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# CRIME & JUSTICE

## LATINOS AND CRIMINAL JUSTICE\*

ROBERT GARCIA†

### INTRODUCTION

White fear of black crime permeates rhetoric about race.<sup>1</sup> Where do Latinos fit in? Do Hispanics share in the fear of crime? Are Latinos part of the crime problem?

Crime is not a black and white issue. The purpose of this Article is not to provide answers but to highlight some of the issues involving Latinos, crime, and justice that deserve greater attention. Law school academics, social scientists and civil rights groups generally have not focused on Latinos and criminal justice.<sup>2</sup> However, in the wake of the riots and rebellion following the acquittals in the Rodney King police brutality trial, it is clear that issues involving the participation of Latinos throughout the criminal justice system must be addressed.

### THE RIOTS AND REBELLION IN LOS ANGELES

#### *Who Rioted?*

Many people were surprised to learn that during the riots and rebellion in Los Angeles, 51% of the people arrested were Latinos. In contrast, only 38% were African Americans, 9%

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\* A version of this Article was delivered at the UCLA School of Law on Feb. 6, 1993.

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1. See, e.g., Cornel West, *Learning to Talk of Race*, N.Y. TIMES, Aug. 2, 1992, § 6 (Magazine) at 24; Editorial, *No Place Seems Safe*, N.Y. TIMES, Mar. 29, 1992, § 4, at 16.

2. *Hobbling a Generation: Young African American Males in the Criminal Justice System of America's Cities: Baltimore, Maryland*, NATIONAL CENTER ON INSTITUTIONS AND ALTERNATIVES (News Release Alexandria, VA), Sept. 1, 1992, at i.

were Anglos, and 2% were Asian Americans or "other."<sup>3</sup> Why are people surprised that the majority of people arrested were Latinos? Perhaps people expect Latinos to be more law-abiding than those figures suggest. Perhaps people expected that only African Americans would be outraged by the verdicts.<sup>4</sup>

Was the arrest rate for Latinos during the riots and rebellion higher or lower than the crime rate among Latinos generally? What is the crime rate among Latinos? We do not know. We have much more information about the crime rate among African Americans than we do about Latinos. For example, on any given day in 1991, 56% of Baltimore's African American males, ages 18 to 35, were in jail or prison, on probation or parole, awaiting trial or sentencing, or being sought on warrants for their arrest.<sup>5</sup> Similarly, 42% of Washington D.C.'s African American males, ages 18 to 35, were in jail or prison, on probation or parole, awaiting trial or sentencing, or being sought on warrants for their arrest on any given day in 1991.<sup>6</sup> What are the figures for Latinos in major cities with large Latino populations, such as Los Angeles, New York, Miami or San Antonio? Such information is not readily available.

Who were the Latinos who rioted? Information about the people who were arrested, who rioted but were not arrested, and who did not riot needs to be analyzed to help determine who rioted and why.

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3. Jerome Miller, *Hobbling a Generation: Young African American Males in D.C.'s Criminal Justice System*, NATIONAL CENTER ON INSTITUTIONS AND ALTERNATIVES (News Release, Alexandria, VA), Apr. 17, 1992, at i.

4. Academic writings tend to focus on racial issues involving African Americans and ignore Latino issues. See, e.g., *Developments in the Law: Race and the Criminal Process*, 101 HARV. L. REV. 1472 (1988).

Among the few empirical studies that address Latinos and criminal justice are JOAN PETERSILIA, *RACIAL DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM* (1983); Malcolm Holmes & Howard Daudistel, *Ethnicity and Justice in the Southwest: The Sentencing of Anglo, Black and Mexican Origin Defendants*, 65 SOC. SCI. Q. 265 (1984); Gary D. LaFree, *Official Reactions to Hispanic Defendants in the Southwest*, 22 J. RES. IN CRIME & DELINQ. 213 (1985); John Tinker et al., *Ethnic Bias in California Courts: A Case Study of Chicano and Anglo Felony Defendants*, 55 SOC. INQ. 83 (1985); Susan Welch et al., *Dismissal, Conviction, and Incarceration of Hispanic Defendants: A Comparison with Anglos and Blacks*, 65 SOC. SCI. Q. 257 (1985).

5. William H. Webster & Hubert Williams, *The City in Crisis: A Report by the Special Advisor to the Board of Police Commissioners on the Civil Disorders in Los Angeles*, Appendix 8-12 (Oct. 21, 1992) (commonly known as the "Webster Report").

Latinos make up 39% of the population in Los Angeles, African Americans comprise 13%, and Anglos are 37%. Paul Lieberman, *51% of Riot Arrests Were Latino*, *Study Says*, L.A. TIMES, June 18, 1992, at B3.

6. Various hypotheses have been offered to explain why the majority arrested during the riots and rebellion were Latinos. Some suggest that Latinos did not commit more crimes, but simply got caught more often. Others argue that the police avoided arresting African Americans to avoid provoking further confrontations and unrest. See, e.g., Lieberman, *id.*

One hypothesis is that the Latinos who rioted tended to be recent immigrants.<sup>7</sup> According to this hypothesis, recent immigrants have fewer stabilizing social structures, such as strong family ties and home ownership, that would tend to make them more law-abiding. In contrast, Latinos who have been in the United States for many generations have stronger social structures in place. They have more to lose and consequently tend to be more law-abiding.

The hypothesis that recent immigrants were disproportionately responsible for the rioting may seem plausible. Among Latino neighborhoods in Los Angeles, looting and destruction were heaviest in Pico-Union, a heavily Central American refugee community, and in South Los Angeles, where half the population is Hispanic. More than half the Pico-Union residents entered the country during the last decade; almost half of the community is primarily Salvadoran.<sup>8</sup> In contrast, there were almost no problems in East Los Angeles, which is said to be more stable because it is heavily populated by Mexican Americans who have lived there for generations.<sup>9</sup>

According to a survey conducted by the Los Angeles Times, of nearly 700 people convicted of riot-related felonies, 43% of the people convicted were Latinos, 50% were black, 4% were Anglo, and 3% were "other."<sup>10</sup> Of the people convicted, 24% were born in Mexico and 12% in Central America.<sup>11</sup> Among Latinos, 79% were foreign-born.<sup>12</sup> Nearly two-thirds of the Latinos were arrested in immigrant communities such as Pico-Union within half a mile of their home address.<sup>13</sup>

While the Los Angeles Times study provides some empirical support for the hypothesis that recent immigrants were disproportionately responsible for the rioting, many questions remain. The study covered only 694 felony convictions of 8,000 to 10,000 arrests.<sup>14</sup> The study does not address the thousands of people

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7. See, e.g., Alicia di Rado, *After the Unrest, Will the Response Meet the Task?*, L.A. TIMES, June 18, 1992, *Nuestro Tiempo*, at 1; Alicia di Rado & Frank Sotomayor, *After the Flames: Latino Leaders Seek Answers in Rebuilding Physically, Emotionally*, L.A. TIMES, May 21, 1992, *Nuestro Tiempo*, at 1; George Ramos & Tracy Wilkerson, *Unrest Widens Rifts in Diverse Latino Population*, L.A. TIMES, May 8, 1992, at A1. Cf. ALFREDO MIRANDE, *GRINGO JUSTICE* 129-38 (1987) (reviewing claims about undocumented workers and crime).

8. di Rado, *supra* note 7.

9. di Rado & Sotomayor, *supra* note 7.

10. Paul Lieberman & Richard O'Reilly, *Most Looters Endured Lives of Crime, Poverty*, L.A. TIMES, May 2, 1992, at A1.

11. *Id.*

12. *Id.*

13. *Id.*

14. From 8,000 to 10,000 people were arrested during the riots, mostly for misdemeanors. About 3,300 were charged with felonies; about a quarter of the felony cases were dismissed; others were reduced to misdemeanors and some cases are

who rioted but were not arrested. The study does not cover those who were arrested on misdemeanor charges. Furthermore, it is not clear why Latinos comprised 51% of the people arrested, but only 43% of those convicted of felonies. In addition, the study may have undercounted Latinos because some were turned over to immigration authorities and were not processed through the courts.<sup>15</sup>

The hypothesis that recent immigrants were disproportionately responsible for the rioting is reminiscent of the "riffraff theory"<sup>16</sup> that was common following the Watts riots and other civil disturbances that broke out across the United States in the 1960s. According to the riffraff theory, only a small percentage of the black population (1-2%) actively participated in the riots.<sup>17</sup> The rioters were not representative of the black community but were mainly the riffraff—the young, unattached, unskilled, unemployed, uprooted, and criminal—and outside agitators. The overwhelming majority of the black population, who was law-abiding and respectable, unequivocally opposed the riots. According to the theory, the riots were a reflection of the personal disabilities of newcomers; they reflected senseless violence and not articulate protest.<sup>18</sup> It was thought that future riots could be prevented by elevating the riffraff without transforming urban society.

The riffraff theory was inaccurate, according to Robert Fogelson's analysis of arrest data, survey research, and impressionistic accounts.<sup>19</sup> Fogelson concluded that the rioters were a small but significant minority of the black population, fairly representative of community residents, and tacitly supported by at least a large minority of the black community.<sup>20</sup> Hence, the riots were a manifestation of racism, a reflection of the social problems of urban centers, a protest against the essential conditions of life there, and an indication of the need for fundamental changes in American society, according to Fogelson.<sup>21</sup>

Like the riffraff hypothesis, the recent immigrant hypothesis makes it easier to minimize the significance of the riots and re-

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pending. The Los Angeles Times study, based on 694 probation reports, covered approximately 43% of the 1,600 riot-related felony cases concluded as of the time of the study. *Id.*

15. *Id.*

16. ROBERT M. FOGELSON, *VIOLENCE AS PROTEST: A STUDY OF RIOTS AND GHETTOS* 27-51 (1971).

At the time of the Watts riots, Latinos made up less than 2% of the population in Watts and 10% of the total Los Angeles population. di Rado, *supra* note 7.

17. Fogelson, *supra* note 16, at 28-29.

18. *Id.*

19. *Id.* at 27-51.

20. *Id.* at 28-29.

21. *Id.* at 51.

bellion by concluding that only an insignificant segment of the Latino population participated in the riots, that the Latino rioters in 1992 were not representative of the Latino community, and that the overwhelming majority of the Latino population was law-abiding, respectable, and unequivocally opposed to the riots. Thus, the argument suggests that the riots were a reflection of the personal shortcomings of the recent immigrants who rioted, not of the failures of basic institutions in this society, and not of Latinos generally. Furthermore, Latino involvement in riots and crime can be avoided if recent immigrants are absorbed over time into the institutions of property, power and pleasure<sup>22</sup> in this society—or if immigrants are deported or immigration is curtailed.

The recent immigrant hypothesis may also encourage some more established Hispanics to distance themselves from recent immigrants, from the conditions that gave rise to the riots, and from the problems of Latinos and crime generally. The recent immigrant hypothesis may also reflect broader divisions within the Latino community. According to a recent survey of Latinos, immigration issues have almost no salience for any of the groups surveyed (Mexican Americans, Puerto Ricans, and Cubans), and none of these groups are particularly supportive of increased benefits for immigrants and refugees.<sup>23</sup> In addition, many Latino elected officials in Los Angeles were born in the United States, trace their roots to Mexico, and have little connection with newer immigrant communities from Central America. Conversely, many newer immigrants are not citizens and do not vote. Thus, the interests and agendas of elected officials and immigrant communities may tend to diverge. Following the riots and rebellion, Los Angeles City Councilman Richard Alatorre, whose district includes several Eastside neighborhoods, was quoted as saying, "I try my best to be an advocate for (immigrants') concerns. . . . But I didn't get elected to represent them. I have a responsibility to the people I happen to represent."<sup>24</sup> Some Latinos have called on traditional Latino leaders in Los Angeles to speak for all Latinos.<sup>25</sup> Others have called for a new Latino leadership to understand and serve the newer communities.<sup>26</sup>

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22. See West, *supra* note 1.

23. RODOLFO O. DE LA GARZA ET AL., *LATINO VOICES: MEXICAN, PUERTO RICAN, & CUBAN PERSPECTIVES ON AMERICAN POLITICS* 15 (1992).

24. Ramos & Wilkerson, *supra* note 7, at A1.

25. Antonio Rodriguez & Javier Rodriguez, *Where Are the Latino Voices?*, L.A. TIMES, Apr. 14, 1992, at B7.

26. Esther Valadez, *A Hidden Community Emerges*, L.A. TIMES, May 10, 1993, at B7.

The recent immigrant hypothesis may also reflect the fact that different segments of the Latino community may have different experiences with crime and justice. The Latino community in the United States includes Mexican Americans, Puerto Ricans, Cubans, people from each of the countries in Central America and South America, recent immigrants, more established members, and so on.<sup>27</sup> There are differences between groups as well as within groups. For example, financially secure Cubans who came to the United States before and soon after the Cuban Revolution may have different experiences than economically disadvantaged Puerto Ricans in New York. More established Cubans may have different experiences than the Marielitos who came to the United States in 1980.<sup>28</sup> Puerto Ricans in Puerto Rico may have different experiences than Puerto Ricans in Spanish Harlem.<sup>29</sup> These points further illustrate the need for more empirical information on Latino experiences with crime and justice.

### *Who Were the Victims?*

Who were the victims of the riots and rebellion? According to initial estimates, at least 30% of the estimated 4,000 businesses destroyed were owned by Latinos.<sup>30</sup> Nineteen of the 58 people killed were Latinos, and hundreds more were injured and left homeless.<sup>31</sup> According to a subsequent survey by the New York Times, however, Korean merchants bore the brunt of property damage. Forty-seven percent of the heavily damaged buildings surveyed were occupied by Korean merchants, though often they were not the owners.<sup>32</sup> Overall, an estimated three-quarters of the wrecked businesses were run by Koreans.<sup>33</sup>

Apart from the riots, who are the victims of crime generally? Hispanics are disproportionately the victims of violent crime and theft. According to the Bureau of Justice Statistics, between

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27. According to 1990 census figures, 64.0% of all Latinos are Mexican Americans, 10.5% are Puerto Ricans, 4.9% are Cubans, 13.7% are Central and South American, and 6.9% are "other." JESUS GARCIA & PATRICIA MONTGOMERY, U.S. DEP'T OF COMMERCE, *THE HISPANIC POPULATION IN THE UNITED STATES 1* (1991). Mexican Americans and Puerto Ricans account for 80% of the nation's Latinos and an even greater percentage of the nation's Latino citizens. DE LA GARZA, *supra* note 23, at 7.

28. See, e.g., James LeMoyné, *Most Who Left Mariel Sailed to New Life, a Few to Limbo*, N.Y. TIMES, Apr. 14, 1990, § 1, at 1.

29. See Larry Rohter, *As Crime Rises, Puerto Ricans Retreat*, N.Y. TIMES, Jan. 13, 1993, at A13.

30. Ramos & Wilkerson, *supra* note 7, at A1.

31. *Id.*

32. Robert Reinhold, *Rebuilding Lags in Los Angeles a Year after Riots*, N.Y. TIMES, May 10, 1993, at A1.

33. *Id.*

1979 and 1986, Hispanics experienced higher rates of victimization from violent crime than did non-Hispanics.<sup>34</sup> Also, Hispanics suffered a higher rate of household crimes—burglary, household larceny, and motor vehicle theft—than did non-Hispanics.<sup>35</sup>

### *Police Abuse In Los Angeles*

Rodney King was not alone. Recent reports have documented the systematic use of excessive force and racial harassment by local law enforcement agents against Latinos and African Americans in Los Angeles. The Christopher Commission Report documents racial bias and harassment by officers in the Los Angeles Police Department, against both civilians and other officers.<sup>36</sup> Racial prejudice and intolerance resulting from the Department's practices and procedures are translated into excessive force on the street.<sup>37</sup> The Kolts Report documents systematic racial and ethnic bias in the Los Angeles County Sheriff's Department against civilians and other officers.<sup>38</sup> According to the Kolts Report, racially intolerant attitudes and conduct reflect management failures, not just problems with individual deputies.<sup>39</sup> Management failures result not only from a lack of accountability but also from a lack of training in dealing with individuals and groups on these sensitive issues.<sup>40</sup> These reports highlight the need to improve the recruitment, hiring, training, sensitivity and discipline of law enforcement officers in these areas.

The Christopher Commission Report and the Kolts Report also highlight the need for similar studies to determine the impact of ethnicity or race on other local, state and federal law enforcement agencies throughout the country. For example, traditionally Latinos have been the victims of discrimination within the Federal Bureau of Investigation, which is charged with enforcing civil rights laws. J. Edgar Hoover resisted hiring Latinos, African Americans and women.<sup>41</sup> In Hoover's wake, the

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34. Lisa D. Bastian, *Hispanic Victims*, *Crime Victims Digest* 1 (Jan. 1990) (citing data from the Bureau of Justice Statistics' National Crime Survey).

35. *Id.*

36. Warren Christopher et al., *The Report of the Independent Commission on the Los Angeles Police Department* 67-83, 91-94 (July 1991) (commonly known as the "Christopher Commission Report").

37. *Id.* at xii.

38. James G. Kolts et al., *The Report on the Los Angeles County Sheriff's Department* 297-300, 319-21 (July 1992) (commonly known as the "Kolts Report").

39. *Id.* at 298-300.

40. *Id.*

41. Philip Shenon, *Panel Says Sessions Tolerates FBI Discrimination*, *N.Y. TIMES*, Apr. 6, 1990, at A15.



FBI systematically discriminated against Latino agents and relegated them to a "taco circuit" of dead-end appointments, according to the findings of a federal district court in a landmark discrimination suit filed by Hispanic agents against the FBI.<sup>42</sup> Latino agents then became the targets of retaliation for having filed and won the suit.<sup>43</sup> Racially biased attitudes and conduct against Latino agents undoubtedly translate into bias and harassment against Latino members of the public.

### *L.A. "Street Gangs"*

During the 1993 campaign for mayor of Los Angeles, one candidate called for the deportation of 23,000 people he claimed were undocumented immigrants and so-called gang members.<sup>44</sup> This battle cry reflects a potential backlash not only against Latinos who are undocumented or who are allegedly members of gangs, but against all Latinos. Some people do not bother to distinguish between "gang members," undocumented Latinos, and other Hispanics. Indeed, law enforcement notions of gang membership are notoriously arbitrary, discriminatory, and overbroad. Law enforcement agencies tend to operate on an "I know 'em when I see 'em" basis as the Los Angeles County District Attorney's office acknowledged in a report on gangs.<sup>45</sup> The number of "gang homicides" in Los Angeles would drop by almost 60% if a different, equally valid, definition of "gang related crimes" were used.<sup>46</sup> Police claim that almost half of all African American men in Los Angeles County between the ages of 21 and 24 are gang members.<sup>47</sup> That number is so far out of line that the district attorney's office has recognized that a careful examination is needed to determine whether the police are systematically over-identifying African Americans as gang members.<sup>48</sup> Legal and social science scholars agree that law enforcement officials cannot accurately determine gang membership or gang activity.<sup>49</sup> Case

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42. See *Perez v. FBI*, 714 F. Supp. 1414 (W.D. Tex. 1989), *aff'd*, 956 F.2d 265 (5th Cir. 1992); *Editorial, Shutting Off the 'Taco Circuit'*, N.Y. TIMES, Sept. 27, 1990, at A22.

43. Shenon, *supra* note 41.

44. Frank Clifford, *Houston Calls for Deporting Illegals in 2 Deadly Gangs*, L.A. TIMES, Jan. 15, 1993, at B1.

45. *Gangs, Crime and Violence in Los Angeles: Findings and Proposals from the District Attorney's Office* 94 (May 1992).

46. *Id.* at 95-96.

47. *Id.*

48. *Id.* at iv.

49. Susan Burrell, *Gang Evidence: Issues for Criminal Defense*, 30 SANTA CLARA L. REV. 739, 746-51 (1990) (surveying law enforcement and social science definitions).

statistics concerning gang-related crimes are manipulated to meet the needs of law enforcement.<sup>50</sup>

Law enforcement efforts to combat so-called gangs can lead to the plundering of constitutional protections. The Kolts Report, for example, describes conduct by sheriff's deputies that is "at best borderline: rousting of asserted gang members with thin cause; questionable pat downs of asserted gang members and searches of their vehicles; petty and not so petty harassment of asserted gang members."<sup>51</sup> Gang teams are permitted to roam the streets virtually at will to deal with alleged gang members. Sheriff's deputies may get away with using improper tactics because of the unsympathetic nature of the suspects against whom the tactics are directed.<sup>52</sup> It is not necessary to abandon constitutional protections in order to combat crime, and efforts which do so only promote lawlessness by the police.

### BEYOND REBUILDING L.A.

Questions about Latinos and criminal justice go beyond the issues raised by the civil unrest in Los Angeles. Other issues that deserve greater attention include, for example, the relationship between race or ethnicity and the death penalty, the relationship between race or ethnicity and the decision to file federal drug charges, and generally, the participation by Latinos throughout the criminal justice system.

#### *The Death Penalty*

Because life is at stake, the impact of ethnicity or race on capital sentencing in particular deserves attention. A recent study indicates that the ethnicity of the offender and the ethnicity of the victim are significant factors in deciding whether to seek the death penalty against a defendant in Fresno County, California.<sup>53</sup> Compared to Anglo offenders, Latino offenders were about four times more likely to be charged with special circumstances.<sup>54</sup> Offenders who were charged with having killed an Anglo were *fourteen times more likely* to be charged with special circumstances than offenders who were charged with having killed a Latino.<sup>55</sup> This suggests that society places a greater value on the life of an Anglo than on the life of a Latino. In light of

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50. *Id.* at 747.

51. Kolts Report, *supra* note 38, at 338.

52. *Id.* at 316-17, 338-39.

53. Study conducted by Professor Richard Berk, Director, Center for the Study of the Environment and Society, University of California, Los Angeles 1 (Aug. 12, 1992) (on file with author).

54. *Id.* at 3.

55. *Id.* at 4.

such information, it is perhaps surprising that a majority of Latinos surveyed generally support capital punishment.<sup>56</sup> Perhaps if more information about the disparate impact of the death penalty were available, legislatures, courts and people generally would not support the death penalty as it is now administered.<sup>57</sup>

### *Federal Prosecutions*

What is the significance of race or ethnicity on the decision to file federal drug charges, which may carry heavy mandatory minimum sentences, rather than state charges, which generally carry lower sentences? More broadly, what is the significance of ethnicity or race on prosecutorial charging discretion and plea bargaining? A recent study explores the relationship between race or ethnicity, arrests, and charges for selling cocaine base in the Central District of California.<sup>58</sup> The study found that African American defendants are significantly more likely to be subjected to federal charges than their non-Hispanic Caucasian (Anglo) counterparts.<sup>59</sup> Although only 58% of those who were arrested by local authorities for selling cocaine base from 1990 to 1992 were African Americans, African Americans represented 83% of the defendants who were charged with federal cocaine base offenses.<sup>60</sup> The remaining defendants were Hispanic. None of the defendants were Anglo, despite the fact that at the local level, Anglos accounted for 3% of the individuals who were arrested for distributing cocaine base.<sup>61</sup> While Hispanics made up 37% of the arrested population, they were only 16% of those charged at the federal level.<sup>62</sup>

Perhaps this study could be interpreted to mean that Hispanics somehow benefit from federal drug policies because Hispanic defendants are less likely to be subjected to federal drug charges than one would expect based on the arrest rate. Hispanic defendants are less likely to be subjected to federal drug charges than African Americans. On the other hand, Hispanics may be more likely to be subjected to federal charges than An-

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56. See DE LA GARZA, *supra* note 23, at 109, 185.

57. See *McCleskey v. Kemp*, 481 U.S. 279 (1987).

58. Memorandum from Richard Berk & Alec Campbell, *United States v. Jenkins*, No. CR 91-632-TJH (C.D. Cal.), reprinted in 6 Fed. Sentencing Rptr. 36 (1993).

59. *Id.* at 38.

60. *Id.*

61. *Id.*

62. It is unlikely—the chances are less than 1 in 100—that the patterns are the result of a random draw for the population of the people arrested. *Id.* However, more information would be required to determine why the pool of federal offenders differs so dramatically from the pool of arrested individuals. See generally Jim Newton, *Harsher Crack Sentences Criticized as Racial Inequity*, L.A. TIMES, Nov. 23, 1992, at A1.

glos. More importantly, no one benefits from disparate law enforcement policies. Unequal justice hurts everyone. Examining the relationship between race or ethnicity and federal charging decisions may lead to basic changes in federal drug policies. Federal funds could be channeled into education and prevention rather than interdiction and incarceration. Mandatory federal sentencing guidelines could be abandoned or substantially revised.<sup>63</sup>

### *Participation Throughout The Criminal Justice System*

We need to examine the involvement and participation of Latinos at every stage of the criminal justice system—as victims, suspects, defendants, innocent members of the community, law enforcement officers, prosecutors, defense attorneys, judges, jurors, witnesses, probation officers, prison authorities, and prison inmates.

Apparently, no chief federal public defender is a Latino or a person of color. Few United States Attorneys are Hispanic. Few federal judges are Hispanic. Only three federal judges in the nation are Hispanic women, and they were appointed in 1992. Until that time, there had never been a Latina federal judge. What impact does the absence of Latino defense attorneys, prosecutors, and judges have on the reality and the perception of justice in the criminal justice system?

Studies on the impact of race or ethnicity in the criminal justice system have tended to focus on narrower issues such as bail determinations, jury selection, and sentencing decisions.<sup>64</sup> However, the issues of Latinos, crime, and justice go far beyond those issues. Furthermore, language and bilingualism may pervade all aspects of the Latino experience. The significance of language to Latinos throughout the criminal justice system deserves far more attention.<sup>65</sup> The impact of poverty, poor schooling, and joblessness must also be examined.<sup>66</sup>

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63. The number of inmates imprisoned for drug offenses exceeds the number of inmates imprisoned for property offenses and violent crimes. Of all new inmates in 1990, almost one-third were drug offenders. *Drug Crimes Push Record Prison Population*, N.Y. TIMES, May 10, 1993, at A20.

64. See, e.g., *Developments in the Law*, *supra* note 4.

65. See, e.g., Miguel A. Méndez, *Hernandez: The Wrong Message at the Wrong Time*, 4 STAN. L. & POL'Y REV. 193 (1992).

66. See, e.g., MARY MERVA & RICHARD FOWLES, ECONOMIC POLICY INSTITUTE, *EFFECTS OF DIMINISHED ECONOMIC OPPORTUNITIES ON SOCIAL STRESS: HEART ATTACKS, STROKES AND CRIME* (1992).

## WHAT CAN BE DONE

What can be done concerning Latinos, crime and justice? The Ninth Circuit Court of Appeals recently held a conference on the impact of ethnicity, race and religion in the courts.<sup>67</sup> The conference may lead to a formal study and report that would include Latinos and criminal justice.<sup>68</sup> Perhaps the Ninth Circuit's interest will stimulate work by others. Academics can begin addressing the issues through empirical studies, publications and teaching.<sup>69</sup> Public interest groups can renew their emphasis on civil rights and criminal justice. Foundations can support more work by civil rights lawyers, law professors, and social scientists.

The Mexican American Legal Defense and Educational Fund (MALDEF) does not have a formal program area devoted to criminal justice. However, MALDEF does do significant work involving Latinos and criminal justice, including extensive litigation of police abuse issues against the Immigration and Naturalization Service (INS). A major report on INS border violence is forthcoming. MALDEF has also worked extensively for increased participation by Latinos at all levels of the criminal justice system. It has fought for more Latino judges, and for increased hiring and promotion of Latino police officers. In addition, MALDEF is active in language issues as they affect the criminal justice system.<sup>70</sup> MALDEF filed a pivotal brief in *Hernandez v. New York*,<sup>71</sup> as well as an amicus brief involving the translation of 12,000 pages of documents in a federal criminal case.<sup>72</sup> MALDEF should continue and expand its work involving Latinos and criminal justice.

The NAACP Legal Defense and Educational Fund, Inc. (LDF) has traditionally devoted extensive resources to capital punishment, police misconduct and other criminal justice issues. The LDF's work cuts across color lines. For example, LDF represents the plaintiffs in a major civil rights class action seeking

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67. See Judith Resnik et al., Report on the Conference on Ethnicity, Race, and Religion in the Ninth Circuit (Jan. 27, 1993). I served on the working subcommittee that prepared the report (on file with author).

68. Cf. Executive Summary, The Preliminary Report of the Ninth Circuit Gender Bias Task Force (July 1992) (discussion draft on file with author).

69. See Robin Heffler & Bill Andrews, *Turning Community Experience into Classroom Lessons*, UCLA TODAY, Apr. 22, 1993, at A3. See generally *id.* at A1-A4 (special report on the efforts of UCLA faculty, students and staff to provide services to the community through UCLA's academic programs).

70. See generally MALDEF Litigation Docket at 2-4, 6, 14, 77-93 (May 1992-April 1993).

71. 111 S. Ct. 1859 (1991) (holding that the exercise of peremptory challenges against bilingual jurors was not discrimination based on race).

72. See *United States v. Mosquera*, 816 F. Supp. 168 (E.D.N.Y. 1993); Joseph P. Fried, *Judge Makes Translations an Issue of Trial Rights*, N.Y. TIMES, Mar. 8, 1993, at B6.

injunctive relief and damages against the Los Angeles County Sheriff's Department for systematic police brutality, racial harassment, illegal searches and seizures, mishandling of civilian complaints, and gang-like behavior by sheriff's deputies in Lynwood, California.<sup>73</sup> A majority of the plaintiffs are Hispanic, and Lynwood is a predominantly Hispanic community. While MALDEF and the LDF have worked together in the past, they should continue to work together in order to build bridges between the two groups and between the Latino and African American communities.<sup>74</sup>

The issues forced to the forefront of the public consciousness after the Rodney King beating go far beyond rebuilding Los Angeles. Fidel Lopez, a Guatemalan immigrant, was one of the victims of the mayhem at the corner of Florence and Normandie following the acquittals in the first Rodney King police brutality trial. After twenty years in this country, Mr. Lopez, 48 years old, had started a contractor's business and was making payments on a house he shared with his wife and three daughters in a predominantly black neighborhood just a few blocks from where he was beaten. Mr. Lopez was dragged from his truck and beaten senseless by a mob that included two black men, Damian Williams and Henry Watson. His forehead was slashed and his left ear was nearly severed; his genitals were spray-painted black and his body was doused with gasoline. A black preacher, Reverend Bennie Newton, threw his body over Mr. Lopez's saving his life. The preacher took Mr. Lopez home and then to a hospital when no ambulance crew would brave the neighborhood. Mr. Lopez, who has no health insurance, has received virtually no medical care since being patched up in an emergency room on the night of the beating. He is now broke because of the months he was unable to work.<sup>75</sup> "They destroyed me, physically and economically," Mr. Lopez said.<sup>76</sup> Yet Mr. Lopez is not bitter and his family is also magnanimous. According to his daughter Melissa, "Everybody says, 'It's your dad, don't you hate black people?' . . . Well, the thing about us, thank God, is that we grew up all our lives around black people. We know there are good peo-

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73. See *Thomas v. County of Los Angeles*, 978 F.2d 504 (9th Cir. 1992) (amended Feb. 12, 1993) (upholding plaintiffs' standing to seek injunctive relief based on patterns of misconduct by deputies and remanding for further proceedings). I am of counsel to the LDF and represent the plaintiffs and class in the *Thomas* litigation.

74. MALDEF and LDF held a historic conference to develop strategies for working together in June 1992 in Los Angeles. I served as the reporter for the conference, which was sponsored by the Ford Foundation.

75. Jane Gross, *Body and Dreams Trampled, a Riot Victim Fights On*, N.Y. Times, Oct. 22, 1993, at A18.

76. *Id.*

ple, bad people, O.K. people. There was really no hatred. I understand why they were so mad."<sup>77</sup>

The reactions of the Lopez family illustrate a simple truth. Crime is not a black and white issue. Questions about Latinos, crime and justice must be assessed in the broader context of rebuilding the nation according to a vision of greater justice and equality for all.

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77. *Id.*