

What a Gang Injunction is Not

- Does not criminalize gang membership
- Not a banishment from the area
- Not effective outside the Safety Zone
- Gang members are free to associate together outside the Safety Zone or within their homes, at church, while attending school
- Can "carve out" other exceptions

Are Gang Injunctions Constitutional?

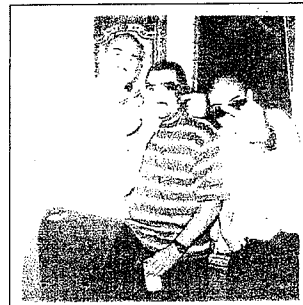
- The California Supreme Court has ruled that gang injunctions do not violate the First Amendment right to freedom of association
 - *People ex rel. Gallo v. Acuna* (1997) 14 Cal. 4th 1090.

First Amendment

- Freedom of association "does not extend to joining with others for the purpose of depriving third parties of their lawful rights"

Acuna at 1112.

Why get a gang injunction?



Why get a gang injunction?

- Crime reduction
 - UCLA study:
 - 8 to 10% decrease in violent crime due to injunction
 - LAPD statistics:
 - typical decrease in Part 1 crime after injunction instituted
 - 2003-2004 LA County Civil Grand Jury Report:
 - Part 1 crime reduced in first year, with no corresponding increase in adjoining areas
 - "[Injunctions] are an important part of a larger strategy to reduce and confront criminal street gang activities"
http://grandjury.co.la.ca.us/gjur03-04/LACGJFR_03-04.pdf

Why get a gang injunction?

- Quality of life improvement
 - Targeting the gang's visible presence
 - "residents are relieved from particular actions from gangs" and "gain a sense of control [of their neighborhoods]" (Grand Jury Report)
 - "From one to 10, I give them a 10." (Anonymous resident quoted in newspaper article)

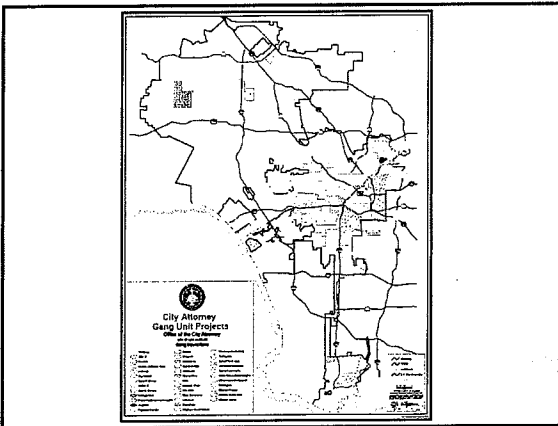


Why get a gang injunction?

- One of few preventative tools available to law enforcement
 - Stops criminal activity by/against gang members before it happens
 - Makes gang crime more difficult to commit/easier to target
- Deterrence
 - Keeps gang members from hanging out with others and being pressured to gang bang
 - Gives excuse/discipline to leave gang, if they desire

Historical Perspective

- Early efforts limited to criminal acts
- Few injunctions prior to 1997, when Cal. Supreme Court decides *Gallo v. Acuna*
- Post *Acuna*, use of gang injunctions accelerates
- Trend of suing the gang only
- Currently 33 gang injunctions targeting 50 gangs in the City of Los Angeles



Legal Theory – Public Nuisance

- Gang interferes with the community members' quiet enjoyment of life and property



Equitable Remedy

- No adequate legal remedy
 - Traditional law enforcement hampered by group activity, witness intimidation
- Irreparable harm
 - Victims of crime can't be made whole even if perpetrator convicted
- Continuing
 - Likely to continue without injunction

What is a "Nuisance"

- One definition (Cal. Civ. Code 3479):
Anything which is injurious to health, including, but not limited to, the **illegal sale of controlled substances**, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to **interfere with the comfortable enjoyment of life and property**, or unlawfully obstructs the free passage or use, in the customary manner, of . . . any public park, square, street, or highway, is a nuisance.

Examples of Nuisance

- **Injurious to health** - ADW, rape, murder
- **Illegal sale of controlled substances** - nuisance per se
- **Indecent or offensive to senses** - urinate in public, litter, graffiti
- **Interfere with comfortable enjoyment of life** - beatings, shots fired, living in fear
- **Interfere with the comfortable enjoyment of property** - robbery, GTA, BFMV, front yard too dangerous to use
- **Unlawfully obstructs the free passage or use of any public park or street**

Abating a Gang Nuisance

- Court order may be tailored to prohibit particular activities causing or contributing to the nuisance
- Typically abated mainly through a "Do Not Associate" provision
 - Analogous to a domestic violence restraining order

Abating a Gang Nuisance

- May prohibit nuisance activities as well as "precursor activities" that lead to the nuisance
 - Association is an example of precursor activity



Do Not Associate - *Acuna*

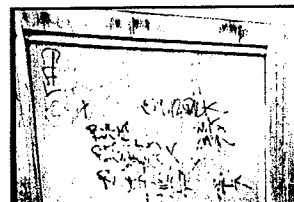
- Gang and its members are enjoined from:
"standing, sitting, walking, driving, gathering or appearing, anywhere in public view or anyplace accessible to the public, with any known member of [gang]."

Step One

- Select a target gang

Selecting a Target Gang

- Gang engages in "nuisance" activities



Selecting a Target Gang

- Gang engages in "nuisance" activities
 - Violent felonies



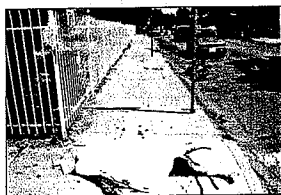
Selecting a Target Gang

- Gang engages in "nuisance" activities
 - Violent felonies
 - Misdemeanors & infractions like blocking the sidewalk, drinking in public, trespassing, loud noise, etc.



Selecting a Target Gang

- Gang engages in "nuisance" activities
 - Violent felonies
 - Misdemeanors & infractions like blocking the sidewalk, drinking in public, trespassing, loud noise, etc.
- Activities occur in public, on streets and sidewalks



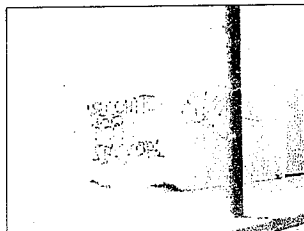
Selecting a Target Gang

- Documentation of criminal/nuisance activities must exist



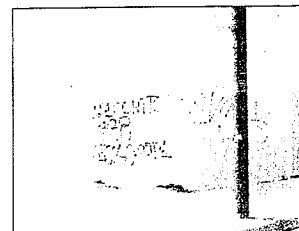
Selecting a Target Gang

- Documentation of criminal/nuisance activities must exist
- Occurs throughout the Safety Zone



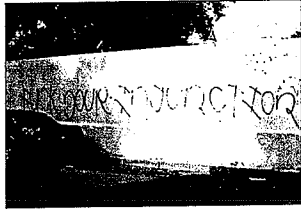
Selecting a Target Gang

- Documentation of criminal/nuisance activities must exist
- Occurs throughout the Safety Zone
- Gang expert with personal knowledge of the gang and its activities, membership and structure



Selecting a Target Gang

- Anticipate criticism and opposition
- Identify/develop community support
- Obtain multi-agency support
- Plan for community meetings



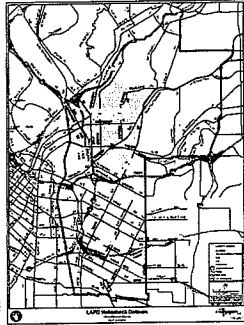
Determining Injunction Boundaries

- At minimum, gang's claimed turf will be "Safety Zone"
- Clearly-defined and stable long-term boundaries



Determining Injunction Boundaries

- Bounded from easy movement by geography or other gangs
- Located entirely within jurisdiction
- Gang has no cliques or safe areas elsewhere



Gang as Defendant

- Gang must be a defendant to keep the permanent injunction useful in the long-term
- Members of enjoined entity may be bound by injunction even if not a party

See: In re Lennon (1897) 166 U.S. 548

People v. Saffell (1946) 74 Cal.App.2d Supp. 967, 979

Gang as Defendant

- Gang sued as "unincorporated association"
 - No agent/officers/designated members
- Unincorporated Association may be sued under name by which known (CCP 369.5)
- Obtain order authorizing service on the gang by service on (one or more) designated members

Gang as Defendant

- Criminal Street Gang is a "jural entity"

See:

People v. Colonia Chiques

(2007) 156 Cal. App. 4th 31

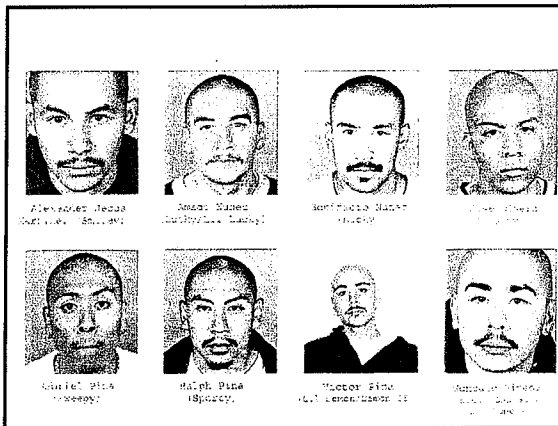
Cal. Penal Code section 186.22

Gang as Sole Defendant

- Service more manageable
- Less confusing
- Membership constantly changing
- Requires proving gang membership in the contempt proceeding

Designated Members

- "Poster Boys" used to prove gang is a nuisance and to serve gang with notice of lawsuit
 - Manageable number
 - Preferably out of custody
 - Documented criminal/nuisance behavior in Safety Zone
 - Clearly established gang membership
 - Active



Designate Members Like These



Juveniles

- Avoid identifying
- Seal information used
- Do not designate for service

Step Two

- Gather evidence
 - Documentation is critical
 - Look for anything that proves gang is a nuisance, or supports the issuance of any desired injunctive provision

Gathering Evidence

- Become familiar with area
 - Do ride-along
 - Note physical boundaries
 - Note problem locations

Gathering Evidence

- Identify known gang members



Gathering Evidence

- Collect crime reports
 - Include those where gang member was suspect/witness/victim
 - Include all gang-related crime, including unsolved
 - Go back 2-3 years, longer for more serious crime
 - Search by area and by gang member

Gathering Evidence

- Other documentation of gang membership
 - Field Interviews (admissions)
 - Photos of gang tattoos



Gathering Evidence

- Photos
 - Graffiti
 - Crime scenes
 - "Party Photos"



Gathering Evidence

- Interview gang expert
 - Draft expert declaration

Percipient Declarations

- Used to establish:
 - Gang is nuisance in the proposed Safety Zone
 - Each individual is a member of the gang
- Reduce each crime report, nuisance incident or field interview to declaration form
- Attorney may draft declarations, with appropriate amount of detail

Percipient Declarations

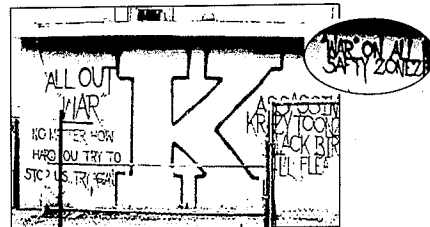
- Rely on officer declarations
 - Consider safety in deciding to use civilian declarations
 - Civilian declarations should be unnecessary
- Statements may be admissible under hearsay exceptions

Draw Up Legal Papers

- Summons
- Complaint
- Application for OSC/Motion for Preliminary Injunction
- Points and Authorities in Support of Preliminary Injunction
- Proposed Order with Map
- Request for Judicial Notice of Criminal Convictions

Step Four

- Serve gangsters and go to court



Civil vs. Criminal

- Everything must be in writing
- Must follow nit-picky rules
 - Code of Civil Procedure
 - Rules of Court
 - Local Rules
 - Forms
 - Courthouse rules/judge's rules

OSC Process

- Order authorizing service on gang by serving designated members is needed
- May be done via Application for Order to Show Cause
- California Rule: OSC required for Preliminary Injunction where party has not appeared

Notice of Ex Parte App re: OSC

- Opposing party must be notified of intention to file Ex Parte Application for Order to Show Cause
- Requires personally serving notice of the proceeding on some of the designated members

Service of Summons

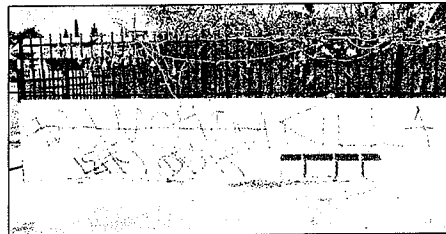
- Summons, Complaint, Order to Show Cause/Motion, all supporting docs must be served on the designated members
- Serve on as many designated members as possible
- **REQUIRES TASK FORCE**, like warrant service

Service of Summons

- File proofs of service
 - declarations re: notice

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Service of Summons

- Due Process requires notice "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."
 - Personal service, substitute service, publication, mailing, posting
- *See:*
 - People v. Broderick Boys* (2007) 149 Cal. App. 4th 1506
 - Mullane v. Cent. Hanover Bank* (1950) 339 U.S. 306

Hearing on Preliminary Injunction

- Generally decided on the pleadings (no oral testimony)
- May enforce preliminary injunction until judgment



Dealing With Gang Members in Court

- Gang members not named as defendants—
are not parties unless given leave to
intervene
- Only lawyer may represent gang
- No right to court-provided attorney
See *Iraheta v. Superior Court* (1999) 70 Cal.
App. 4th 1500
- Amicus often get involved (ACLU, etc.)

Let Gang Members Talk!

- Quotable quotes:

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 - When asked about gang graffiti conviction:

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- Quotable quotes:
 - When asked about gang graffiti conviction:
 - "Oh, I just wrote that because my homie just got
killed and I was drunk."

Let Gang Members Talk!

- Quotable quotes:
 - When asked what provisions he objected to:

Let Gang Members Talk!

- Quotable quotes:
 - When asked what provisions he objected to:
 - "I don't object to none of them. I think that's
going to be better for the community."

Favorite "Defenses"

- "I'm not a gang member"
- "The cops will harass me"

If Defendants Appear - Discovery

- Interrogatories
- Depositions
- Requests for Admission
- Document Requests

Entry of Default

- If no answer filed, immediately request entry of default, then request default judgment

Permanent Injunction

- Trial, settlement, default
- Once permanent injunction issued, preliminary injunction no longer valid – must re-serve
- Effective indefinitely

Enforcement of the Injunction

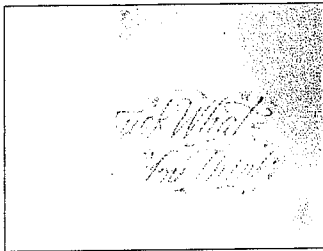
- A violation is prosecuted as criminal contempt of court
 - See, e.g.* Cal. Penal Code section 166
 - Civil contempt penalties limited

Enforcement of the Injunction

- Injunction only useful if committed to enforcement
- Keep track of who has been served and by whom
- Need ongoing effort to document and serve gang members
- Use discretion in deciding whom to serve

Elements of Contempt

- Valid Order
- Notice of Order
- Willing Violation of Order



Proof of Gang Membership

- Required in the criminal contempt case (unless defendant named in civil case)
- All the defendant's past criminal activities, tattoos, past statements, etc. are relevant
- Unlike ordinances, does not require intent to promote the gang at the time of offense

Collateral Bar Rule

- Defendant cannot relitigate civil case in criminal contempt prosecution
 - California Rule: can challenge facial validity of injunction, but not at trial
 - Constitutional defects appearing on the face of the order may be challenged

Arrest Report

- PC to stop
 - Officer must know the individual and that he has been served
- Defendant bound by the order
 - Member of gang – must have expertise & facts to show
 - Served with the order
- Terms violated and why
 - Occurred within Safety Zone

Due Process Concerns

- Gang entity had opportunity to object in civil court
- An injunction may properly run against unnamed members of the enjoined entity
See: People v. Saffell
(1946) 74 Cal. App. 2nd Supp. 967
People v. Colonia Chiques
(2007) 156 Cal. App. 4th 31

FAQ

- What if gang member lives in Safety Zone?
- Aren't gang injunctions a lot of work?
- Wouldn't it be easier to pass an ordinance?
- Does the gang just move?

Gangsters in Same Family



"The morning after a rival gang tried to shoot Chivo for the fourth time, Chivo teaches his daughter how to hold a .32-caliber pistol. Her mother looks on. Boyle Heights."
- From *East Side Stories, Gang Life in East LA*

Gangsters in Same Family

- Many gangs are multi-generational
- Injunction doesn't infringe on intimate family association, because limited to association in public view

See: People v. Englebrecht
(2001) 88 Cal. App. 4th 1236

One More Reason to Seek a Gang Injunction

- Reduce's gang's street presence, prestige, and influence to recruit youngsters

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**California Gang Injunction
Case Law**

- *Gallo v. Acuna* (1997) 14 Cal. 4th 1090
- *In re Englebrecht* (1998) 67 Cal. App. 4th 486
- *People v. Englebrecht* (2001) 88 Cal. App. 4th 1236
- *Iraheta v. Superior Court* (1999) 70 Cal. App. 4th 1500
- *People v. Gonzalez* (1996) 12 Cal. 4th 804
- *People v. Colonia Chiques* (2007) 156 Cal. App. 4th 31
- *People v. Broderick Boys* (2007) 149 Cal. App. 4th 1506

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