated, but encouraged in some respects as well. Finally, gang members exude a defiant air, both publicly, by defying authorities, and privately, by resolving to continue despite all obstacles. MARTIN S. JANKOWSKI, *ISLANDS IN THE STREET: GANGS AND AMERICAN URBAN SOCIETY* 23-27 (1991).

¹⁰ *Id.* at 40.

¹¹ *Id.* at 42.

¹² *Id.*

¹³ *Id.* at 42-47.

¹⁴ LEONE BING, *DO OR DIE* 268 (1991) (arguing that subliterate youths without marketable skills have no options except gangs).

concern of the both media and the community.¹⁶

Consequently, for law enforcement agencies the central defining factor of a gang and gang members is criminality. One criminologist defines a gang as "a group of recurrently associating individuals with identifiable leadership and internal organization, identifying with or claiming control over territory in the community, and engaging either individually or collectively in violent or other forms of illegal behavior."¹⁸ Another criminologist defines gangs as

any denotable adolescent group of youngsters who (a) are generally perceived as a distinct aggregation by others in their neighborhood; (b) recognize themselves as a denotable group (almost invariably with a group name); and (c) have been involved in a sufficient number of delinquent incidents to call forth a consistent negative response from neighborhood residents and/or enforcement agencies.¹⁷

Notably, this particular explanation allows community perception to shape the definition of gangs, which is problematic because of the incomplete information the public receives.¹⁸ Both of these definitions are, in fact, misleading. One critic notes that defining gangs as requiring criminal *or* violent behavior is too broad¹⁹ because it would "probably include more delinquent groups in the gang definition than either the police or the neighborhood would."²⁰ Thus, even though a small portion of gang activity may be devoted to violence, it is the "*willingness to do violence* that makes a gang a gang."²¹ At the most general level, however, most seem to agree that the characteristics of a gang consist of "a group with social, racial or ethnic ties that acts to further a criminal purpose."²²

Even accepting the criminal definition of gangs, there are distinct subgroups within a gang that assume different roles.²³ Gang members that are *hard-core* are those that are considered most dedicated to the gang and who initiate most of the gang delinquency.²⁴ A gang *affiliate* is one who identifies with the gang but is not considered as committed or reliable when there is danger. He will sometimes fight to back up his *homeboys* (fellow gang members), but is not considered to have the heart of a core member.²⁵ *Fringe* members, often referred to as "wannabes," are those who claim affiliation with the gang, attend gang parties, wear gang colors, and associate with gang members, but

¹⁶ See *infra* text accompanying notes 29-33.

¹⁸ WILLIAM B. SANDERS, GANGBANGS AND DRIVE-BYS: GROUNDED CULTURE AND JUVENILE GANG VIOLENCE 10 (1994).

¹⁷ MALCOLM W. KLEIN, STREET GANGS AND STREET WORKERS 13 (1971).

¹⁸ See *infra* text accompanying notes 29-33.

¹⁹ SANDERS, *supra* note 16, at 11.

²⁰ *Id.* at 9.

²¹ *Id.* at 12.

²² Mayer, *supra* note 1, at 951.

²³ SANDERS, *supra* note 16, at 13.

²⁴ *Id.*

²⁵ *Id.*

do *not* engage in gang violence.²⁶ The following is an example of the actual differences between hard-core and fringe members:

[A] group of three hard-core members and a fringe member were driving in a car together with a gun. They drove by a rival gang's house and found several rival gang members standing in the driveway "like sitting ducks." Continuing down the street, they pulled the gun out, made a U-turn and began back down the street to shoot the rival gang. At this point . . . the fringe member became hysterical crying, "You can't do this! You just can't go and shoot people." The hard-core members were dissuaded primarily because of the attention they believed the fringe member was drawing to their car in the middle of hostile territory.²⁷

Thus, if violent criminal activity were the central delineating factor of gangs, only the hard-core members would definitively fit into the definition of the gang member and, consequently, the gang profile. Arguably, only hard-core members are the target of law enforcement. Yet the design of gang profiles actually encompasses all gang members, including fringe members.²⁸

B. *Media Attention and Public Perception*

In addition to mischaracterizing gangs, the media has focused almost exclusively on the criminality and violence of gangs. In fact, because violence and crime are interest-generating topics for the profit-making media, reporters focus on such stories —

Reporting on gangs is optimal for any reporter, and the news station for that matter. . . . To begin with, since we would usually only cover a story if it had crime or violence associated with it, establishing who committed the criminal act of violence is made easier because it can be attributed to a group and not just one individual.²⁹

Another reporter explains:

Gang stories are one type of story that is valued because it gets people's attention and creates enough interest so that people will continue to watch the rest of the news. It is also true that gang-related violence is easier than some other stories that we are assigned to cover. The main reason is that we have an incident that's occurred, some violent act, and if the police report that it is "gang-related" or some of the witnesses believe that it is "gang-related," then we report it as being "gang-related" and a lot of our investigative job is over. We don't have to run down a lead here, or lead there, we have just been able to save time and get the same result—a story that the public will probably find interesting.³⁰

²⁶ *Id.* at 13-14.

²⁷ *Id.* at 14.

²⁸ See *infra* text accompanying note 34.

²⁹ SANDERS, *supra* note 16, at 287.

³⁰ *Id.* at 286-87.

The effect of such focus by the media is the treatment of "gangs and their presence or absence in a community as a fact apart from the people of the local community, something akin to a disease or a military attack."³¹ Moreover, the media often portrays gangs as powerful, hierarchical armies, only furtively conceding that they are not actually tightly structured, hierarchical organizations.³² In fact, one study reports that the media focuses on gangs strictly as a crime problem to be solved by law enforcement.³³ Since the media has placed its attention exclusively on the violent and criminal behavior of gang members, rather than on other aspects of gang membership, public perception of gangs is distorted. As a result, it is clear why there is such public outcry against gangs, which in turn places additional pressure on law enforcement to control gang crime.

C. *Analysis of Gang Profiles*

In response to increased gang violence and the resulting public pressure, law enforcement agencies have created procedures to address criminal gang activity. Gang profiles are one method law enforcement agencies have created to identify gang members, presumably to halt gang crime. Gang profile criteria, however, focus largely on the social aspects of gangs such as the neighborhood, association and clothing, rather than on the criminal aspects of gangs. For example, the California Tri-Agency Resource Gang Enforcement Team (Tri-Agency Team) lists the following criteria to identify gang members:

1. When an individual admits membership to a gang.
2. When a reliable informant identifies an individual as a gang member.
3. When an informant of previously untested reliability identifies an individual as a gang member and it is corroborated by independent information.
4. When an individual *resides in or frequents a particular gang's area and affects their style of dress, uses of hand signs, symbols, or tattoos, and associates with gang members.*
5. When an individual has been arrested several times in the company of identified gang members for offenses which are consistent with usual gang activity.
6. When there are strong indications that an individual has a close relationship with a gang but does not fit the above criteria, he shall be identified as a "gang associate."³⁴

³¹ Mayer, *supra* note 1, at 954. See also Gary Lee, *Gangs Carve 'New Frontier' on the Old: As Violence Rides in, Wichita Relives Bygone Era with Urban Twist*, WASH. POST, June 22, 1993, at A1 (describing the invasion of gangs into America's heartland).

³² Don Terry, *Hope and Fear in Los Angeles as Deadly Gangs Call Truce*, N.Y. TIMES, May 12, 1992, at A1. See also Mayer, *supra* note 1, at 954-55.

³³ HAGEDORN, *supra* note 8, at 12-13.

³⁴ TRI-AGENCY RESOURCE GANG ENFORCEMENT TEAM, GANG UNIT: 1992 YEAR-END RESEARCH REPORT 3 (1993) (emphasis added) [hereinafter TRI-AGENCY

Numerous gang profiles created by other law enforcement agencies maintain similar criteria.³⁵

REPORT].

³⁵ The California Youth Gang Task Force outlines the following criteria:

1. Subject admits being a member of a gang.
2. Subject has tattoos, clothing, etc., that are only associated with certain gangs.
3. Subject has been arrested while participating in activities with a known gang member.
4. Information that places the subject with a gang has been obtained from a reliable informant.
5. Close association with known gang members has been confirmed.

CALIFORNIA YOUTH GANG TASK FORCE, GUIDE FOR THE INVESTIGATION AND PROSECUTION OF YOUTH GANGS VIOLENCE IN CALIFORNIA 1 (1988).

The San Diego Police Department concludes that an individual is a gang member if he meets *any one or a combination of five objective criteria*:

- [a] The individual admits gang membership.
- [b] The individual has tattoos, wears or possesses clothing and/or paraphernalia that is primarily associated with a specified gang or gangs.
- [c] The individual is arrested participating in delinquent/criminal activity with a known gang member.
- [d] Police records and/or observations confirm the individual's close association with known gang members.
- [e] Information from a reliable informant identifies the individual as a gang member.

Mayer, *supra* note 1, at 969.

The Portland, Oregon description states that an individual may be identified as affiliated with a gang when:

- a. An individual admits or asserts affiliation with a gang to police;
- b. A reliable informant has identified an individual as a gang affiliate;
- c. An individual displays clothes, jewelry, hand signs and/or tattoos unique to gang affiliation; clothing color alone is not sufficient for designation;
- d. A law enforcement agency, including out-of-state federal agencies has identified an individual as affiliated with a gang;
- e. An individual is present with an identified gang affiliate involved in suspected criminal behavior or during the commission of a crime;
- f. An individual conspires to commit or commits crimes against persons or property based on race, color, religion, sexual preference, national origin, or rival gang association.

Id. at 969-70.

Florida has similar elements:

- (a) Admits to gang membership.
- (b) Is a youth under the age of 21 years who is identified as a gang member by a parent or guardian.
- (c) Is identified as a gang member by a documented reliable informant.
- (d) Resides in or frequents a particular gang's area and adopts their style of dress, their use of hand signs, or their tattoos, and associates with known gang members.
- (e) Is identified as a gang member by an informant of previously untested reliability.

If the goal of law enforcement is to eliminate criminal activity, profiles that assist law enforcement agencies should target criminal behavior. Gang profiles, however, fall short of this aim. To determine the utility of gang profiles, each criterion within the profile must be examined individually, particularly because the potential gang member need not conform to all of the criteria. First, it would seem that, if an individual admitted to gang membership, that person could clearly be identified as a gang member. Fringe members or "wannabes," however, may identify themselves as members of a gang, yet they do not participate in any criminal or violent activity. This criterion, then, could only serve law enforcement if officers could identify hard-core members through their potential association with the already identified fringe members. Second, identification of a gang member by an informant, however reliable, encounters the same problems as the first criterion. The identified person may be considered a gang member although he may not be involved in the criminal activity in which the hard-core members are involved. Once again, officers would need to be able to identify potential associations to get the full benefit of identification through an informant. The corroboration of "independent information" in the third criterion is problematic because the required "independent information" is undefined and thus open to subjective determination by law enforcement officers. Even if such "independent information" is comprised of elements in the fourth criterion, such as residing in or frequenting a particular gang's area and affecting their style of dress or associating with gang members, it still faces problems of vagueness and inaccuracy.

The fourth criterion includes physical and behavioral attributes of gang members that are overbroad and often inaccurate, especially since style of dress is most often used to determine gang membership.³⁶ In 1991, for example, the black and silver of the Los Angeles Raiders football team was associated with gang activity, causing many schools to ban team jackets and caps.³⁷ Using a Raiders jacket to identify gang members, however, would include numerous individuals who are not associated with gangs, but who are merely Raiders fans. Fifth, if law enforcement defines gangs by their violent or criminal element, the only criterion which includes criminality in its definition is arrest with a known gang member. But even this criterion can be easily misapplied. An individual may, in fact, be in the presence of known gang members

bility and such identification is corroborated by independent information.

- (f) Has been arrested more than once in the company of identified gang members for offenses which are consistent with usual gang activity.
- (g) Is identified as a gang member by physical evidences such as photographs or other documentation.
- (h) Has been stopped in the company of known gang members four or more times.

Id. at 976.

³⁶ See *infra* text accompanying notes 73-75.

³⁷ Tim Golden, *Raiders' Chic: A Style, and Sinister Overtones*, N.Y. TIMES, Feb. 4, 1991, at A12.

and have committed numerous crimes. It is quite possible, however, for that individual to have no relation, social or otherwise, with the gang or other gang members. As a result, law enforcement officers could effectively create a new gang by erroneously focusing on an individual's association with one believed to be a gang member.³⁸ Finally, an individual may be named a "gang associate" even if none of the above criteria are applicable to his situation.³⁹

Thus, the gang profile is problematic because it is both overinclusive and underinclusive. It is overinclusive because its criteria are vague and inaccurate, allowing individuals to be falsely identified as gang members. At the same time, the gang profile is underinclusive because its criteria do not necessarily identify all gang members engaged in violent or criminal activity. Consequently, gang profiles are not useful in honing in on criminal gang activity.

The same problems arise when using profile information to identify gang activity. The Tri-Agency Team's criteria to determine if an *incident* is gang-related are no better than the vague criteria of the gang member profile:

1. When an incident occurs wherein participants, suspects, or victims are identified gang members or associates.
2. When a reliable informant identifies an incident as gang activity.
3. When an informant of previously untested reliability identifies an incident as gang activity and it is corroborated by other attendant circumstances or independent information.
4. When there are strong indications that an incident is gang related but it does not fit the above criteria, it shall be considered as gang activity.⁴⁰

This profile both parallels and encompasses the gang member profile. Under the first criterion, if an individual is identified as a gang member, presumably through the gang member profile, the incident is gang-related. However, if the gang member profile cannot correctly identify gang members, then using it to identify gang activity results in further inaccuracy. The second and third criteria fare better than those of the gang member profile only if "incident" refers to a criminal incident. The fourth criterion, however, allows law enforcement officers to subjectively determine the existence of gang activity without any objective requirement. This, then, could easily result in arbitrary and inaccurate determinations that would not assist law enforcement in eradicating true gang crime.

Though law enforcement agencies seem to use gang profiles for numerous purposes, two general investigative categories seem to emerge.⁴¹ First, gang profiles are used in compiling massive gang files and mug books. The files are used not only to keep track of gang members, but also to flush out suspects in

³⁸ Mayer, *supra* note 1, at 966.

³⁹ See *Lanzetta v. New Jersey*, 306 U.S. 451 (1939) (holding that criminalizing gang membership is vague and overbroad). For further discussion, see *infra* text accompanying notes 92-93.

⁴⁰ TRI-AGENCY REPORT, *supra* note 34, at 3.

⁴¹ Evidentiary uses of gang membership are not covered by this Note.

particular incidents. Second, gang profile criteria are used to aid police officers in detecting potential criminal activity. A law enforcement official may instigate an investigatory stop when she identifies an individual conforming to gang profile criteria. In addition to the other criteria noted in the forth factor of the Tri-Agency Team's profile, the individual's attire is more often than not a determining factor in this situation. The following sections discuss these two uses of gang profiles and the problems arising from such uses.

III. THE LIMITATIONS OF GANG PROFILE USE

A. *Using Profiles to Compile Gang Files and Mugbooks*

One purpose for gang profile criteria is to create massive gang files and mugbooks of those who are identified as gang members by such criteria. For example, the Gang Strategy Steering Committee, formed by Chiefs of Police and Sheriff's Associations in southern California, acquired a computer program known as the Gang Reporting Evaluation and Tracking System (GREAT). The criteria that places an individual on the GREAT system as a gang member are very similar to the criteria mentioned above, and the information in these files is shared not only with other area law enforcement agencies, but also with the District Attorney's Office and probation officers.⁴²

The accuracy and race neutrality of these files are seriously questionable. For example, a *Los Angeles Times* article criticized GREAT in Los Angeles for identifying nearly half of the young black men in Los Angeles County as either gang members or gang associates.⁴³ In Denver, law enforcement officers compiled a list of suspected gang members that included two of every three young black men in the city.⁴⁴ GREAT in Orange County, California lists two hundred and forty gangs. Of the 14,609 identified gang members, approximately 75% are Latinos and the rest are mostly Asians.⁴⁵ Fewer than five percent on the list are young women.⁴⁶ Paul Walters, Chair of the Orange County Steering Committee, notably comments that "white gangs are not a problem."⁴⁷ Yet, white gangs do exist and they do participate in violent and delinquent activities. Community opinion of white gangs, however, tends to be

⁴² Thuan Le, *Police Group Unveils Anti-Gang Strategy; Law Enforcement: Committee Will Track Young Offenders Via a Computer System. The Data Will be Shared with the D.A. and Probation Officers*, L.A. TIMES, Feb. 5, 1993, at B4 (Orange County Ed.).

⁴³ *Id.* Though this note will not discuss the racial issues of gang control, the following examples are included to question the accuracy of gang profiles in identifying gang members.

⁴⁴ Dirk Johnson, *2 of 3 Young Black Men in Denver Listed by Police as Suspected Gangsters*, N.Y. TIMES, Dec. 11, 1993, at A8.

⁴⁵ Le, *supra* note 42, at B4.

⁴⁶ *Id.*

⁴⁷ *Id.*

less critical than of gangs comprised of different races.⁴⁸ It is not surprising, then, that such a biased opinion would translate into disparate law enforcement.

Moreover, erroneous inclusion in gang files could lead to severe consequences for the misidentified person. For example, Ted Nguyen, a self-employed construction contractor, was picked out of a gang mugbook and accused of home robbery. Nguyen had been photographed when he inadvertently drove up to a friend's house during a drug investigation. Nguyen, who had no previous criminal record, was taken in, photographed and included in the mugbook. He spent three months in jail awaiting trial, because he could not raise the \$500,000 bail, and was later acquitted when the victim admitted she could not be certain that Nguyen was the culprit. Furthermore, Nguyen was getting medical treatment at the time of the incident and could not have been the offender.⁴⁹ Nguyen's liberty, thus, was restrained for three months solely because he was erroneously included in a gang mugbook. This entire incident could have been avoided if either the gang criteria were less vague, or Nguyen had the opportunity to remove his name and photo from the files.⁵⁰

B. *Gang Profiles and Terry v. Ohio*⁵¹

Gang profiles are additionally used for investigatory purposes. Although the use of gang profiles may not necessarily result in arrests, they are often used to instigate investigative stops. These stops, nonetheless, raise Fourth Amendment concerns, since the Fourth Amendment "applies to all seizures of the person, including seizures that involve only a brief detention short of tradi-

⁴⁸ Mayer, *supra* note 1, at 957 (discussing the perception of the white gang "Albanian Boys" as a nuisance or less serious threat). See also David Gonzalez, *Just Boys Being Boys, or Vicious Gangs*, N.Y. TIMES, Jan. 16, 1992, at B1.

⁴⁹ De Tran & Iris Yoki, *O.C. Asians Say Police Photos are Harassment; Dispute: Fountain Valley's 'Mug' Shots Unfairly Stereotype Youths as Gang Members, Complaints Say*, L.A. TIMES, Nov. 15, 1992, at A1 (Orange County Ed.).

⁵⁰ The problems with regard to gang files, thus, are not only the inaccuracy, but also the lack of procedures available to contest or remove oneself from inclusion in the files. In fact, the lack of such procedures likely contributes to the inaccuracy of the lists and mugbooks. Therefore, one of the steps to creating a more accurate system is to incorporate certain procedural steps that would enable innocent individuals to remove their names from these lists. Courts have been willing to require such procedural steps when agencies maintain such lists. For example in *Valmonte v. Bane*, 18 F.3d 992 (2d Cir. 1994), New York Social Services had maintained a list of alleged child abusers. Social Services would add names onto this list as a result of the mere suspicion and identification of such alleged abusers by third parties. A conviction or even a full investigation was not required, even though names on the list would be revealed to a potential child care employer. Due to the likely harm resulting from such a system, the Second Circuit required procedural means for an individual to contest and remove his name from the list.

⁵¹ 392 U.S. 1 (1968).

tional arrest."⁵² Fourth Amendment protection, then, imposes a standard of reasonableness "upon the exercise of discretion by government officials, including law enforcement agents, in order 'to safeguard the privacy and security of individuals against arbitrary invasions'"⁵³ Hence, the role of the Fourth Amendment is to limit and curb the unrestrained discretion of law enforcement. As a result, the Supreme Court of the United States has long required that officers must justify investigative stops by having "a reasonable suspicion, based on objective facts, that the individual is involved in *criminal activity*."⁵⁴

The Court first established this standard in 1968 in *Terry v. Ohio*.⁵⁵ In *Terry*, a detective, with many years of patrol experience, observed two strangers on a street corner walking up and down the same street, pausing to stare into the same store window. Each time they completed the route, the two men conferred with a third person waiting at the street corner. The men repeated this routine about twelve times.⁵⁶ Suspecting that the men were planning a robbery, the officer approached them, identified himself as a police officer, and asked for their names.⁵⁷ When the men mumbled something, the officer spun petitioner Terry around, patted him down and found a pistol in his overcoat. The petitioner was charged with carrying a concealed weapon,⁵⁸ and at trial the defense moved to suppress the weapon.⁵⁹ The Court found that there was no probable cause for an arrest and, although a seizure of the petitioner had occurred, denied the motion to suppress.⁶⁰ The Court held that

where a police officer observes unusual conduct in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous . . . he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in attempt to discover weapons which might be used to assault him.⁶¹

A *Terry* stop, then, is an investigatory stop in which an officer may perform a frisk of the outer clothing of the suspect if he has reasonable suspicion of ongoing criminal activity. Given the need for reasonable suspicion of ongoing criminal activity as a prerequisite to a *Terry* stop, the following incidents illustrate that the use of gang profiles alone is insufficient to instigate *Terry*

⁵² *Brown v. Texas*, 443 U.S. 47, 50 (1979) (citing *Davis v. Mississippi*, 394 U.S. 721 (1969); *Terry v. Ohio*, 392 U.S. 1, 16-19 (1968)).

⁵³ *Delaware v. Prouse*, 440 U.S. 648, 654 (1979) (quoting *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978) (quoting *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967))).

⁵⁴ *Brown*, 443 U.S. at 51 (emphasis added).

⁵⁵ 392 U.S. 1 (1968).

⁵⁶ *Id.* at 6.

⁵⁷ *Id.* at 6-7.

⁵⁸ *Id.* at 7.

⁵⁹ *Id.*

⁶⁰ *Id.* at 8.

⁶¹ *Id.* at 30.

stops.⁶² As the following incidents show, suspects are included in gang profiles often on such a flimsy basis as attire. Since the accuracy of gang profiles is highly questionable, and inclusion in gang profiles is not based on reasonable suspicion, they should not be used to instigate *Terry* stops.

1. Misuse of Gang Profile Investigatory Stops and Detentions

In 1990, four Latino teenage males paid their admission fees and attempted to enter Great America, an amusement park in Santa Clara, California.⁶³ Before they reached the entrance, however, they were surrounded by Great America security guards.⁶⁴ The officers accused the four of being gang members and told them that they could enter only if they divided themselves into smaller groups. The teenagers then paired off but were again stopped a few steps later. This time the officers questioned the youths more insistently. Deciding that the youths' answers and appearance indicated gang membership, the guards threatened them with arrest for trespassing and demanded that they leave the park. The youths left.⁶⁵

That same day, teenagers Roger Prieto and Anthony Scozzari also visited Great America.⁶⁶ After riding White Water Rapids, a popular ride that often drenches its riders with huge splashes of water, Prieto's pants were soaked and sagging. A park official, noticing Prieto's sagging pants, approached the youths and interrogated them. He accused the youths of being in a Mexican gang and ejected them from the park. As Prieto and Scozzari departed, more officers approached them and arrested, handcuffed, and beat them.⁶⁷ Later that same year, Great America officials stopped three young African-American males from attending a concert because of their attire—identical "Joe Boxer" style pajamas with a green billiard ball print, and deliberately mismatched shoes.⁶⁸

In 1992, about fifteen Asian men filed complaints in Orange County contending that police officers falsely accused them of being gang members and

⁶² This Note will not address the issue of voluntary consent to investigatory stops or when a detention has taken place, but will instead focus on the requirement of reasonable suspicion.

⁶³ Margaret M. Russell, *Entering Great America: Reflections on Race and the Convergence of Progressive Legal Theory and Practice*, 43 HASTINGS L.J. 749, 759-62 (1992) (recounting the Great America incidents; Great America has long had a gang profile policy, which, though it has never fully disclosed the criteria, has indicated a few isolated items of apparel mentioned as "gang signifiers," such as "acid-wash jeans" and "overalls").

⁶⁴ Although the Great America incidents involve private security officers, they illustrate the use of gang profiles. Moreover, they parallel incidents involving police officers, and thus are included in this note to highlight arbitrary law enforcement actions that are based on gang profile criteria.

⁶⁵ Russell, *supra* note 63, at 760.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 761.

photographed them without their consent.⁶⁹ In 1994, a class action suit alleged that Garden Grove police officers detained and photographed Asian teenagers without reasonable suspicion.⁷⁰ In a related incident, officers of the Garden Grove gang unit ejected about a dozen Asian girls — ranging from age eleven to sixteen — from a local fair and then detained them upon exiting. The proffered reason was that the girls were all dressed identically in black body suits and blue jeans.⁷¹ According to one of the detainees, they were dressed alike in honor of one of the girls' birthday. Nonetheless, they were each interrogated and detained for approximately thirty to forty-five minutes. None of the girls were members of gangs.⁷²

2. Inadequacy of Gang Profile Criteria in Meeting the Requisite Reasonable Suspicion Standard

The above examples illustrate the problems generated by the use of gang profiles. *Terry* requires a law enforcement officer to have reasonable suspicion of criminal activity in order to make an investigatory stop.⁷³ When applied to the gang profile analysis, this requirement consists of two elements. The officer's suspicion must relate to *ongoing criminal activity*, and the conjecture must be based on articulable observations of *suspicious behavior*. The use of gang profiles, however, often does not fulfill either of the two prongs of the *Terry* requirement.

First, using clothing and appearance to identify gang members is vague and overbroad because such characteristics could easily include those of innocent persons. For example, baggy pants or black body suits are just as likely to be worn by individuals with no gang connections. Moreover, instead of stopping every individual dressed in a particular manner, law enforcement officials seem to stop only some individuals. Without any additional evidence of gang membership, all of the above youths were singled out of a crowd primarily, if not solely, because of their appearance and attire. Moreover, the inaccuracy of this criterion is compounded by its constant variation. Regarding gang attire, an officer of the Garden Grove Police Department Gang Unit observes:

Well, there are trends and you watch those trends, but as soon as they become a noticeable trend, the kids realize it and they change it. Dragon Family [a gang in Garden Grove], for example, a year ago or so everybody in Dragon Family every time they were out wore green pants. Once they started being able to go up and say, "Hey you've got green pants, you must be from Dragon Family," it disappeared. So it is not something that is going to be long-term consistent. As soon as they think we [law

⁶⁹ Tran, *supra* note 49, at A1.

⁷⁰ Pham v. City of Garden Grove, No. CV 94-3358 WDK (C.D. Cal. filed May 20, 1994).

⁷¹ Interview with minor, whose identity is omitted because of minor status, in Santa Ana, Cal. (June 13, 1994).

⁷² *Id.*

⁷³ Terry v. Ohio, 392 U.S. 1, 16-19 (1968).

enforcement] can identify who they are, it's going to change.⁷⁴

Since style of dress changes both with evolving fashion trends, as well as conscious decisions by gang members, attire cannot effectively identify gang members.

Tattoos pose another problem. Since tattoos are permanent, individuals who have since renounced their gang membership are, nonetheless, subject to gang identification. Many individuals with tattoos who are not gang members are erroneously identified as such even though there is no articulable suspicion of criminal activity.

Second, even if attire were accurate in determining gang membership, it does not necessarily detect those gang members who are involved in crimes. According to the social models of gangs, only hard-core gang members are consistently involved in criminal or violent activity. Yet gang profiles, particularly in terms of attire and appearance, do not distinguish between hard-core and fringe members. Consequently, those who do not and will not participate in any criminal activity are nevertheless subject to detention based solely on their shared attire with hard-core members. Thus, if *Terry* stops are established entirely on the profile, the requisite reasonable suspicion of ongoing criminal activity is ignored.

Third, the relevant gang profile criteria focus, for the most part, on mere physical indications without requiring behavioral manifestations. This is incongruent with other types of profiles, such as the drug courier profile, and with the behavioral focus of the *Terry* reasonable suspicion standard. The *Terry* requirement, albeit a low standard, does emphasize the behavior of the detainee, such as walking slowly, evading eye contact, and using an alias.⁷⁵ In contrast, the gang profile, by allowing an officer to detain an individual based merely on attire, effectively lowers the already low *Terry* standard for reasonable suspicion.

C. *Comparison to Drug Courier Profiles*

Gang profiles are by no means law enforcement's first attempt to use profiles in aiding the fight against crime. Courts have also struggled to find the appropriate role of such profiles in the justice system. Thus, a comparison of gang profiles to other profiles, most notably drug courier profiles, is extremely useful in determining the most effective and constitutional use of gang profiles.

1. Description and Court Treatment of Drug Courier Profiles

Drug courier profiles were developed in the early 1970s to aid in investigat-

⁷⁴ Deposition of Garden Grove Officer Bruce Davis at 54 (Aug. 4, 1994).

⁷⁵ See, e.g., *United States v. Bowles*, 625 F.2d 526, 528 (5th Cir. 1980) (finding that walking slowly is reason for suspicion); *United States v. Pacheco*, 617 F.2d 84 (5th Cir. 1980) (finding that evasion of eye contact is reason for suspicion).

ing commercial airline passengers carrying illegal narcotics.⁷⁶ A typical encounter between law enforcement officials and potential couriers is described as follows:

DEA agents and police officers stationed at airports observe arriving and departing travelers on certain flights. They "watch for characteristics and behavioral traits which, on the basis of their collective experience, have tended to distinguish drug couriers from other passengers." When a specific traveler arouses the agents' suspicions, they approach the suspect, identify themselves, ask the suspect to consent to questioning, and ask to see the suspect's identification and ticket. If the agents' suspicions are not eliminated during this exchange, they continue to question the suspect and ask him to move to another location within the airport, often a room used by law enforcement officers. The suspect is typically asked at this point to consent to a search of his person, luggage, or both.⁷⁷

Though *Terry* stop encounters of alleged drug couriers and gang members are similar, the structure of the profiles themselves differ markedly. The drug courier profile usually does not consist of a standard list of characteristics, and different cases have laid out different criteria. In *United States v. Mendenhall*,⁷⁸ the first of the drug courier profile cases, the suspect (1) arrived on a flight from Los Angeles, a city the agents believed to be the place of origin for much of the heroin brought to Detroit; (2) was the last person to leave the plane and appeared to be very nervous, scanning the entire area where the agents were standing; (3) proceeded past the baggage area without claiming any luggage; and (4) changed airlines for her flight out of Detroit.⁷⁹ Though this case turned on the question of probable cause, five Justices did agree that reasonable suspicion could be found based on these factors.⁸⁰ In *Reid v. Georgia*,⁸¹ however, the suspects (1) arrived from Ft. Lauderdale, considered to be a major place of origin of cocaine; (2) arrived early in the morning, when law enforcement is diminished; (3) appeared to be trying to hide the fact that they were traveling together; and (4) carried shoulder bags as their only luggage.⁸² In a per curiam opinion, the Court held that the agents could not have had reasonable suspicion, even though the defendants' actions conformed to the drug courier profile, because the observed characteristics could have easily been portrayed by innocent travelers.⁸³

The two cases following *Reid*, nonetheless, confirmed that drug courier

⁷⁶ Morgan Cloud, *Search and Seizure by the Numbers: The Drug Courier Profile and Judicial Review of Investigative Formulas*, 65 B.U. L. REV. 843, 844 (1985).

⁷⁷ *Id.* at 848-49 (quoting *United States v. Mendenhall*, 446 U.S. 544 (1980)).

⁷⁸ 446 U.S. 544 (1980).

⁷⁹ *Id.* at 547 n.1.

⁸⁰ *Id.* at 564.

⁸¹ 448 U.S. 438 (1980).

⁸² *Id.* at 441.

⁸³ *Id.*

profiles could create reasonable suspicion. In *Florida v. Royer*,⁸⁴ the suspect (1) was carrying American Tourister luggage, which appeared to be heavy; (2) was young, apparently between 25-35; (3) was casually dressed; (4) appeared pale and nervous, looking around at other people; (5) paid for his ticket in cash with a large number of bills; and (6) rather than completing the airline identification tag to be attached to checked baggage, which had a space for a name, address, and telephone number, wrote only a name and the destination.⁸⁵ In *United States v. Sokolow*,⁸⁶ the suspect (1) paid \$2100 for two airplane tickets from a roll of \$20 bills; (2) traveled under a name that did not match the name under which his telephone number was listed; (3) had an original destination of Miami, a source city for illicit drugs; (4) stayed in Miami for only forty-eight hours even though a round-trip flight from Honolulu to Miami takes twenty hours; (5) appeared nervous during his trip; and (6) checked none of his luggage.⁸⁷ The Justices in *Sokolow*, however, emphasized that all of these factors taken together amounted to reasonable suspicion regardless of their categorization under the drug courier profile.⁸⁸

Though some of the profile criteria overlap in these cases, many differ. As a result, drug courier profiles have been severely criticized due to their lack of uniformity, and have had the effect of lowering *Terry* standards.⁸⁹ Nonetheless, for better or worse, the Supreme Court has held that conforming to drug courier profiles may indeed create reasonable suspicion.⁹⁰ The Court has, however, emphasized that because the criteria of suspicious behaviors are formed from the experiences of law enforcement officers, the criteria may be enough to constitute reasonable suspicion whether or not they are set forth in a profile.⁹¹ In other words, if law enforcement officers observe articulable, suspicious behavior, as in *Terry*, they have enough to constitute reasonable suspicion for a stop. Allowing gang profiles to act as a proxy for reasonable suspicion, however, would greatly undercut the behavioral element of *Terry* stop suspicion. Instead of being a compilation of suspicious behaviors, gang profiles are mere checklists of physical attributes of potential gang members. Therefore, because gang profiles themselves are distinguishable from drug courier profiles, the manner in which they can be used must also be distinguished.

2. Gang Profiles Distinguished

Gang profiles and drug courier profiles are similar in that neither are neces-

⁸⁴ 460 U.S. 491 (1983).

⁸⁵ *Id.* at 493 n.2.

⁸⁶ 490 U.S. 1 (1989).

⁸⁷ *Id.* at 3.

⁸⁸ *Id.* at 9-10.

⁸⁹ See generally Cloud, *supra* note 76.

⁹⁰ This Note does not necessarily support the Court's holdings in the drug courier profile cases. However, the drug courier profile holdings are current law and provide a valuable juxtaposition for examining gang profiles.

⁹¹ *United States v. Sokolow*, 490 U.S. 1, 10 (1989).

sarily specific enough to differentiate between innocent individuals and gang members or drug couriers. Just as an innocent person could arrive in an airport with little luggage and walk slowly, so can an innocent person wear baggy green pants. Drug courier profiles differ significantly from gang profiles, however, because drug profiles specifically target criminal activity — namely, the transport of drugs. Gang profiles, on the other hand, do not focus on criminal activity per se; rather they focus on membership in a gang which is a mere social construct.

In *Lanzetta v. New Jersey*,⁹² the Supreme Court struck down a New Jersey statute penalizing gang membership or otherwise being a gangster. Finding the statute to be vague, the Court stated that it could not find “that ‘gang’ has ever been limited in meaning to a group having purpose to commit any particular offense or class of crimes, or that [‘gang’] has not quite frequently been used in reference to groups of two or more persons not to be suspected of criminality or of anything that is unlawful.”⁹³ While it is a crime to engage in unlawful activities, which may be initiated by gang members, being a gang member in and of itself is not a criminal act. Notwithstanding this fact, gang profiles are designed only to determine whether or not an individual is in a gang. Indeed, criteria used in gang profiles, particularly those such as attire used in *Terry* stops, do not distinguish between criminal and non-criminal gang members. Fringe members, then, could ultimately be erroneously labeled as criminals, even though their participation in the gang was purely social. Thus, gang profiles, unlike drug courier profiles, go beyond targeting a specific crime. Consequently, solely using gang profiles allows law enforcement officers to detain innocent persons without suspicion of specific criminal activity.

Moreover, whereas drug courier profiles are a compilation of behavioral traits, gang profiles, at least with regard to detentions, focus primarily on physical attributes. Arguably, dressing a particular way manifests a certain behavior. However, the difference in criteria between the two profiles is more significant. The behavioral versus physical distinction is reflected in the structure of the profiles themselves. The flexibility of drug courier profiles, though criticized, allows law enforcement officers to observe and note a compilation of suspicious behavior drawn from their own experience. Thus, notwithstanding the label of drug courier profile, the Court has been able to find that, based on the articulated suspicious activity, law enforcement officers had the requisite reasonable suspicion to detain the suspects. Gang profiles, on the other hand, have a more rigid list of criteria. Some may argue that this is preferable because it limits the discretion of law enforcement officers. This argument may indeed be favorable if gang profiles were a list of behaviors that give rise to

⁹² 306 U.S. 451 (1939).

⁹³ *Id.* at 457. Cf. *People v. Belcastro*, 190 N.E. 301 (Ill. 1934) (finding that an amendment to the Vagabond Act of 1933 was unconstitutional because it punished people for what they are “reputed” to be, not for what they actually are); *People v. Licavoli*, 250 N.W. 520 (Mich. 1933) (striking down a law which allowed evidence of reputation to be prima facie evidence of engaging in an illegal occupation).

suspicion of ongoing criminal activity. Gang profiles are not such a compilation, however, and law enforcement officers could easily use them as a mere checklist to justify any stop without any additional behavioral observations.

D. The "Profile-Plus" Alternative

Since gang profile criteria alone are not necessarily determinative of reasonable suspicion, some advocates have suggested that the focus be solely on criminal activity, regardless of gang membership.⁹⁴ Despite their deficiencies, gang profiles can be a useful tool for law enforcement because gangs are indeed a source of criminal activity. Nevertheless, gang profiles alone cannot instigate *Terry* stops.

An adequate compromise may be the use of gang profile criteria in addition to other behavioral manifestations. The court of appeals' decision in *United States v. Sokolow*⁹⁵ illustrates the use of this compromise. The Ninth Circuit found that drug courier profile criteria fell into two categories. Some elements included those behaviors consistent with an ongoing crime, such as using an alias or taking an evasive or erratic path through an airport to avoid detection.⁹⁶ The second category identified personal characteristics, such as arriving from a particular city, time of flight and manner of attire, which by themselves could not indicate ongoing criminal behavior.⁹⁷ In this case, the court found that paying \$2100 in cash for two airplane tickets fell under the second category.⁹⁸ The court determined, however, that the personal characteristics of the drug courier profile criteria could still be probative if used in conjunction with suspicious behavior. Thus, "a traveler under an alias arriving from Miami [(a drug source city)] may arouse a greater suspicion than a traveler arriving under an alias from Dubuque."⁹⁹ The Supreme Court, though reversing the Ninth Circuit, overturned the decision on the grounds that the categorization by the court of appeals was too tenuous and that the totality of the facts provided adequate reasonable suspicion.¹⁰⁰ Nevertheless, the Supreme Court maintained that each of the facts alone would not be proof of illegal conduct.¹⁰¹

The Ninth Circuit's analysis, however, is more suitably applied to gang profiles. First, the distinction between ongoing criminal behavior and personal characteristics is drawn more clearly. The personal characteristics in gang profiles include criteria such as attire and do not necessarily include behaviors such as paying large amounts of cash for airline tickets. Second, because gang

⁹⁴ See generally Mayer, *supra* note 1.

⁹⁵ 831 F.2d 1413 (9th Cir. 1987). See also *United States v. Harrison*, 667 F.2d 1158 (4th Cir. 1982).

⁹⁶ *Sokolow*, 831 F.2d at 1419.

⁹⁷ *Id.* at 1420.

⁹⁸ *Id.*

⁹⁹ *Id.* at 1421.

¹⁰⁰ *United States v. Sokolow*, 490 U.S. 1, 8 (1989).

¹⁰¹ *Id.* at 9.

profile criteria do not target criminal activity itself, unlike the facts of *Sokolow*, an additional behavioral element must be present in order to use such criteria in a *Terry* stop.

This "profile-plus" analysis, when applied to gang profiles, would enable law enforcement agencies to incorporate gang profiles into their crime fighting programs without violating Fourth Amendment rights. The "plus" requirement would be a behavioral manifestation that may not, by itself, be enough to constitute reasonable suspicion. If that behavior is combined with gang profile criteria, however, it could amount to reasonable suspicion. For example, a group of individuals driving slowly down a street may not be enough to raise suspicion, since they may be merely looking for an address or have some other innocent purpose. If those individuals had a particular manner of dress or tattoos, however, the combination of the behavior and gang profile criterion may be enough to raise reasonable suspicion. Thus, a law enforcement officer would neither be relying solely on attire and the like, nor would he be relying solely on a possibly innocent action. Indeed, at a minimum, "profile-plus" analysis should be required for gang profiles since their criteria, unlike drug courier profiles, are not composed of behavioral traits.

IV. CONCLUSION

Gang profiles can only be the first step in the law enforcement effort to combat criminal gang activity. Taken alone, the manner in which gang profiles are used may indeed cause harm to innocent persons while remaining ineffective in fighting crime. Moreover, the variable and fluid nature of gangs makes it difficult to further identify criteria in gang profiles that specifically target the criminal element of gangs. At the same time, the criteria used in initiating *Terry* stops are alone too vague to create reasonable suspicion. Thus, instead of using gang profile criteria as a checklist to sanction *Terry* stops, law enforcement officers should use gang profiles in addition to observing suspicious behavior.

Law enforcement agencies must check themselves, not only to avoid violating *Terry* stop standards, but also to increase their effectiveness in fighting criminal activity. Gang profile criteria, without an additional behavioral observation, is not accurate in ferreting out criminal gang members. Thus, police activity based on gang profiles alone wastes time and resources by detaining innocent persons as well as maintaining bloated, inaccurate gang files. Courts, too, must require an additional articulation of suspicious behavior in order to assure law enforcement officers' compliance with *Terry* standards. Only by doing so will courts be able to retain the minimal levels of reasonable suspicion required in the drug courier profile line of cases. Otherwise, the already low *Terry* requirements will be further diminished, perhaps even to the point of being inconsequential.

Moreover, because of the inaccuracies of the profiles, gang files and mugbooks often result in the misidentification of potential suspects. Consequently, innocent individuals may be identified as suspects in particular inci-

dents with no other foundation. Not only, then, may the individual be burdened, but law enforcement investigations may also be hindered. If gang profile criteria cannot be refined in identifying criminal gang members, then law enforcement agencies must reexamine the usefulness of these lists and mugbooks. At the very least, procedural systems should be created in which individuals may fairly contest their inclusion in such gang files. Aside from protecting innocent individuals from unfair accusations, this would increase law enforcement officers' ability to fight gang crime by assuring that their files hold only the names of true criminal gang members. Limiting the use of gang profiles, thus, serves two main purposes — the protection of individuals' Fourth Amendment rights, as well as the increased accuracy and effectiveness of law enforcement.

Suzin Kim

