HEINONLINE

Citation: 78 Denv. U. L. Rev. 1081 2000-2001

Content downloaded/printed from
HeinOnline (http://heinonline.org)
Mon Nov 9 08:13:30 2015

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at http://heinonline.org/HOL/License

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

https://www.copyright.com/ccc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=0883-9409

STATE VIOLENCE, AND THE SOCIAL AND LEGAL CONSTRUCTION OF LATINO CRIMINALITY: FROM EL BANDIDO TO GANG MEMBER

MARY ROMERO[1]

D: 911 what is your emergency?

C: Did [sic] you speak Spanish?

D: No, do you speak English?

C: No.

D: Do you have an emergency?

C: Police please.

D: Do you need Police?

C: Yes

. . . [Dispatcher contacts ATT interpreter] . . .

D: Can you find out what this ladies [sic] emergency is for the Police please?

ATT: Do you have an emergency ma'am?

C: Yes, my son of 16 years fought with my husband, but he left with a knife.

ATT: Is he fighting with a knife there right now?

C: No, he left running with a knife outside.

ATT: 16 year old was fighting with his father and he left with a knife in his hand.

---

1. Professor, School of Justice Studies, College of Public Programs, Arizona State University. I benefitted from comments on this paper received at the "Work in Progress" session at LatCrit V from Thomas D. Russell, Sylvia Lazos, Frances Ansley, Jane Rutherford, Alejandro Covarrubias, Robert Maes, and Norberto Valdez. I want to recognize the very helpful comments and feedback Sylvia Lazos provided after the session. Kevin R. Johnson graciously offered critical comments on a draft of this paper. Thanks to Kevin R. Johnson, Christopher David Ruiz Cameron, and George A. Martínez for encouraging me to write about my community work with the Committee for Equal Protection and Service. I profited immensely from my work with members of Students United for Justice and the Committee for Equal Protection and Service. I want to acknowledge the importance of Alfredo Mirandé and Larry Trujillo's classic writings on el bandido and Armando Morales' research on Mexican Americans and police conflict in framing the history of state violence.

. . . [Caller identifies address and time teen left home] . . .

ATT: Describe your son?

C: Tall and thin.

ATT: Is he Hispanic?

C: Yes

. . . [Caller describes teen's clothes and persons with him] . . .

ATT: Has he been drinking tonight?

C: Yes

. . . [Caller identifies location of teen's stepfather] . . .

ATT: Do you know what kind of knife he has?

C: Uh, it's from the kitchen.

. . . [Caller describes the knife and teen's clothes] . . .

D: Is the officer at the door?

ATT: Yes

D. Okay, tell her she can go talk to the officer.

ATT: Go talk to the officer.

C: Thank You.[2]

On November 15, 1996, at approximately 11:47 p.m., four Phoenix police officers responded to this emergency call from Julio Valerio's mother, Paulina Valerio. At 11:52 p.m. the officers confronted Julio and ordered him to drop the knife. At 11:54 p.m., an additional eight officers arrived and advised police radio that they had a subject armed with a knife, at gun point, behind the liquor store and requested a canine unit. Cornering Julio in a fenced area, the officers positioned themselves on both sides of a large dumpster to prevent his escape. One police officer attempted to spray Julio with Oleoresin Capsicum gas. Moving away from the spray, Julio stepped towards the officers. Six police officers wearing bullet-proof vests fired twenty-five rounds at Julio. At 11:55 p.m., Julio Valerio was pronounced dead at the scene by Phoenix Fire paramedics.[3]

Waking up to the news on a Sunday morning, I listened to the news reports and wondered how a mother's 911 call for assistance had escalated into six police officers killing of her son in less than ten minutes. I

---

2. PHOENIX POLICE DEP'T REPORT, SHOOTING INVESTIGATION S-96-29, ATTACHMENT 1 - PHOENIX POLICE 911 CALL (Jan. 16, 1997) [hereinafter PHOENIX POLICE REPORT].

3. *See id.* at 1.

tried to imagine what these Phoenix police officers saw that night to warrant the use of lethal force.

Televised images of police officers and border patrol agents engaged in the act of corporeal violence,[4] along with the physical evidence of severe bodily injury or mutilation of the body from excessive lethal force,[5] has generated serious questions about the degree of military tactics and demonization of the "other" into everyday domestic policing in the United States[6] and prosecution.[7] Since the filming of the Rodney King incident, there has been renewed attention on police violence in communities of color,[8] particularly among Black and Latino youth.[9] Nationally, communities tell the same stories with the same theme: race matters.[10] This social construction is particularly evident in recent trends

---

4. See Cassandra Stern, Taped Beating Galvanizes Latino Community; Hispanic Residents of California Fight What They See as Growing Intolerance of Immigrants, WASH. POST, June 11, 1996, at A03.

5. *See* Susan Leonard, *Police Face U.S. Probe in Man's Death; 89-Shot Fusillade Prompts Rights Inquiry*, ARIZ. REPUBLIC, Oct. 24, 1995, at B1 (reporting that Rudy Buchanan Jr. fired a sawed-off shotgun three times toward officers and thirteen Phoenix police officers fired 89 shots in return).

6. A national day of protest has been organized by a diverse coalition of organizations and individuals with the specific concern surrounding police violence: "[w]e came together out of our concern that the peoples resistance to Police Brutality needed to be taken to a higher level nationwide." *October 22 Coalition*, *at* http://www.unstoppable.com/22 (last visited Oct. 31, 2000). The Stolen Lives Project lists more than 1,000 people who were shot down in the streets, beaten or pepper sprayed to death by police and other law enforcement agents since 1990. Most of the victims were unarmed and committing no crime against anybody. *See id.* at http://www.unstoppable.com/stolenlives.

7. *See, e.g.*, Angela J. Davis, *Prosecution and Race: The Power and Privilege of Discretion*, 67 FORDHAM L. REV. 13, 15-16 (1998) (discussing the disparities in prosecution on the basis of race).

8. *See, e.g.*, CHARLES J. OGLETREE ET AL., BEYOND THE RODNEY KING STORY: AN INVESTIGATION OF POLICE CONDUCT IN MINORITY COMMUNITIES 6-7 (1995) (discussing the U.S. House of Representatives Committee on the Judiciary hearings on excessive police brutality); READING RODNEY KING/READING URBAN UPRISING 3-4 (Robert Gooding-Williams ed., 1993) (compiling essays exploring the relationship between the Rodney King incident and the "exercise of political, economic, and cultural power throughout the United States"); THE LOS ANGELES RIOTS, LESSONS FOR URBAN FUTURE 1 (Mark Baldassare ed., 1994) (representing the first comprehensive study of the Los Angeles riots).

9. *See* Felicia R. Lee, *Young and in Fear of the Police; Parents Teach Children How to Deal with Officers' Bias*, N.Y. TIMES, Oct. 23, 1997, at B1.

10. *See* OGLETREE ET AL., *supra* note 8. The major findings of the NAACP Commission Study on police conduct in minorities communities were: "[r]acism is a central part of police misconduct," *id.* at 21, "[c]itizens experience police abuse in a wide variety of forms," *id.* at 29, "[p]olice departments have only begun to address police abuse and have failed to track or discipline officers who are repeat offenders," *id.* at 44, "[c]ivilians seldom prevail in complaints against police officers," *id.* at 52, "[t]here seems to be a correlation between the race of the officer, the race of the citizen, and the incidence of abuse," *id.* at 70, "[t]here is an 'Us versus Them' mentality in police-community relations," *id.* at 74, "[p]olice departments are beginning to respond to the needs of the community in police training programs," *id.* at 96, and "[r]acism has a detrimental effect on law enforcement." *Id.* at 101; *see generally* JODY DAVID ARMOUR, NEGROPHOBIA AND REASONABLE RACISM: THE HIDDEN COSTS OF BEING BLACK IN AMERICA 5 (1997) (discussing the existence of racial fear and its role in justifying police action); DAVID COLE, NO EQUAL JUSTICE: RACE AND

in the policing and incarceration of African American and Latino youth.[11] Characterization of this population as superpredators is socially constructed through a racial lens—the lens that reflects the images of White middle class youth as "our" children and Latino adolescent males as violent, inherently dangerous and endangering.[12] The focus of the racialized lens can be measured when their existence, their brown bodies, no matter how young or small, are circumscribed as dangerous, prior to any gesture, any raising of the hand,[13] defines a situation as in need of protection, a source of danger, a threat.[14] The academic spokesperson for this demonization process is John DiLulio who refers to inner city youth as "super-predators"—and describes these children as "growing up surrounded by deviant, delinquent, and criminal adults in chaotic, dysfunc-

---

CLASS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM 12 (1999) (describing that African-American skepticism of the criminal justice system is "not shared by the white majority"); RANDALL KENNEDY, RACE, CRIME AND THE LAW ix (1998) (exploring the crossroads between race relations and the rules that govern the criminal justice system); KATHERYN K. RUSSELL, THE COLOR OF CRIME: RACIAL HOAXES, WHITE FEAR, BLACK PROTECTIONSIM, POLICE HARASSMENT, AND OTHER MACROAGRESSIONS xiv (1998) (discussing the public perception of the criminalization of race); JEROME G. MILLER, SEARCH AND DESTROY: AFRICAN-AMERICAN MALES IN THE CRIMINAL JUSTICE SYSTEM 5-8 (1996) (discussing that statistics across the nation show the overwhelming disparity between white and nonwhite incarceration rates).

11. *See* PETER ELIKANN, SUPERPREDATORS: THE DEMONIZATION OF OUR CHILDREN BY THE LAW xi (1999) (characterizing youth of color as superpredators has resulted in oppressive political agendas against children and families of color and legitimated state violence carried out under the war against drugs and gangs); BARRY C. FELD, BAD KIDS: RACE AND THE TRANSFORMATION OF JUVENILE COURT 3 (1999) (transforming juvenile court into a "scaled-down second-class criminal court for young people" is one of the most significant trends); MILLER, *supra* note 10, at 80-86 (showing bias in the drug war policies and its impact in the African-American community).

12. Judith Butler attributes the difference in police behavior observed in immigrant and color communities as the result of "racially saturated field of visibility." Judith Butler, *Endangered/ Endangering: Schematic Racism and White Paranoia, in* READING RODNEY KING/READING URBAN UPRISING, *supra* note 8, at 15.

13. Sgt. Anthony Miranda, the president of the Latino Officers Association, reported that the problem of racial inequity in law enforcement is so prevalent that he counsels "young people on how to deal with the police." Ana and Eddie Hernandez stated that even after taking steps to coach their son in tactics of protective mechanisms to avoid vehicle stops, "their son Eduardo had been stopped at gunpoint by the police three times. Each time, they said, he was in a vehicle that the police suspected of carrying drugs." Lee, *supra* note 9.

14. Based on the findings from his study of the determinants of deadly force, David Jacobs and Robert M. O'Brien, concluded "Political or threat explanations for the state's use of internal violence suggest that killings committed by the police should be greatest in stratified jurisdictions with more minorities. . . . Separate analyses of police killings of blacks show that cities with more blacks and a recent growth in the black population have higher police killing rates of blacks, but the presence of a black mayor reduces these killings." David Jacobs & Robert M. O'Brien, *The Determinants of Deadly Force: A Structural Analysis of Police Violence*, 103 AM. J. SOC. 837 (1998).

tional, fatherless, Godless, and jobless settings."[15] The police shooting death of Julio Valerio is a case in point.[16]

As depicted in the case of Rodney King, the publicity of the use of lethal and excessive force was transformed by the defense attorneys in an effort to legitimate state violence and rationalize everyday practices.[17] The video of a man being brutally beaten, was repeatedly used as evidence that Rodney King's black body was itself the source of danger and the threat of violence.[18] The defense's tactic of slowing down the video tape of the beating totally decontexualized the violence of this act and provided the path for white jurors to find that the police had acted reasonably. Legitimation of power, and the specific use of that power, becomes institutionalized through texts produced in the proceedings.[19] The process frequently begins at the level of the media. As the story breaks,

---

15. James Traub, *The Criminals of* Tomorrow, THE NEW YORKER, , Nov. 4, 1996, at 53. See *generally* Lee, *supra* note 9 (discussing the effects of demonization on African American and Latino parents in New York).

16. This case follows the stages of police brutality that Kathryn K. Russell refers to as the "Roundabout":

- There is an incident of alleged police violence against a person of color.
- Expressions of outrage by members of the minority community are followed by calls form calm by the authorities (e.g., mayor, police chief).
- The authorities publicly classify the incident as an "aberration" and note that most officers do a good job and that the public should not rush to judgment.
- There are some attempts to portray the victim of the alleged police abuse as flawed or less than innocent. Attention may be drawn to a prior criminal record or the fact that the victim was engaged in deviant behavior at the time of the alleged assault.
- Community protests by the affected minority group (e.g., rallies) are met with further calls for calm by the authorities.
- A grand jury declines to issue a criminal indictment. No trial is held, and none of the officers involved in the assault is held accountable.

Katheryn K. Russell, *"What Did I Do to Be So Black and Blue?"*, *in* POLICE BRUTALITY 145 (Jill Nelson ed., 2000).

17. *See* Seth Mydans, *The Police Verdict: Los Angeles Policemen Acquitted in Taped Beating*, N.Y. TIMES, Apr. 30, 1992, at A1; *see generally* Robin K. Magee, *The Myth of the Good Cop and the Inadequacy of Fourth Amendment Remedies for Black Men: Contrasting Presumptions of Innocence and Guilt*, 23 CAP. U. L. REV. 151 (1994) (discussing that black males suffer from a perpetuated negative public image that fosters an environment in which their guilt is assumed).

18. *See* Judith Butler, *Endangered/Endangering: Schematic Racism and White Paranoia*, *in* READING RODNEY KING/READING URBAN UPRISING, *supra* note 8, at 15-18 (arguing how the Rodney King's body was itself made into the treat during the trial); *see generally* Stanley Fish, *How the Right Hijacked the Magic Words*, N.Y. TIMES, Aug. 13, 1995, at 15 (arguing that the defense strategy showing the Rodney King videotape in frame-by-frame slow motion minimized the actual harm done).

19. Statistics from a section of an investigation conducted by Charles J. Ogletree et al. entitled "Citizens rarely prevail in police investigations" shows that only 13 percent of the 127 complaints of excessive or inappropriate force in the Virginia Beach Police Department were sustained; only 4 cases of 65 complaints between 1986 to 1990 in the St. Louis County Police Department were sustained; only 6 percent of the complaints in the Metro-Dade Police Department prevailed. OGLETREE ET AL., *supra* note 8, at 65-66. Further, the Christopher Commission reviewed thirty-four hundred complaints of excessive force and improper tactics from 1986-1990 and only 3 percent had been sustained. *See id.* at 66. Similarly, the St. Clair Commission found only 5.0 complaints sustained in the Boston Police Department. *See id.* at 66-67.

details and the "spin" given in the news report is usually from the police perspective.[20] Suspects' previous criminal record, or additional "facts," are provided to the media to support the use of excessive force.[21] Evidence collected becomes part of the internal investigation that is mediated textually, including transcribed interviews with officers, interviews police conduct with witnesses, and the description of material evidence. Police procedures on the use of lethal force, internal investigations, review committee reports and other documents complied are formal representations of policing and state power. Documentary practices consist of standardized modes of monitoring, observing, coordinating, and classifying[22] that impose a specific order or understanding of events that reproduces a racialized form of rationality, objectivity or actualities.[23] Review committee reports may also be part of the documentary practices of the police bureaucracy.[24] The documentation of patterns or separate incidents become record, perspectives become legitimized, and agency is established. Classifying persons speaking as experts or as the "official" spokesmen for the State is an additional practice resulting in racialized patterns of inclusion and exclusion and legitimates categories invoked by the state. Police reports provide the means to establish erasure or inscription of agency that is essential in shifting responsibility of lethal and excessive force away from state and upon victims.[25]

---

20. In response to high-profile police killings of minority youth in Phoenix, police respond by placing a system in place for "telling the true story" in the next controversial police shooting. Louis Sahagun, *American Album; Phoenix Spreading New Type of Police Line*, L.A. TIMES, June 12, 1997, at A5.

"Under a new marketing bureau, the police department aims to balance press coverage that it believes too often highlights distraught relatives and neighbors, outraged minority activists -- and the alleged mistakes of officers involved in violent confrontations." *Id.*

21. *See* Russell, *supra* note 16.

22. *See generally* DOROTHY E. SMITH, TEXTS, FACTS, AND FEMININITY: EXPLORING THE RELATIONS OF RULING 12 (1990) (discussing that agencies of control have institutionalized procedures for interpreting behavioral information that identifies individuals as members of certain classes).

23. For instance, the reference to "experts" in the media also produce texts by other interested parties (such as representatives from the Police Union or Associations) who shape the categories used to create documentation for the record.

24. Everyday management of social control and domination occurs through political and economic power processed in the bureaucratic form of organizations, such as the criminal justice system and the welfare system. Max Weber called our attention to social relations in bureaucracies, which he analyzed as rational legal forms of domination. This specific mode of governing "separates the performance of ruling from particular individuals and makes organization independent of particular persons and local settings." SMITH, *supra* note 22, at 213. The media, police reports and investigations, government forms and documentation and other textual practices are the everyday processes of ruling apparatus in our community.

25. Patricia J. Williams believes that the police officers' claims that Rodney King was in control of the beating is a prime example of how this logic works. Williams discusses the meaning of agency as applied to the Rodney King beating and points to how experts "create" the facts. *See* Patricia J. Williams, *The Rules of the Game, in* READING RODNEY KING/READING URBAN UPRISING, *supra* note 8, at 51; *see also* Magee, *supra* note 17, at 213-14 (discussing the "good cop paradigm"

Cultural critics and legal scholars have connected the history of police violence to racism.[26] However, the singular focus on the African American experience[27] ignores the history of state violence against Latinos and renders invisible the link between white supremacy in the construction of Latino criminality.[28] In this article, I build on the work of LatCrits to broaden the scope of legal analysis and scholarship to reflect the experiences of police misconduct and racial profiling in Latina/o communities.[29] I examine the construction of Latino criminality[30] that is

---

and how the myth of the good cop demonstrates the erasure of agency and the promotion of anti-black male sentiment).

26. *See* Houston Baker, *Scene ... Not Heard*, *in* READING RODNEY KING/READING URBAN UPRISING, *supra* note 8, at 48; Judith Butler, *Endangered/Endangering: Schematic Racism and White Paranoia*, *in* READING RODNEY KING/READING URBAN UPRISING, *supra* note 8, at 15-18; Kimberle Crenshaw & Gary Peller, *Reel Time/Real Justice*, *in* READING RODNEY KING/READING URBAN UPRISING, *supra* note 8, at 56; Mike Davis, *Uprising and Oppression in L.A.*, *in* READING RODNEY KING/READING URBAN UPRISING, *supra* note 8, at 150; Thomas L. Dumm, *The New Enclosures: Racism in the Normalized Community*, *in* READING RODNEY KING/READING URBAN UPRISING, *supra* note 8, at 179; Melvin L. Oliver et al., *Anatomy of a Rebellion: A Political-Economic Analysis*, *in* READING RODNEY KING/READING URBAN UPRISING, *supra* note 8, at 119-20; Patricia J. Williams, *The Rules of the Game*, *in* READING RODNEY KING/READING URBAN UPRISING, *supra* note 8, at 53-55.

27. *See* Viet D. Dinh, *Book Review: Randall Kennedy, Race, Crime and the Law: Races, Crime, and the Law*, 111 HARV. L. REV. 1289, 1289 (1998) (discussing Randall Kennedy's book on race and criminal justice and its failure to expand its analysis beyond white-black relations); *see, e.g.*, Joan W. Howarth, *Representing Black Male Innocence*, 1 J. GENDER RACE & JUST. 97, 106 (1997) (describing the image of the frightening black man embedded in the criminal justice process); Nathaniel R. Jones, *For Black Males and American Society — The Unbalanced Scales of Justice: A Costly Disconnect*, 23 CAP. U. L. REV. 1, 19 (1994) (describing incarceration rates "taking a toll on black males unlike any other racial or ethnic group"); Magee, *supra* note 17, at 150 (discussing practices in law enforcement that privilege police officers in excessive force cases by presuming the innocence of the police and the guilt of the victim).

28. *See, e.g.*, ANATOMY OF RACISM xi-xxiii (David T. Goldberg ed., 1990) (showing discussions of racism as being focused solely in the relationship between whites and blacks); ANDREW HACKER, TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL 3-6 (1992) (discussing racism as a divide between whites and blacks and criticizing the status of Latinos as a separate race); CORNEL WEST, RACE MATTERS 28-9 (1993) (showing the singular focus of racism as affecting only blacks as furthering the plight of the black race).

29. LatCrit perspective is committed to the methodology of storytelling, interdisciplinary knowledge, human rights, and the specific roles and places of Latina/o voices, communities and interests. *See generally* Elizabeth M. Iglesias, *International Law, Human Rights, and Latcrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1996) (arguing that theories of international law support the continued subordination of domestic racial minorities); Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101 (1997) (discussing the need to make Latino race issues more visible to escape the typical myopic view of race); Rachel F. Moran, *Neither Black Nor White*, 2 HARV. LATINO L. REV. 130 (1997) (contending that the typical Black-White model of race relations accounts for the ignorance towards Latino civil rights); Francisco Valdes, *Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits, LatCrits*, 53 U. MIAMI L. REV. 1265 (1999) (discussing the history and current perspective of "outsider jurisprudence").

30. The focus on the black/white paradigm in civil rights discourse has made discussions of Latino criminal justice issues virtually invisible. *See* Dinh, *supra* note 27, at 1289; Margaret E. Montoya, *Of "Subtle Prejudices," White Supremacy, and Affirmative Action: A Reply to Paul Butler*, 68 U. COLO. L. REV. 891, 895 (1997) (describing that Paul Butler's work on jury nullification focuses exclusively on African American males).

enacted and mediated textually in the everyday organization in the police bureaucracy.[31] Analyzing data collected from texts created by the state to rationalize and legitimate the use of violence against youth of color reveals the social and political construction of Latino criminality. Police practices have immediate impacts on Latino communities. The *Scottsdale Tribune* reported that a review of police records show that the "Phoenix police have shot and killed more people per capita than their counterparts in the nation's largest cities over the past three years. . . . In the last three years, Phoenix police killed 25 suspects out of the 43 they shot. That translates into a kill rate of 58 percent."[32] Data includes established police guidelines for the use of lethal force, and information collected on police cases resulting in injury and death. Investigation of the structure and procedure of formal investigations delineates the process of erasure that conceals the racialized and gendered nature of police power. Part 1 begins with an overview of the history of social construction of Latino criminality, identifying racial, gender, class, sexual, and cultural aspects. Part 2 provides a discussion of the documentation or textual process that construct Latino criminality, including the bandido, gang member, drug user and dealer, and illegal alien. Statements by law enforcement officers, politicians, and judges establish a history of demonization of Latino youth and claiming an inherent criminality. Part 3 presents a detailed analysis of the case study involving the fatal shooting of Julio Valerio, highlighting how legitimacy and power in the police bureaucracy is enacted and mediated textually, and exploring how documentary practices shape public debate. Part 4 summarizes legal and political efforts to stop state violence against people of color and suggest ways to change the textual process used to legitimate excessive force in communities of color.

PART I: HISTORY AND DEVELOPMENT OF THE LATINO CRIMINAL STEREOTYPE

Taco Bell's use of "dinky", the heavily accented Chihuahua imitating the popular pose of Che Guevara,[33] is an updated version of the Latino male as a revolutionary bandit.[34] Unlike the Frito Bandido used to

---

31. This analysis builds on sociologist Dorothy Smith's analysis of texts as a source of exploring power relations. In this case, I am focusing on the texts produced from police and other law enforcement investigations related to state violence. *See* SMITH, *supra* note 22, at 120-25.

32. SCOTTSDALE TRIBUNE, Aug. 30, 1998, at A1.

33. *See* Richard Estrada, *Taco Bell TV Ads Aren't as Harmless as Viewers Think*, DEN. ROCKY MOUNTAIN NEWS, Apr. 27, 1998, at 36A; George Hunter, *Ads Often Miss for Minorities: In Touchy Industry, White- and Black-Owned Agencies Struggle to Overcome Stereotypes*, DET. NEWS, Oct. 18, 1998, at B1.

34. Latino entrance into the U.S. legal and judicial system began as conquered subjects of the particularly violent Mexican-American War. Acuña's reference to the southwestern United States as "occupied America" captures the essence of the history from which the Latino criminal stereotype originated. *See* RODOLFO ACUÑA, OCCUPIED AMERICA: A HISTORY OF CHICANOS (1981) (providing an in-depth history and analysis of Chicanos' history in the United States).

advertise Frito Corn chips in the late 60s, corporations no longer construct racist caricatures by dressing the human body of the "other" but rather rely on their audiences understanding the symbols. The power of the Latino and African American criminal narrative is so dominant in American society that its use can be accomplished through images not embodied by Latinos or African Americans.[35] In the same way that we were able to read the racialized text presented in the "California Raisins" commercial, Taco Bell is able to rely upon the Latino criminal trope without using the Latino physical bodily image.[36] The Chihuahua stands in for the Mexican, the beret replaces the sombrero, and the cigar replaces the weapon.[37] The trope works because after decades of presenting specific stereotypes on the silver screen,[38] the popular racist narrative is easily called forth without calling the image a "bandido."[39] Taco Bell

---

35. *See* Charles Ramírez Berg, *Stereotyping in Films in General and the Hispanic in Particular*, *in* LATIN LOOKS: IMAGES OF LATINAS AND LATINOS IN THE US MEDIA 118 (Clara E. Rodriguez ed., 1998) (making a similar observation in his discussion of "one of the most disturbing turns Hispanic cinematic imagery has taken is its degeneration into an unrecognizable, nonhuman form" and pointing to recent science fiction films and their depiction of "Aliens," he argues that the destruction and struggle to send extraterrestrial "back where they came" may be representations of Hispanics aliens, naturalized and undocumented); *see generally* DOROTHY E. ROBERTS, KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY 156-59 (1997) (discussing, for example, the media's exaggerated creation of the image of a black crack mother crack baby).

36. At the same time, the placement of white faces changes the meaning and interpretation of the same behavior or symbols. As Brent Staples noted, "Playing at gangsterism may be harmless for suburban white kids who roam the mall. But in places like Bedford-Stuyvescant, the same postures and clothing can get you killed." Brent Staples, *Dying to Be Black*, N.Y. TIMES, Dec. 9, 1996, at A16. While we know that white middle class adolescents dress in pfat pants and t-shirts as they listen to Death Row and Interscope rap music, the police do not perceive them as a threat. Yet the same clothing, music and behavior embodied by African American or Latino youth has been used to justify police violence. *See also* Malcolm W. Klein, *Street Gang Cycles*, *in* CRIME 230 (James Q. Wilson & Joan Petersilia eds., 1995).

37. Although state violence against Mexico has been well documented, the image of the violent Mexican remains part of our popular culture. The Mexican American War is particularly noted for its state-sanctioned violence. *See* CAREY MCWILLIAMS, NORTH FROM MEXICO: THE SPANISH-SPEAKING PEOPLE OF THE UNITED STATES 101 (Matt S. Meier ed., Greenwood Press 1990) (1948). McWilliams also quotes Lieutenant George C. Meade's description of the acts included: "'driving husbands out of houses and raping their wives. . . . They will fight as gallantly as any men, but they are a set of Goths and Vandals without discipline, making us a terror to innocent people.'" *Id.* at 101. Anti-Catholic feeling is documented in the extensive desecration of churches and violence against nuns and priests. Irish immigrants fighting for the U.S. were so appalled by the anti-Catholic violence, "two hundred and fifty" switched sides and formed the "San Patricio battalion" and fought with the Mexicans. *Id.*; *see also* ACUÑA, *supra* note 34, at 14-17 (recounting additional eyewitness accounts of the violence). In his review of Mexican American representation in film, Chon Noriega links the "greaser" image to "American thought and popular culture since the 1820s, when Anglo Americans first settled in Texas, then the northernmost state of Mexico." Chon Noriega, *Citizen Chicano: The Trials and Titillations of Ethnicity in the American Cinema, 1935-1962*, *in* LATIN LOOKS: IMAGES OF LATINAS AND LATINOS IN THE US MEDIA, *supra* note 35, at 91.

38. *See, e.g.*, BOULEVARD NIGHTS (Warner Bros. 1979); DEFIANCE (Am. Int'l 1979); WALK PROUD (Universal 1979) (depicting the Chicano youth as gang affiliated and the hardships of breaking free from the gang lifestyle).

39. Charles Ramírez Berg dates the cinematic roots of the bandido "to the villains of the silent 'greaser' films," and continuing into the westerns. "Typically, he is treacherous, shifty, and

does not have to mention a hot-blooded, violent tempered, treacherous, knife-wielding gang banger, or drug-selling *vato*. While based on images of the Mexican struggle for social change and equality, the narrative is constructed by reducing history to individual characters that become a generic revolutionary social bandit. American culture has reduced the Mexican American War and the history of resistance and struggle against dispossession and oppression to the image of a violent, barbarous, and ferocious Latino bandido.[40] Film portrayal of Latino males is saturated with images of gangs,[41] prisoners,[42] drug dealers,[43] wife abusers[44] and other violent characters.[45] Even contemporary writers trying to gain from the interest in the Latinization of American culture have exploited the racist bandido icon to sell books.[46]

The lasting image of the bandido strongly points to the success of American popular culture in wiping collective memory of the history of

---

dishonest. His reactions are emotional, irrational, and usually violent; his intelligence is severely limited, resulting in flawed strategies. . . . From the halfbreed villain in *Broncho Billy and the Greaser* (1914) to Andy Garcia's sadistic Cuban American gangster in *Eight Million Ways to Die* (1986), the Hispanic bandit is a demented, despicable creature who must be punished for his brutal behavior. Other versions of the bandit stereotype include Latin American rebel leaders, corrupt dictators, and inner-city youth gang members." Charles Ramírez Berg, *Stereotyping in Films in General and the Hispanic in Particular*, *in* LATIN LOOKS: IMAGES OF LATINAS AND LATINOS IN THE US MEDIA, *supra* note 35, at 113.

40. *See* Larry Trujillo, *La Evolución del 'Bandido' al 'Pachuco': A Critical Examination and Evaluation of Criminological Literature on Chicanos*, 9 ISSUES IN CRIMINOLOGY 43-67 (1974) (rendering one of the first sociological viewpoints on this image); *see also* ALFREDO MIRANDÉ, THE CHICANO EXPERIENCE: AN ALTERNATIVE PERSPECTIVE (1985) (discussing the evolution of the El Bandido image of Chicano criminality).

41. *See, e.g.*, BACK ROADS (Warner Bros. 1981); THE BIG FIX (Universal 1978); BOULEVARD NIGHTS (Warner Bros. 1979); COLORS (Orion 1988); MI VIDA LOCA (Cineville 1993);WALK PROUD (Universal 1979); WEST SIDE STORY (United Artists 1961); ZOOT SUIT (Universal 1981) (depicting Latino males as gang members).

42. *See, e.g.*, AMERICAN ME (Universal 1992) (depicting a gang leader's continued role as drug lord from prison).

43. *See, e.g.*, ABOVE THE LAW (Warner Bros. 1988); CODE OF SILENCE (Orion 1985); 8 MILLION WAYS TO DIE (TriStar 1986); *Miami Vice* (NBC television broadcast series); Q & A (TriStar 1990); RUNNING SCARED (MGM 1986); SCARFACE (Universal 1983); STICK (Universal 1985) (providing examples of Latinos being depicted as drug dealers).

44. *See, e.g.*, LA BAMBA (New Visions 1987) (containing a musical biography of Ritchie Valens).

45. These themes even are common among "Latino" projects such as Edward Olmos's film *American Me*. Directors and producers know these themes sell. Joan Moore argues that the premise that gang membership is passed from father to son that is depicted in the film is inaccurate. *See* JOAN MOORE, GOING DOWN TO THE BARRIO: HOMEBOYS AND HOMEGIRLS IN CHANGE 114 (1991).

46. For instance, Ilan Stavans capitalizes on the comic, over weight stereotype of the bandido for his title and cover for his book on Oscar "Zeta" Acosta, the Chicano activist and writer. *Compare* ILAN STAVANS, BANDIDO, OSCAR "ZETA" ACOSTA AND THE CHICANO EXPERIENCE (1995), *with* ERNESTO B. VIGIL, THE CRUSADE FOR JUSTICE: CHICANO MILITANCY AND THE GOVERNMENT'S WAR ON DISSENT 123, 137, 146-48, 150 (1999) (discussing Acosta's work in the Chicano movement, which is quite absent of the racist caricature, bandido, used by Stavans).

conquest[47] and the extensive use of armed force to subordinate Mexicans and Mexican Americans in the Southwest.[48] Reference to the southwestern U.S. as "Occupied America" captures the essence of the history from which the Latino criminal stereotype originated.[49] Latino entrance into the U.S. legal and judicial system began as conquered subjects of the violent Mexican-American War. Fueled by the white supremacy ideology of a Manifest Destiny, the U.S. carried out acts that General Winfield Scott characterized as, "atrocities to make Heaven weep and every American of Christian morals blush for his country. Murder, robbery and rape of mothers and daughters in the presence of tied-up males of the families have been common all along the Rio Grande."[50] In regions that did not experience a massive demographic change, such as the California Gold Rush, economic circumstances[51] or control through economic and political means,[52] a reign of terror followed the war and the signing of the Treaty of Guadalupe-Hidalgo. As an occupying force, the U.S. government had to be ready for possible uprisings; however, the primary interest of state repression was the dispossession of land and other resources. The history of conquest in the Southwest, and the extensive use of armed forces to subordinate Mexicans and Mexican Americans became subliminally grafted in the American psyche as a "foreigner," even though the land had once belonged to Mexico. While economic and political repression were extremely successful in dispossession and subordination of Mexicans living in occupied territory,[53] state sanctioned violence, which in the early 1900s took the form of lynching, has never entirely been replaced.[54] Resistance against the state violence carried out by the police, military, Border Patrol, and the Arizona and Texas Rangers has included insurgent movements, riots, and other forms of armed protest.[55] The armed resistance against the privatization of communal salt beds by Mexicans and Mexican Americans became known as the El Paso

---

47. This erasure of history is documented in the American psyche in the portrayal of Mexicans as "foreigners" even though the land had once belonged to Mexico, and U.S. citizens were the immigrants.

48. As an occupying force, the U.S. government had to be ready for possible uprisings but the primary interest of state repression was the dispossession of land and other resources. *See generally*, ACUÑA, *supra* note 34 (discussing the history of Mexican Americans as a conquered people and recounting the use of military and border patrol before and after the Mexican American War).

49. *See generally*, ACUÑA, *supra* note 34 (providing an in-depth history of the conquest of the Southwest).

50. MCWILLIAMS, *supra* note 37, at 101.

51. *See id.* at 102.

52. *See id.* at 63-80.

53. *See id.* at 122-24.

54. *See* ACUÑA, *supra* note 34, at 30, 35, 43, 45, 59, 101, 105-06, 108-09, 112, 114, 117 (documenting the Chicano history, including patterns of repression and injustice).

55. *See id.* at 109-12. Resistance also included non-violent responses such as the journalistic efforts of Francisco P. Ramírez's in Los Angeles. *See id. See generally*, ALFREDO MIRANDÉ, GRINGO JUSTICE (1987); ROBERT J. ROSENBAUM, MEXICANO RESISTANCE IN THE SOUTHWEST: "THE SACRED RIGHT OF SELF-PRESERVATION" (1981) (recounting Mexican resistance to American encroachment).

Salt War.[56] In *Las Gorras Blancas*, an insurgent movement against the privatization and fencing of communal lands in New Mexico united poor white farmers and Native Americans against Anglo carpetbaggers and the *Hispano rico*.[57] The list of social rebels that emerged after the Mexican American War are numerous and include Tiburcio Vásquez,[58] Juan Cortina,[59] Joaquín Murietta, Juan Flores,[60] Francisco "Chico" Barela,[61] Juan and Pablo Herrera,[62] and Gregorio Cortez.[63] The Mexican American War,[64] the Treaty of Guadalupe-Hidalgo,[65] Las Gorras Blancas,[66] El Paso Salt War,[67] Zoot Suit Riots,[68] and struggles up to the 1960's high school walkouts[69] all get depoliticized and the mythology of the Latino banditry masks protests and resistance to social and economic injustices. And thus, Che Guevara becomes one more image of "El Bandido."[70] The media, politicians and law enforcement frequently used aspects of the ban-

---

56. *See* Mary Romero, *El Paso Salt War: Mob Action or Political Struggle*, 16 AZTLAN INT'L J. OF CHICANO STUDIES RESEARCH 119-43 (1987).

57. *See* Mary Romero, Class Struggle and Resistance Against the Transformation of Land Ownership and Usage in Northern New Mexico: The Case of Las Gorras Blancas, paper presented at 1848/1898 @ 1998Transhistoric Tresholds Conference, Arizona State University (Dec. 1998) (on file with author).

58. *See* ACUÑA, *supra* note 34, at 33, 113-14.

59. *See id.* at 33-36. Juan N. Cortina, also known as the Red Robber of the Rio Grande, led an organized revolt against "gringo" oppression against Mexicans in Texas. *See id.*

60. *See id.* at 111-12.

61. Francisco "Chico" Barela organized Mexicans and Mexican Americans against the Texas Rangers in the El Paso Salt War. *See* Mary Romero, *El Paso Salt War: Mob Action or Political Struggle*, *supra* note 56, at 127, 138.

62. The brothers were believed to be the primary organizers behind Las Gorras Blancas in New Mexico. *See* Mary Romero, Class Struggle and Resistance Against the Transformation of Land Ownership and Usage in Northern New Mexico: The Case of Las Gorras Blancas, *supra* note 57.

63. *See generally* AMÉRICO PAREDES, WITH HIS PISTOL IN HIS HAND: A BORDER BALLAD AND ITS HERO (1958) (recounting the story and legend of Gregorio Cortez).

64. *See generally* Acuña, *supra* note 34.

65. *See id.* at 17-20.

66. Las Gorras Blancas, the insurgent movement against the privatization and fencing of communal lands in New Mexico, included a class platform that tried to unite poor white farmers and Native Americans against Anglo carpetbaggers and the Hispano *rico*. *See* Robert J. Rosenbaum, *Las Gorras Blancas of San Miguel, 1889-1890*, *in* CHICANO: THE EVOLUTION OF A PEOPLE 128-36 (Reanto Rosaldo et al. eds., 1973); Andrew B. Schlesinger, *La Gorras Blancas, 1889-1890*, J. MEX. AM. HIST. 87-143 (1970); *see generally* ROBERT W. LARSON, NEW MEXICO POPULISM: A STUDY OF RADICAL IN A WESTERN TERRITORY (1974); ROBERT J. ROSENBAUM, MEXICANO RESISTANCE IN THE SOUTHWEST: "THE SACRED RIGHT OF SELF-PRESERVATION", *supra* note 55 (recounting the history of Las Gorras Blancas).

67. *See* Mary Romero, *El Paso Salt War: Mob Action or Political Struggle*, *supra* note 56, at 119-43 (stating that the armed resistance against the privatization of communal used and maintained salt beds by Mexicans and Mexican Americans became known as the El Paso Salt War)

68. *See generally* ACUÑA, *supra* note 34; MAURICIO MAZÓN, THE ZOOT-SUIT RIOTS: THE PSYCHOLOGY OF SYMBOLIC ANNIHILATION (1984); MCWILLIAMS, *supra* note 37, at 215-31 (providing accounts of the riots).

69. *See generally* CARLOS MUÑOZ, JR., YOUTH, IDENTITY, POWER, THE CHICANO MOVEMENT (1989); VIGIL, *supra* note 46 (discussing the Chicano student and power movements of the 1960's).

70. *See supra* notes 33-34.

dido stereotype to frame demonstrations, protests, and other political activity during the Chicano Movement. Civil rights leaders and labor activists were frequently characterized as criminal and violent and state violence was sanctioned by the press and local officials. Civil rights activities carried out by Corky Gonzales and the Crusade for Justice,[71] Reies López Tijerina and La Alianza Federal de Mercedes (The Federal Alliance of Land Grants),[72] and the union organizing activities by César Chavez and the United Farm Workers[73] were frequently construed as Mexican and Chicano criminality.

Since WWII, Latino youth have been constructed as inherently criminal.[74] Although most of the time the construction of youth as criminal has fallen under the gang rubric, political activity in the late 60s and 70s was also treated as criminal activity. The specific focus on Mexican and Mexican American youth as embodying the bandido violent and treacherous character is well documented in the 1943 Zoot-Suit Riots.[75] The demonization of the youth by the press and police in Los Angeles occurred within days of the removal of the last Japanese to internment camps.[76] Mexican crime, Mexican juvenile delinquency and Mexican gangs became the new scapegoat group.[77] National and international attention of the targeting of Latino youth in Los Angeles occurred during the trial known as the Case of Sleepy Lagoon and from the work of the Sleepy Lagoon Defense Committee who continued two years after the trial to gain the freedom of the youth convicted. Latinos in the US military stationed throughout the world serving their country in the war effort donated money.[78] In response to political pressure, the press replaced the reference to Mexican and replaced it with "Zoot-Suit" and "Pachuco."[79] However, authorities (military and police) continued to treat Mexican youth as inherently criminal.[80]

---

71. *See generally* VIGIL, *supra* note 46 (documenting the rise of the Crusade for Justice Chicano movement in the 1960's).

72. *See generally* PETER NABOKOV, TIJERINA AND THE COURTHOUSE RAID (1969) (discussing the Tierra Amarilla insurrection).

73. *See generally* John G. Dunne, Delano (1967); Peter Matthiessen, Sal Si Puedes: Cesar Chavez and the New American Revolution (1969); Ronald B. Taylor, Chavez and the Farm Workers (1975) (recounting the farm workers movement and experience towards unionization).

74. *See generally* ALFREDO MIRANDÉ , GRINGO JUSTICE, *supra* note 55 (asserting that Chicanos have been the victims of "prejudicial and discriminatory treatment" as well as a double standard of justice).

75. *See generally* MCWILLIAMS, *supra* note 37, at 220-31 (detailing the events during the riots); MAZÓN, *supra* note 68 (providing accounts of the riots).

76. *See generally* MCWILLIAMS, *supra* note 37, at 220-31.

77. *See id.* at 227.

78. *See id.* at 231-33.

79. *Id.* at 215. *See also* Alfredo Mirandé et al., *Chicano Urban Youth Gangs: A Critical Analysis of a Social Problem?*, 3 LATINO STUDIES J. 17 (1992) (noting that by 1943, public officials and law enforcement began describing Mexican youth as gang members).

80. *See* MAZÓN, *supra* note 68, at 79 (arguing that the riots were perceived as a military exercise, noting alleged conspiracy on the part of zoot-suiters and depicting servicemen as engaged

State violence against Latino youth received public attention during the Chicano Movement.[81] "Between January 1, 1965, and March 31, 1969, the United States Justice Department received 256 complaints of police abuse against Hispanics in the Southwest. Over a two-year span, the American Civil Liberties Union of Southern California filed 174 complaints of serious police brutality against Chicanos."[82] In 1970 the U.S. Commission on Civil Rights report concluded: "Mexican American citizens are subject to unduly harsh treatment by law enforcement officers . . . they are often arrested on insufficient grounds, receive physical and verbal abuse, and penalties which are disproportionately severe."[83] Given the continuous history of state violence against the Mexican American communities, the study was long overdue.[84] The Congress of Mexican American Unity and the Chicano Moratorium Committee requested UCLA Professor Armando Morales to "make an inquiry into the duration, depth and nature of the problem, and develop recommendations that would have the effect of reducing the conflict."[85] The study followed the 1970-71 East Los Angeles riots.[86] Examining police deployment prac-

---

in "Landing Parties," "Mopping up operations," "Taxicab brigades," "task forces," "blitzes," "punitive expeditions," "guerrilla warfare," and "civil war"); MCWILLIAMS, *supra* note 37, at 244-58.

81. *See* ARMANDO MORALES, ANDO SANGRANDO (I AM BLEEDING) 22-23 (1972). Morales' study was extremely important in documenting a consistent history of police misconduct towards Mexicans throughout the Southwest and Midwest, namely Chicago.

82. ALFREDO MIRANDÉ, GRINGO JUSTICE, *supra* note 55, at 149 (internal citations omitted).

83. U.S. Commission on Civil Rights, Mexican Americans and the Administration of Justice in the Southwest, iii (1970). Testimonies presented indicated that:

> law enforcement officers discriminated against Mexican-Americans. Such discrimination includes more frequent use of excessive force against Mexican-Americans than against Anglos, discriminatory treatment of juveniles, and harassment and discourteous treatment toward Mexican Americans in general. Complaints also were heard that police protection in Mexican American neighborhoods was less adequate than in other areas. The Commission's investigations showed that belief in law enforcement prejudice is widespread and is indicative of a serious problem of police-community relations between the police and Mexican-Americans in the Southwest.

Id. at 13.

84. Professor Morales begins his chapter on "Patterns of Police Brutality" by noting:

> there is not one police officer in the United States that has ever been prosecuted in the federal courts for assaulting or killing (these acts would constitute a violation of a person's civil rights under color of law, Title 18, U.S. Code Section 242) a person of Spanish-surname since the inception of these statues in 1872, revised in 1940, and again in 1964. The principle reason that there are no court convictions is that police administrators, prosecutors, county and federal grand juries, judges and the general public, have been *dangerously overprotective* of police in police brutality cases.

MORALES, *supra* note 81, at 20; *see also* MCWILLIAMS, *supra* note 37, at 112 (quoting an article by George Marvin in World's Work, describing anti-Mexican attitudes before WWI:

> The killing of Mexicans . . . through the border in these last four is almost incredible. . . . Some rangers have degenerated into common man-killers. There is no penalty for killing, for no jury along the border would ever convict a white man for shooting a Mexican. . . . Reading over the Secret Service records makes you feel almost as there were an open game season on Mexicans along the border.).

85. MORALES, *supra* note 81, at V.

86. Mirandé points out that the riots did not draw the same attention as the shooting at Kent State even though thirty-five persons were shot by police in the confrontation on January 31, 1972.

tices in Los Angeles, Morales found a disproportionate number of police deployed in the predominately Mexican American community of Hollenbeck Division even though the incident of crime was greater in the middle-class community of Wilshire Division.[87] Comparing the findings from the U.S. Riot Commission Report to the 1970-71 East Los Angeles riots, Morales argued that "Chicano" could easily be substituted for "Black" and "barrio" for "ghetto."[88] Community-police conflict was not restricted to Los Angeles. Studies conducted by researchers and civil rights organizations, such as the Mexican-American Legal Defense and Education Fund, documented the number of Latinos who died while in police custody and were physically abused.[89] Research on the Brown Beret, student movement, and other Chicano youth activities have suggested that law enforcement targeted this population for surveillance and harassment.[90]

The most widely distributed representation of Latino youth today is as a gang member.[91] Although the existence of gangs can be traced back to the Middle Ages in Europe and found throughout the world,[92] the War

---

See ALFREDO MIRANDÉ, GRINGO JUSTICE, *supra* note 55, at 22. After the Zoot-Suit Riots, this period of confrontations between Mexican American youth and the police has drawn the attention of Chicano Studies scholars; s*ee generally* ACUÑA, *supra* note 34 (analyzing confrontations between police and Mexican American youth in "Occupied California"); ALFREDO MIRANDÉ , GRINGO JUSTICE, *supra* note 55 (discussing confrontations with police throughout the 1970s), MORALES, *supra* note 81 (providing extensive discussion of Mexican American – police conflict).

87. *See* MORALES, *supra* note 81, at 52.

88. *See* MORALES, *supra* note 81, at 91. Morales listed twenty-five circumstances present in three of the riots, including: major outbursts precipitated by routine arrests of ethnic minorities by white police; police coming to symbolize white power, white racism, and white repression to ethnic minorities; a widespread perception among ethnic minorities of the existence of police brutality and corruption, and of a double standard of justice and protection — one for ethnic minorities and one for whites; deaths and casualties resulting from the force used against ethnic minorities by police and National Guard units. *See id.* at 99.

89. *See* Alfredo Mirandé , Gringo Justice, *supra* note 55, at 180-82 (citing the following authorities: Mexican American Legal Defense and Education Fund, MALDEF Documents Official Abuse of Authority Against Mexicans in Letter to Attorney General Griffen Bell (1978); National Hispanic Conference on Law Enforcement and Criminal Justice, A Report from the National Hispanic Conference on Law Enforcement and Criminal Justice 28-30 (1980); Larry Trujillo, *Police Crimes in the Barrio, in* History, Culture, and Society: Chicano Studies in the 1980s 199-242 (Mario T. García et al. eds., 1983) (describing police brutality in Chicago and Dallas); Kay Bárbaro, *Sin pelos en la lengua*, 2 Hisp. Link Wkly. Rep. 2 (1984); Mexican American Legal Defense and Education Fund, *Dallas Brutality Conference Displays Chicano Unity*, 8 MALDEF 1-8 (1978); Ernie Sotomayor, *Police Abuse: The Most Volatile Issue*, 13 C.R. Q. 28-35 (1982)).

90. *See* VIGIL, *supra* note 46, at 81-159 (discussing student protests in Denver, Colorado and the activities of the Brown Beret); MUNOZ, *supra* note 69, at 86.

91. *See supra* text accompanying notes 37-39, 41.

92. Surges of academic and public interest in gangs occurred in the 1890s, 1920s, 1960s and late 1980s into the 1990s. The last three surges have included extensive attention on Mexican and Mexican American youth. *See* SCOTT H. DECKER & BARRY VAN WINKLE, LIFE IN THE GANG 12-16 (1996); *see generally* J. GILBERT, A CYCLE OF OUTRAGE: AMERICA'S REACTION TO THE JUVENILE DELINQUENT IN THE 1950S (1986) (discussing the interrelationship between mass culture and negative views of youth); MALCOLM W. KLEIN, THE AMERICAN STREET GANG (1995) (providing extensive information on Mexican and Mexican American gangs).

on Gangs launched over the last few decades by U.S. local police departments has targeted Black and Latino youth.[93] While there is a lack of consistency in defining gangs and gang members,[94] the public's acceptance of racialized versions has resulted in an over identification of gangs in low-income communities of color[95] and has rejuvenated the bandido image.[96] The link between immigration, poverty and urban life that social scientists highlight in theorizing about gangs,[97] appears in the popular racialized definitions acted upon by the media and public officials.[98] In the case of Latino youth, primary importance is placed on Chicano culture.[99]

---

93. *See generally*, MILLER, *supra* note 10 (explaining that black males between 18 and 35 have an inordinate likelihood of encountering the criminal justice system at some point in their lifetime); Marjorie S. Zatz, *Chicano Youth Gangs and Crime: The Reaction of a Moral Panic*, 11 CONTEMP. CRISES 129-58 (1987).

94. Jose Lopéz and Alfredo Mirandé describe the ubiquitous definitions public officials use for Latino gangs as "encompassing groups as diverse as paramilitary organizations and occult worshipers, on the one hand, and neighborhood children socializing at McDonald's after curfew, on the other." Jose Lopéz & Alfredo Mirandé, *The Gangs of Orange County: A Critique and Synthesis of Social Policy* 19 AZTLAN 128 (Spring 1988-1990); *see generally* Patrick Jackson, *Moral Panic and the Response to Gangs in California*, *in* GANGS 257-75 (Scott Cummings et al. eds., 1993) (exploring that the image of gangs consisted of drug trafficers using children to carry out their crimes); Zatz, *supra* note 93, at 129-58.

95. *See* Maureen Harrington, *Abuse of Mexican Immigrants Nothing New, Activist Says*, DENV. POST, Apr. 21, 1996, at 8. Harrington's interview with an activist described an occurrence frequently recalled in community meetings I attended in Phoenix following the Valerio shooting: "I worked in northwest Denver, at the Pecos Community Center, and I saw Hispanic teenagers get harassed by police unfairly. They would stop them, make derogatory remarks about their heritage, take their pictures and say they were in gangs, put them on lists, when they weren't." *Id.* In his critique of gang scare created by the War on Gang, Joel Best quotes a January 1996 news story reporting a presentation at a gang-awareness seminar in Marion, Illinois: "'There is no such thing as a wannabee. That's a copout. A wannabee will be.'" JOEL BEST, RANDOM VIOLENCE: HOW WE TALK ABOUT NEW CRIMES AND NEW VICTIMS 72 (1999). *See generally* C. Ronald Huff, *Denial, Overreaction and Misidentification: A Postscript on Public Policy*, *in* GANGS IN AMERICA 310-17 (1991) (arguing that cities deny, overact to, and then misidentify gangs).

96. *See generally* ALFREDO MIRANDÉ, THE CHICANO EXPERIENCE: AN ALTERNATIVE PERSPECTIVE, *supra* note 40, at 70-91 (providing a detail history of the bandido image); Alfredo Mirandé et al., *Chicano Urban Youth Gangs: A Critical Analysis of a Social Problem?*, *supra* note 79, at 25.

97. *See* DECKER & VAN WINKLE, *supra* note 92, at 2.

98. *See* Alfredo Mirandé et al., *Chicano Urban Youth Gangs: A Critical Analysis of a Social Problem?*, *supra* note 79 (noting that by 1943, public officials and law enforcement began describing Mexican youth as gang members)

99. One of the longest ongoing field research has been conducted by Joan Moore, in collaboration with Chicano ex-convicts in East LA. This collaboration may influence the attention given to culture in theorizing about distinctive characteristics of Chicano gangs, particularly the argument that gangs had a life-long role for the members and communities, adult gang members performed a role in the intergenerational transmission of gang membership within neighborhoods, and the existence of prison gang culture in the barrio. *See* JOAN MOORE, GOING DOWN TO THE BARRIO: HOMEBOYS AND HOMEGIRLS IN CHANGE, *supra* note 45; JOAN MOORE, HOMEBOYS: GANGS, DRUGS, AND PRISON IN THE BARRIOS OF LOS ANGLES (1978); *see also* RUTH HOROWITZ, HONOR AND THE AMERICAN DREAM (1983) (studying a gang in a Chicano community in Chicago during the late 70's); FELIX PADILLA, THE GANG AS AN AMERICAN ENTERPRISE (1992) (studying a

Next to the image of gangs,[100] Latino criminality appears in the American psyche as the "illegal alien"[101] and has become analogous to the "immigration problem."[102] Criminalization of Mexican immigrants stigmatizes the Latino community in the US and reinforces the bandito stereotype. In his 1948 book, *American Me*, B. Griffiths writes:

> In police and sheriffs' stations throughout the state today, picture displays show Mexican "criminals" and "bandits" of the early [19th century] days of California, and there are showcases with guns and other souvenirs that were used in the fights. Occasionally, too, you see a block-framed picture of a police officer killed by a Mexican in line of duty. Such facts and folklore become a real part of the rookie officer's indoctrination. Policeman and sheriff's deputies add stories of their personal experiences with "those sneaky greasers — who knife you as soon as look at you." False arrests, unjustifiable beatings, and sometimes the tragic deaths of Mexican youths at the hands of officers who shoot first and think later are the natural consequences of the usual prejudice intensified by such training.[103]

If we consider the videotape beating of two undocumented immigrants that occurred in April 1997,[104] Griffiths' description appears to capture

---

Puerto Rican gang in Chicago in the 80s); JAMES DIEGO VIGIL, BARRIO GANGS: STREET LIFE AND IDENTITY IN SOUTHERN CALIFORNIA (1988) (examining Chicano gangs in LA in the late 70s). These researchers situated their analyses of gangs and gang members in the context of Hispanic culture and the marginality of ethnic groups in the larger culture. More recently, researchers have argued that local factors, especially economic and demographic ones, are important variables in explaining the emergence and nature of gangs. *See* JOHN HAGEDORN, PEOPLE AND FOLKS (1988). Similarly, Sanchez-Jankowski argues that street culture is a response to the underclass conditions within which gangs operate. MARTÍN SANCHEZ-JANKOWSKI, ISLANDS IN THE STREET (1991).

100. However, the category of gang and immigrants is not mutually exclusive: "Much of the literature about crime among Mexican immigrant communities . . . has focused on gang activity." TONY WATERS, CRIME & IMMIGRANT YOUTH 32 (1999).

101. In an interview on law enforcement abuse of immigrants, Angelo Velasquez, director of operations for Rocky Mountain Service, Employment, Redevelopment, recalled a presentation she gave to Boulder police officers and identified the following stereotypes they expressed: "Mexicans are seen as thieves, dirty, engaging in criminal conduct." Harrington, *supra* note 95, at 8.

102. *See generally* Jorge A. Bustamante, *The 'Wetback' as Deviant: An Application of Labeling Theory*, 77 AM. J. SOC. 706-18 (1972) (discussing how the transformation of this group of foreign laborers by the law criminalizes the behavior of Mexican immigrants entering the U.S. and influences on the immigrant worker's interaction with law enforcement and employers that maintains a process of exploitation and the success of the anti-law entrepreneur). Borrowing from Keith Aoki's analysis of the Asian immigrant experience, we can update the list of "wetback" as deviant to include: "(1) immigrants as a threat to valuable U.S. natural resources, (2) immigrants as a threat to moral and physical public health, and (3) immigrants as natural disasters." Keith Aoki, *"Foreign-ness" & Asian American Identities: Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes*, 4 UCLA ASIAN PAC. AM. L.J. 2, 60 (1996).

103. WATERS, *supra* note 100, at 172 (citing BEATRICE GRIFFITHS, AMERICAN ME (1948)).

104. *See* Jim Newton, *Audiotape of Beating Sparks New Inquiry: Immigration Investigators Seek to Identify Officer Heard Using an Ethnic Slur. Both Sides say the Recording Supports Clients' Claims*, L. A. TIMES, Apr. 10, 1996, at A3; David Rosenzweig, *Deputies Videotaped Beating Migrants Won't Face Charges: There is not Enough Evidence That They Violated Federal Civil Rights Laws, Justice Department Says. Mexican American Groups Express Disappointment at Decision*, L.A. TIMES, June 13, 1998, at A15.

contemporary experiences.[105] The meaning of the Justice Department's decision not to prosecute the two Riverside County sheriff's deputies in this case provides a significant training message to law enforcement officers.[106] While Proposition 187 has fueled anti-immigration sentiment in California,[107] images of criminality embodied in Latino immigrants is not limited to law enforcement in Los Angeles. In their April 1995 report, "Crossing the Line," Human Rights Watch described INS agents as employing "'Wild West' behavior entirely inappropriate for a professional, federal law enforcement agency."[108] The use of excessive force and racial profiling involves constructing Latino criminality to the immigrant profile and applied to INS policing practices.[109]

PART II: TEXTS, FACTS, AND LATINO CRIMINALITY

Power relations following the Mexican American War to the present have certainly included violence, coercion, and armed forces in the form of the Texas Rangers, the Arizona Rangers, the Border Patrol, as well as the military, and the local police.[110] The textual practices that constructed Latino criminality can be traced back to military and police reports to Washington, and later used by historians, to document official accounts of events occurring in the newly acquired territory.[111] Consequently,

---

105. *See* ALFREDO MIRANDÉ, THE CHICANO EXPERIENCE: AN ALTERNATIVE PERSPECTIVE, *supra* note 40, at 82 (citing Sam Negri, *FBI Probes Alien-Torture Case for Civil Right Act Violations*, ARIZ. REPUBLIC, Oct. 19, 1977, at B1-2). The notorious case of abuse is the infamous Hannigan case. In the summer of 1976, near Douglas, Arizona, George Hannigan and his two sons captured and tortured three undocumented Mexicans who entered their property in search of employment. *See id.*

106. One article reported:

> 'The message came through that you can target certain groups as long as you are targeting them not because of their race but because of their immigration status,' said Thomas Saenz, the Los Angeles counsel for the Mexican American Legal Defense and Education Fund. 'It was an open invitation to discriminate against people who fit the broad, sweeping profile of undocumented workers.'

Stern, *supra* note 4.

107. *See* Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 UCLA LAW. REV. 1509, 1561 (1995) (discussing the criminal provisions in Section 4 of Proposition 187).

108. David Adams, *Videotape of Beating Isn't Just One Image*, ST. PETERSBURG TIMES, Apr. 6, 1996, at 1A; *see also* Maureen Harrington, *supra* note 95; *More Police Violence on Video; Whether Alien Bashing or Not, Attack was Outrageous*, BUFF. NEWS, Apr. 4, 1996, at 2C.

109. *See generally* Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. 1395 (1997) (examining the racialized space of U.S. race relations that Asian and Latina/o immigrants enter); Kevin R. Johnson, *Race, the Immigration Laws, and Domestic Race Relations: "A Magic Mirror" into the Heart of Darkness*, 73 IND. L.J. 1111 (1998) (stating that race is central to immigration laws and impacts inter-ethnic relations).

110. *See generally* TIMOTHY J. DUNN, THE MILITARIZATION OF THE U.S. - MEXICAN BORDER, 1978-92 (1996) (discussing the increasing use of military tactics along the border that stem from U.S. immigration and drug enforcement policy).

111. A case in point is the correspondence about Las Gorras Blancas that Baron Bradford Prince, New Mexico's territorial governor, accumulated during his term. Correspondence include Anglo merchants and lawyers, as well as the native elite (los ricos), complaints to the governor about damage to their property from Las Gorras nightly raids. Bradford's correspondence to Washington

community perspectives are frequently discarded in public documents and are left to oral history. These textual practices are most evident in the treatment of insurgent movements in the Southwest.[112] Frequently Chicano resistance is attributed to the interference of outside agitators or manipulative leaders.[113] This characterization is accomplished by distorting the actual function of leadership roles in community mobilization and implying that Latino fatalism and ignorance demands outside leadership as a catalyst for action. Embedded in early academic writings is reference to inherent weakness for domination as a dominant cultural feature of New Mexican life.[114]

The first group of historians engaged in documenting accounts of the transformation from communal to private ownership were primarily Anglo lawyers and politicians writing memoirs.[115] The next major writ-

---

includes efforts to downplay the level of resistance against statehood in New Mexico. Correspondence with local authorities documents attempts to establish Las Gorras to outside influences from the labor movement. Attempts to claim that Las Gorras was conspiring against the U.S. government rather than against landgrabbers and carpetbaggers in order to justify calling in federal troops. *See* Mary Romero, Class Struggle and Resistance Against the Transformation of Land Ownership and Usage in Northern New Mexico: The Case of Las Gorras Blancas, *supra* note 57, at 1-2.

112. *See generally* ACUÑA, *supra* note 34; ROBERT J. ROSENBAUM, MEXICANO RESISTANCE IN THE SOUTHWEST: "THE SACRED RIGHT OF SELF-PRESERVATION", *supra* note 55 (discussing insurgent attempts in the southwest).

113. *See* Mary Romero, *El Paso Salt War: Mob Action or Political Struggle*, *supra* note 56, at 122.

114. For example, Margaret Mead identified the trait as the patrón system: "leadership is provided through the patrón system, whereby the leading man in the community, whether because of his financial status, his knowledge of the outside world or his personal power, assumes a position of responsibility for the villagers." MARGARET MEAD, CULTURAL PATTERNS AND TECHNICAL CHANGE 174 (1955). Frances Leon Swadesh, in her challenge to the Kluckhohn-Strodtbeck analysis of Hispanic values, is one of the first New Mexican historians to explain patrons in an historical context:

> The emergence of *patróns* as a powerful class appears to date from the mercantile development stimulated by the Santa Fe Trail. *Patróns* became particularly powerful as a result of the junior partner status to which they were elevated during the Yankee military occupation and appear to be, at least in part, a product of Anglo-American domination, just as Indian "chiefs" were created by Army officers and employees of the Bureau of Indian Affairs for easier administration of those Indians among whom chiefdoms had previously been unknown.

Frances L. Swadesh, *The Social and Philosophical Context of Creativity in Hispanic New Mexico*, 9 ROCKY MTN. SOC. SCI. J. 1, 12 (1972). Swadesh's description of patróns is similar to the reference of "comprador" used in China: "Now in China, the name of the principal native servant, employed in European establishments, and especially in houses of business, both as head of the staff of native employees, and as intermediary between the house of its native customers." OXFORD ENGLISH DICTIONARY 741 (2000).

115. *See, e.g.*, GEORGE B. ANDERSON, COMPLETE HISTORY OF NEW MEXICO: ITS RESOURCES AND PEOPLE (1907); HUBERT H. BANCROFT, HISTORY OF ARIZONA AND NEW MEXICO (1889); FRANK W. BLACKMAR, SPANISH INSTITUTIONS OF THE SOUTHWEST (1891); HELEN HAINES, HISTORY OF NEW MEXICO FROM THE SPANISH CONQUEST TO THE PRESENT TIME, 1530-1890 (1891); L. BRADROD PRINCE, HISTORICAL SKETCHES OF NEW MEXICO (1883); W. G. RITCH, AZTLAN: THE HISTORY, RESOURCES AND ATTRACTIONS OF NEW MEXICO (1885); RALPH E. TWITCHELL, LEADING FACTS OF NEW MEXICO HISTORY (1912) (documenting the transformation from communal to private ownership in their memoirs).

ings on land documentation occurred after the depression. At this time, social scientists focused on the aftermath of drought and land loss.[116] Again, attention to value orientations resulted in defining the land grant issue as a consequence of cultural conflict between Chicanos and Anglos. The third major group of studies were written in response to Reis L. Tijerina's activities in northern New Mexico.[117] Sociological notions of cultural pluralism and assimilation had little political meaning to people struggling to retain their land.[118] Having constructed insurgents movements as riots and void of political consciousness, the construction of the lawless bandido became the primary character in historical accounts as well as a common feature in popular culture.[119]

The process of constructing Latino criminality became an ongoing function of policing.[120] Investigations of the use of excessive force produced textual documentation of a violent Mexican character. Returning to the Zoot-Suit Riots, we find a report about the problem of Mexican youth written by Captain E. Duran Ayres, chief of the "Foreign Relations Bureau" of the LA sheriff's office. Characterization Latino youth as violent is presented in the following passage of the report :

> When the Spaniards conquered Mexico they found an organized society composed of many tribes of Indians rules over by the Aztecs who were given over to human sacrifice. Historians record that as many as 30,000 Indians were sacrificed on their heathen altars in one day, their bodies being opened by stone knives and their hearts torn out while still beating. This total disregard for human life has always been universal throughout the Americas among the Indian population, which of course is well known to everyone.

---

116. *See, e.g.*, HERBERT O. BRAGER & WILLIAM BLACKMORE, A CASE STUDY IN THE ECONOMIC DEVELOPMENT OF THE WEST (1949); RUTH LAUGHLIN, CABALLEROS (1947); GEORGE SANCHEZ, FORGOTTEN PEOPLE: A STUDY OF NEW MEXICANS (1940); BLANDIAN SEAGLE, AT THE END OF THE SANTA FE TRAIL (1949) (referring to the aftermath of drought and land loss).

117. *See, e.g.*, PETER NABOKOV, TIJERINA AND THE COURTHOUSE RAID (1969) (writing in response to Reis L. Tijerina's activities in northern New Mexico).

118. Radical perspectives were frequently used to explain the dynamics involved. The racial perspective studied the change from feudalism to capitalism in the Southwest, identified the different class interests, and used a class analysis to analyze the consequent conflicts. The investigation discussed the colonial process, as well as the changing economic and political relations between and within groups. However, social scientists are not the only ones attempting to make sense of changes occurring in land ownership and usage. The decedents have been engaged in an everyday process of defining the land grant issue based on the interpretation of their predecessors, their own experiences and class interests. Although subjected to the traditional perceptions of history presented in literature, media and social policy, the decedents have their own oral and written history and community experiences.

119. *See, e.g.*, BRONCHO BILLY AND THE GREASER (1914); HIGH NOON (1952); THE OX-BOW INCIDENT (20th Century Fox, 1943); THE TREASURE OF THE SIERRA MADRE (Warner Brothers, 1948) (portraying lawless bandido characters).

120. *See generally* ALFREDO MIRANDÉ, GRINGO JUSTICE, *supra* note 55 (discussing policing and the Latino culture).

> The Caucasian, especially the Anglo-Saxon, when engaged in fighting, particularly among youths, resort to fisticuffs and may at times kick each other, which is considered unsportive, but this Mexican element considers all that to be a sign of weakness, and all he knows and feels is a desire to use a knife . . . to kill, or at least let blood. That is why it is difficult for the Anglo-Saxon to understand the psychology of the Indian and for the Latin to understand the psychology of the Anglo-Saxon or those from Northern Europe.[121]

Over the next decade, racist statements by state officials continue to be made by high officials in law enforcement[122] and judges.[123]

Contemporary cases of police violence conducted under the military language of the War Against Gangs and War Against Drugs are mediated through texts that rationalize and objectify the use of excessive and lethal force. Police violence is thus a reasonable response to criminality encapsulated under the category of Latino gang member. Military language if further warranted as conspiratorial qualities of gangs are added to the description by characterizing gangs as secretive, spreading to new neighborhoods, dealing in drugs, violence and other crime, organized and structured around a "secretive culture of colors, gang signs, and initiation rites."[124] Conspiracies call for "gang intelligence units", in addition to "the dissemination of workshops and educational materials designed to help adult recognize and interpret the gesture, clothing, graffiti, and other secret symbols of gang involvement."[125]

In the following section, the case of Julio Valerio presents the use of excessive force resulting in the death of a sixteen year old in Phoenix, Arizona. The investigation that followed, along with the media coverage, provides data on the police department's rationalization of local racialized practices. Individual responsibility of police officers becomes invisible and police violence is mediated. What should be a factual investi-

---

121. *Id.* at 160. It is not surprising that excerpts from the report were quoted on Radio Berlin, Radio Tokyo, and Radio Madrid as evidence that Americans held similar beliefs as Adolf Hitler.

122. *See* MORALES, *supra* note 81, at 22 (quoting Chief of Police William H. Parker's statement before the U.S. Commission on Civil Rights in 1960: "Some of these people [he had been talking about Mexican-Americans and Latin-Americans here] have been here before we were, but some of them are not far removed from the wild tribes of Mexico").

123. *See id.* at 43 (quoting a court transcript of "Judge Gerald S. Chargin of the Santa Clara County Juvenile Court, in passing sentence on a seventeen year old Mexican American on September 2, 1969 charged with incest":

> Mexican people, after 13 years of age, think it is perfectly all right to go out and act like an animal. We ought to send you out of the country — send you back to Mexico. You belong in prison for the rest of your life for doing things of this kind. You ought to commit suicide. That's what I think of people of this kind. You are lower than animals and haven't the right to live in organized society — just miserable, lousy, rotten people. Maybe Hitler was right. The animals in our society probably ought to be destroyed because they have no right to live among human beings.).

124. BEST, *supra* note 95, at 82.

125. *Id.*

gation becomes a justification adhering to guidelines.[126] When excessive force is investigated, police officers subjective discretion is ignored.[127] Police have free rein to stop and question citizens whom they deem suspicious under current interpretations of constitutional law.[128] Consequently the differences in policing from one socio-economic and racial community to another does not become part of the bureaucratic or organizational formal procedures.[129] The structure of the review process operates to erase the racialized and gendered nature of police power. Racial profiling, like police brutality, is not recorded nor becomes part of documented practices; and thus, the actual behavior and actions of racial profiling are denied, police violence is erased—reducing police action to rational decisions based on objective information about crime.

PART III: CASE STUDY OF JULIO VALERIO

The shooting death of Julio Valerio caught public attention in Arizona, not because the death of a Mexican youth under police pursuit is news breaking in the U.S., and certainly not in Phoenix, but because the police shooting involved six officers who claimed they fired to protect themselves from a 5'8 120 pound 16 year-old armed with a kitchen knife. The killing of Julio Valerio occurred after two other highly publicized shootings in Phoenix had established a pattern of racialized police violence in the community memory of South Phoenix residents. In January

---

126. *See, e.g.*, Mydans, *supra* note 17 (providing an example of this after-the-fact justification in the Rodney King incident as police justified the beating by invoking police department guidelines for subduing threatening civilians, based on officers' subjective judgement, which include choke holds and wielding a baton).

127. *See* Magee, *supra* note 17 (discussing the existence of the good cop paradigm and the negative perception of black men that prevail in police misconduct and brutality investigations).

128. *See generally* David A. Harris, *Factors for Reasonable Suspicion: When Black and Poor Means Stopped and Frisked*, 69 IND. L. J. 659 (1994); Omar Saleen, *The Age of Unreason: The Impact of Reasonableness, Increased Police Force, and Colorblindness on Terry "Stop and Frisk"*, 50 OKLA. L. REV. 451 (1997); Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. REV. 956 (1999).

129. In his study of police officers in two urban and three suburban police agencies in northwestern Indiana, Dennis Powell's findings indicated:

> [T]here are significant differences among police agencies concerning how they use their discretionary powers, and these differences are influenced by the racial mix of both the community being policed and the police agency itself. Considering these findings, it also seems appropriate to suggest that there may be considerable amount of racial discrimination prevalent within policing.

Dennis Powell, *Race, Rank, and Police Discretion*, 9 J. POLICE SCI. & ADMIN. 383, 388 (1981); *see also* NATIONAL CRIMINAL JUSTICE COMMISSION, THE REAL WAR ON CRIME 161 (Steven Donziger ed.) (making the link between police discretion and the difference between "minor inconvenience to the destruction of life and property"); ROBERTS, *supra* note 35 (arguing that discriminatory, subjective law enforcement in minority communities counts for higher rates of arrest in these areas and is not related to higher propensity for law breaking); Magee, *supra* note 17 (providing a discussion on deference, discretion and esteeming police and their decisions); Gregory H. Williams, *Controlling the Use of Non-Deadly Force: Policy and Practice*, 10 HARV. BLACKLETTER L.J. 79 (1993); Gregory H. Williams, *Police Discretion: A Comparative Perspective*, 64 IND. L.J. 873 (1989) (providing an analysis of police discretion in foreign criminal justice systems).

1995, twenty-two year old Rudy Buchanan Jr. was shot about 30 times by Phoenix officers who fired 89 times. Buchanan, who was of Hispanic and African-American heritage, had fired three times at police with a sawed-off shotgun.[130] Five months earlier, Edward Mallet, twenty-five, African-American and double amputee, died while resisting arrest after he was put in a neck hold by Phoenix officers.[131] In the Buchanan case, the department's Use of Force Board reprimanded four of the 13 officers who shot Rudy Buchanan; three officers were reprimanded for endangering fellow officers and a fourth was reprimanded for being too far from the target when firing.[132] No officers were disciplined in the Mallet case.[133] One of the officers was later involved with the shooting death of an auto-theft suspect. The police department referred to the incident as "suicide by cop" because the suspect had indicated that he might shoot himself.[134] Both the Buchanan[135] and Mallet[136] families sought solutions in the civil courts when state prosecution was not forthcoming.[137] Commu-

---

130. *See* Chris Moeser, *Community Leaders Decry Fatal Shooting by Officers*, PHOENIX GAZETTE, Feb. 4, 1995, at B1; Susie Steckner, *Deadly Shootout Detailed in Report; Armed Man Shot 89 Times by Police*, PHOENIX GAZETTE, Mar. 9, 1995, at B1.

131. *See* Susan Leonard & Norm Parish, *Panel Urged to Examine Man's Death*, ARIZ. REPUBLIC, Sept. 3, 1994, at A1.

132. *See* Susan Leonard, *Shooting Panel Finds 4 in Wrong*, ARIZ. REPUBLIC, May 25, 1995, at B1.

133. *See* Abraham Kwok, *Human-Relations Panel Urges Police Reforms*, ARIZ. REPUBLIC, Mar. 3, 1995, at B1.

134. *See* Monica Davis, *Vehicle-Theft Investigation Turns Into "Suicide by Cop": Police Shooting Appears Justified, Official Indicates*, ARIZ. REPUBLIC, Aug. 27, 1999, at B5. The concept of "suicide by cop" or "police assisted suicide" appears in the discussion of the Julio shooting and continues to be used by Phoenix police. The concept is obviously an attempt to shift agency from police to victim. *See* Victoria Harker, *Mom Sues Police Over Son's Death; Contends Officers Erred in Failing to Calm Him*, ARIZ. REPUBLIC, Nov. 15, 1997, at B1.

135. *See* Chris Fiscus & Christina Leonard, *Phoenix, Buchanans Settle Suit; $570,000 in Police Shooting Case*, ARIZ. REPUBLIC, Mar. 18, 1999, at B1. In March 1999, the City Council settled a lawsuit with the Buchanan family and paid $570,000. *See id.*

136. *See* Dennis Wagner, *Mallet Parents: Aim was to Vindicate Son*, ARIZ. REPUBLIC, July 3, 1998, at A17. In July 1998, a jury awarded a $45 million settlement to the Mallet family. However, this was reduced to $5.3 million under a settlement that included an admission of police blame and an agreement to improve policies and training. The parents of Edward Mallet "said that their wrongful-death lawsuit was never about money: They fought City Hall and the Phoenix Police Department because they believed their son was a victim, they needed officials to admit it, and they wanted a promise of change." *Id.* His mother is quoted as saying, "The admission of liability, to me, is priceless . . . . I feel like my son has been vindicated. This proves that everybody is human and everybody makes mistakes, even the police . . . . If this prevents it from happening again, I'll be satisfied." *Id.*

137. *See* PAUL CHEVIGNY, EDGE OF THE KNIFE: POLICE VIOLENCE IN THE AMERICAS 94 (1995) (stating:

> Although formally the burden of proof is no more than the usual standard in civil cases of a "preponderance of the evidence," in practice disciplinary bodies use a higher standard. An example is the rule of thumb that the complainant does not prevail unless she has some way of corroborating the complaint, usually through the testimony of another witness. No such rule is used in ordinary civil matters; although a case is obviously stronger if it is corroborated, trials in which the jury has to decide whether the plaintiff or the defendant is telling the truth are conducted every day, and juries sometimes decide against the defendant on the word of the plaintiff alone. But in police disciplinary matters for civilian

nity members voiced their concerns for a pattern of excessive force used by police officers in the Black and Latino communities in Phoenix.[138]

A. *The Media Text*

The incident began when Julio's mother, Paulina Valerio, called 911 requesting assistance because her son had left home, extremely upset and had taken a kitchen knife.[139] Upon arrival officers found a transient that had apparently been stabbed by Julio. Police claim a transient was attacked and stabbed by Julio; however, other witnesses reported that the transient attempted to take the knife away from Julio and the cut resulted from his attempt to grab the knife.[140] Police were unable to locate the transient after the incident.[141] Officers cornered the teenager along a brick wall and chain fence in a vacant lot behind a liquor store.[142] Three unsuccessful attempts were made at spraying pepper spray.[143] Approximately ten minutes of police responding to the incident, six of the ten officers surrounding Julio fired a total of twenty-five rounds. According to their own testimony, they felt their lives or the lives of their fellow officers were in danger.[144]

Two quotes, which represent the opposing views on police responsibility, appeared in the *Arizona Republic* shortly after the shooting. The first quote is from the police spokesperson, and the second was made by the lawyer representing the Valerio family: 1) "If I'm going to perceive a lethal threat, I'm going to fire . . . . What you have here is all six officers

---

> complaints, the police respondents win virtually all the time, unless they fail to give a legally sufficient explanation of their actions or the complainant is able to corroborate her side of the case. Thus damages may be and often are awarded in civil actions against the police although, in the parallel review board investigation, the complainant's case had been found "unsubstantiated.");

see generally Thomas M. Riordan, *Copping an Attitude: Rule of Law Lessons from the Rodney King Incident*, 27 LOY. L.A. L. REV. 675, 765-66 (1994) (suggesting that the events surrounding the Rodney King beating sends the message that the susystem is flawed).

138. *See Editorial: The Julio Valerio Shooting; Asking the Right Questions*, ARIZ. REPUBLIC, Nov. 21, 1996, at B4; Jerry Kammer et al., 200 *Marchers Protest Teen's Killing; Police Face FBI Probe in Death From Gunfire*, ARIZ. REPUBLIC, Nov. 22, 1996, at A1; Jerry Kammer, *Witnesses Condemn Killing of Teen by Police Gunfire*, ARIZ. REPUBLIC, Nov. 20, 1996; *Parents Question Police Killing of Son*, 16 TUCSON CITIZEN, Nov. 18, 1996, at 4.

139. Transcript of police radio call indicates a request is made for a Spanish-speaking officer at the Valerio home: "Have a 101 screaming. Says it was her son. We need a Spanish speaking officer to calm her down and control her." PHOENIX POLICE REPORT, *supra* note 2.

140. *See generally* Clint Williams, *Police Kill Teen Armed with Knife*, ARIZ. REPUBLIC, Nov. 17, 1996, at B1 (reporting that Julio Valerio stabbed a transient).

141. Interview with students United for Justice in the Police & Public Safety Building, General Investigation Bureau, 620 West Washington, Phoenix, Arizona (Mar. 4, 1997).

142. *See* Jim Walsh, *No Evidence of Pepper Spray Found on Teen's Body; Police Chief Suggests Wind Blew it Away*, ARIZ. REPUBLIC, Nov. 21, 1996, at A8.

143. *See id.*

144. *See* Jerry Kammer et al., *Knife-Wielding Boy was Riddled With Bullets; Family Critical of Police in Teen's Death*, ARIZ. REPUBLIC, Nov. 19, 1996, at A1.

perceived a lethal threat";[145] 2) "How can six police officers with guns in their hands not have taken an action short of killing this young man?"[146] Establishing the perception of "lethal threat" became essential to the police investigation and the basis for "rationalizing" police action. The investigation needed to address several questions in order to be exonerated by the Mexican American community: 1) Why were police officers unable to disarm a sixteen-year old boy short of killing him? 2) Why did all six police officers shoot a suspect armed with a knife? 3) Why did the confrontation with an armed white man who stated his purpose was to shoot a police officer the week before, end peacefully—with the suspect unharmed? 4) How can police justify the action of "overkill" that not only resulted in Julio's death, but in the injury of two men and gunfire entering the windows and walls of the nearby apartment building? 5) What kind of threat did Julio pose that justified this kind of lethal force and disregard for human life? 6) What was the threat that justified killing within ten minutes of the police-suspect encounter? Why were officers unable to wait for the canine unit to respond?[147]

The Mexican American community accused the police of racism.[148] In the attempt to discredit the claims of racism, police advocates noted the number of whites killed by police. "Of the twenty-seven police killings from 1990-94, thirteen of the dead were Anglo, eight Hispanic, one African-American and three Native American."[149] One editorial went so far as to argue that the recent death of a white inmate under the sheriff's supervision was evidence that police violence was not exclusively aimed at communities of color.[150] The police advocates fell short of claiming that Phoenix law enforcement was engaged in an equal opportunity practice of violence.[151] Accusations of racism were clearly implied in the call for police to distinguish between the incidents involving white males, armed with weapons much more dangerous than a knife, that did not have such tragic endings.[152]

---

145. *Id.*

146. *Id.*

147. *See generally id.* (explaining the events that took place on the night of the shooting).

148. *See* Jerry Kammer et al., *200 Marchers Protest Teen's Killing; Police Face FBI Probe in Death From Gunfire*, *supra* note 138; Bill Muller & Dennis Wagner, *Facts Dispute Race Element in Police Shootings; Numbers Match Other Cities'*, ARIZ. REPUBLIC, Nov. 24, 1996, at A1; *Parents Question Police Killing of Son*, *supra* note 138.

149. *See* Muller, *supra* note 148.

150. *See* E.J. Montini, *Ethnicity Colors Issues in Slaying*, ARIZ. REPUBLIC, Nov. 24, 1996, at B1.

151. *See* Muller, *supra* note 148 (stating that "[i]n a 1993 study of police shootings in several major cities, Phoenix ranked third in the number of police slayings per 100,000 population, but last in woundings").

152. *See* Richard De Uriarte, *Big Stories Stoke Community's Emotions*, ARIZ. REPUBLIC, Nov. 24, 1996, at B1 (quoting one reader as stating:

> "I'm afraid to call the police," .... Referring to a peaceful resolution of a hostage crisis at a north-central Phoenix office last Friday .... "Why is it that on the north side, the police

Criticism included questions about equal service and protection. Families in middle-class suburbia can call upon the police to assist in a family crisis—in a time that an adolescent child is in trouble, has lost control, and needs medical assistance to deal with an emergency and access to mental health services. However, the request from Paulina Valerio was responded to as a crime posing a serious threat to the community rather than a call for help or assistance in a family matter.[153]

A police "spin" was evident in the initial newspaper account.[154] The morning after Julio's death, the *Arizona Republic* published an article entitled, "Police Kill Teen Armed With Knife", that relied on police sources.[155] The story began with the following sentences: "Clouds of pepper spray couldn't stop 16-year-old Julio Valerio. It took a rain of police bullets."[156] These sentences turned out to be a prelude to the rationalizations given for the police action. Lethal force was justified on the basis that Julio presented a "deadly threat" to police officers. Clearly the image of a distressed 120 pound sixteen-year old armed with a knife cornered by six police officers armed with four handguns and two shotguns is not extremely convincing. Consequently, Julio's image needed to be reconstructed into a bodily form that could only be apprehended and stopped with lethal force.

The police chief argued that Julio presented a different situation than the two other incidents that had occurred earlier that week in which armed suspects walked away unharmed. He argued that the police were unable to wait out the situation with Julio because he was on the move.[157] Thus, the chief was raising the specter of greater danger in the Valerio case. He also rejected that shooting Julio in the legs was an option because "the teen could have stumbled forward and killed an officer. 'The bottom line is, I don't want any of our officers placed in any undue

---

negotiate for hours with a paranoid man with a gun? And on this side of town, they don't give a 16-year-old Hispanic with a knife more than a minute?");

Jim Walsh, *Delivered From Harm by a Purse*, ARIZ. REPUBLIC, Oct. 25, 1995, at B1 (stating that Kenneth Dale Edwards attempted to rob Carl's Jr. restaurant and was struck by an employee in the head with a purse. He remained in the restaurant while the employee safely escaped. Edwards, a suspect in nine other fast-food robberies, had a two and a half hour standoff with a police SWAT team until they arrested him); Brent Whiting, *Peaceful Surrender Ends Hostage Crisis*, ARIZ. REPUBLIC, Nov. 16, 1996, at B1 (stating that Thomas Baisley, armed with two handguns, held a real-estate investor hostage for 5 ½ hours and upon his surrender, Baisley was immediately given a psychological evaluation).

153. *See Parents Question Police Killing of Son*, *supra* note 138 (reporting that "[t]he incident began when police officers responded to a domestic violence call at the Valerio's home, when he was arguing with his parents about smoking pot").

154. *See* Williams, *supra* note 140.

155. *Id.*

156. *Id.*

157. However at the time of the shooting, Julio was not "on the move" but was cornered by ten police officers. All the officers involved in the shooting noted that the area where they had cornered Julio had good lighting. *See, e.g.*, PHOENIX POLICE REPORT, INTERVIEW WITH OFFICER CHAD GOULDING #5743, supra note 2.

harm.'"[158] Ed Stock, a weapons expert for the state Department of Public Safety, claimed that it was "unrealistic to expect an officer to fire a shotgun in the dark at a suspect's legs [because] 'He's shooting blind, he can't see the sights.'"[159] Making use of the media, a police spokesman emphasized additional factors that increased the danger of this situation: (1) Julio had already stabbed a transient before police arrived at the scene; (2) he refused to follow police demands to "drop the knife," (3) his drug crazed state made it difficult for police to subdue him with pepper spray; and (4) his movement prior to the shooting was depicted as provoking police and placing them in physical harm.[160] These points were elaborated by police spokesman and experts. The physical action that provoked police was described as a lunge forward with the intent to stab police or intent to throw the knife at police.[161] Therefore the six officers reasonably feared for their safety and the safety of their fellow officers.

Among the experts quoted in the media was a Tempe University psychologist, Stephen Carson, who provided the justification for six officers shooting at once at the suspect.[162] "Anytime your brain registers a life-or-death situation, your brain registers an ultra state of consciousness . . . . You go on automatic pilot. . . . What cops do is they revert to training . . . . In a shooting, they react to stop the threat as best they can."[163] Carson also stated, "You go to each one individually and they had a legitimate fear for someone's life. How can you fault them for that?"[164] The following editorial illustrates the tone of editorials carried by the Arizona Republic:

> All this happened in about a minute.
>
> It would have been better if there were beanbag shotguns available. It would have been better if a police dog had been given the chance to take Valerio down with a bite instead of a bullet. The K-9 unit couldn't make it to the scene in time.
>
> As a result, a 16-year-old boy with friends and a job and a mother who loved him wound up dead.
>
> But no one else. No other citizens and no cops, which is the way it should be.

---

158. Jerry Kammer et al., *Knife-Wielding Boy was Riddled With Bullets; Family Critical of Police in Teen's Death*, *supra* note 144.

159. *Id.*

160. *See id.*; Williams, *supra* note 140.

161. PHOENIX POLICE REPORT, INTERVIEW WITH OFFICER SCOTT BURGESS #5757, OFFICER ROBERT PITTS #5707, OFFICER ROBERT CORUEIL, *supra* note 2.

162. *See* Jim Walsh, *No Evidence of Pepper Spray Found on Teen's Body; Police Chief Suggests Wind Blew it Away*, *supra* note 142.

163. *Id.*

164. *Id. See also* Thompson, *supra* note 128, at 986 (discussing categorization, schemas, and stereotyping in the context of quick evaluations and judgments in police work).

> It would have been better if everyone involved had lived, if everyone had made right moves, if life were like the movies and Clint Eastwood had answered the call from Julio Valerio's mother rather than the ordinary people who make up the Phoenix police.[165]

However, even with the official spin dominating the newspaper, a strong opposition remained unconvinced in the community. Initial newspaper articles did not succeed in making a "rational" justification for killing Valerio. As long as Julio represented a confused sixteen year old and mothers sympathized with Paulina Valerio, the police department had to reconstruct the bodily image of Julio as posing a threat to ten officers, within sixty seconds of the time ten officers made the encounter. Julio had to be demonized into a drug-crazed knife-wielding gang member.[166] "Aggravated Assault on [a] Police Officer" is the official classification of the type of report filed by the internal investigation by the Phoenix Police Department report.[167]

In the week following the shooting, the Police Union engaged in an attack on Julio's character and home life.[168] In order to rationalize the police action, rumors were circulated about gang membership and drugs.[169] Police released information about Julio's previous arrest record on August 19, 1996 for a minor in possession of a firearm and selling drugs.[170] He had been accused of "attempting to sell a $50 rock of crack cocaine to two undercover officers", but he was not prosecuted.[171] He was identified as once belonging to the gang *Barrio Pobre* and his gang name was *El Tigre*.[172] The police also released a portion of the autopsy report that indicated Julio had traces of alcohol, methamphetamine, cocaine,

---

165. E.J. Montini, *What People Forget About Armed Teen*, ARIZ. REPUBLIC, Nov. 21, 1996, at B1.

166. This transformation was evident in the defense attorneys for the police in the Rodney King case. The video of a man being brutally beaten repeatedly was used as evidence that Rodney King's black body was itself the source of danger and the threat of violence. *See* Butler, *supra* note 8, at 15. While lacking the evidence of a video, in this case, internal investigations of police violence conclude with similar arguments: the body was itself a source of danger or threat of violence justifying the use of excessive and sometimes lethal force.

167. PHOENIX POLICE REPORT, *supra* note 2, at 1. Latino leaders described the beating of undocumented immigrants in Los Angeles as evidence of the "atmosphere in California of mistrust and outright contempt for Latinos, native born and immigrant." Stern, *supra* note 4. More recently the highly publicized cases of Abner Louima, "a Haitian immigrant . . . assaulted by police officers in the bathroom of the 70th Precinct station house in Brooklyn," and Amadou Diallo, "an unarmed West African immigrant . . . shot dead . . . by four police officers of the Street Crimes Unit have received attention." Michael Cooper, *The Safir Tenure*, N.Y. TIMES, Aug. 8, 2000, at B4.

168. This is a typically respond by police and city officials. *See* Russell, *supra* note 16.

169. *See* Jerry Kammer et al., *200 Marchers Protest Teen's Killing; Police Face FBI Probe in Death From Gunfire*, *supra* note 138.

170. *See id.*

171. *See id.*

172. *See* Jerry Kammer, *Artist, Loner, Troubled Kid: Life of Conflicts Cut Short*, ARIZ. REPUBLIC, Nov. 23, 1996, at A1.

and marijuana in his body at the time of death.[173] Inflammatory comments made by the President of the Phoenix Law Enforcement Association framed the debate away from the issue of excessive force and on gangs and drugs: "For their efforts, these officers are being vilified by opportunist politicians, whose support for a dope-selling, dope-smoking gang member is disgusting."[174] Not only did Julio become a demonized and dehumanized, sixteen-year-old Latino criminal, the police framed the debate to divide the community by depicting concerned community members as "anti-police" and "pro-gang." The chairman and chief executive officer of the Central Phoenix alliance defended Phoenix minority groups as law abiding, by going public and stating, "[N]ot all minority group members or residents of crime-ridden neighborhoods believe Valerio's shooting was an act of racism."[175] A group of Phoenix residents headquarters.[176] Rally organizer explained the purpose as a way "to thank the police for coming into our communities and risking their lives every day to protect us. . . . We know the intensity and the fear involved in coming into a community where there are gangs and drugs and prostitution."[177] While public scrutiny and internal investigations required the police to provide a rationalization for the use of lethal force against Julio Valerio, the rally strongly suggested that social and legal constructions of Latino criminality were shared by some residents.[178]

The demonization process to establish Julio as a "super-predator," posing a threat to six armed officers required focusing on Julio's behavior prior to the shooting, and depicting a chaotic, dysfunctional, fatherless family life. Police noted that prior to the shooting, Julio had been drinking with his step-father and afterwards he smoked marijuana laced with crack cocaine.[179] He had argued with his parents about smoking pot[180] and accused them of loving their other children, but not him.[181] Emphasis on Julio's past police record, and family circumstances, gained more and more publicity in the local paper, thus shifting the focus from

---

173. *See* Jerry Kammer, *Tests Find 4 Drugs in Slain Teen; Alcohol, Meth, Cocaine, Marijuana Turn Up in System*, ARIZ. REPUBLIC, Nov. 23, 1996, at A1.

174. Jim Walsh, *Police Feel 'Vilified,' Lash Back; Teen's Death Sparks Call for More Training*, ARIZ. REPUBLIC, Nov. 26, 1996, at A1.

175. *See* Jerry Kammer et al., *200 Marchers Protest Teen's Killing; Police Face FBI Probe in Death From Gunfire*, *supra* note 138.

176. *See* Jim Walsh, *Police Feel 'Vilified,' Lash Back; Teen's Death Sparks Call for More Training*, *supra* note 174.

177. *Id.*

178. *See generally* Steve Wilson, *Officers in Fatal Shooting of Armed Teen Only Human*, ARIZ. REPUBLIC, Nov. 22, 1996, at A2 (reporting on the reactions of some members of the state legislature to the death of Julio Valerio).

179. *See* Jerry Kammer, *Tests Find 4 Drugs in Slain Teen; Alcohol, Meth, Cocaine, Marijuana Turn Up in System*, *supra* note 173; *see also* BEST, *supra* note 95, at 90 (discussing the dynamics of drug scares as applied to gangs).

180. *See Parents Question Police Killing of Son*, *supra* note 138.

181. Jim Walsh, *2nd Report on Killing Clears Police " Did What They Were Trained To Do"*, ARIZ. REPUBLIC, Jan. 18, 1997, at A1.

the police killing to Julio Valerio's police record and gang membership.[182] The tone of the news coverage, as well as the "expert" comments by the police union and police advocates, helped rationalize Julio's death as a consequence of the deadly threat that he posed to these six officers who shot him.

In response to the police department's character attacks, family members, Julio's teachers, and his neighbors attempted to counter the image of Julio as a drug-selling gang member from a dysfunctional family. Julio was the oldest of four children of Paulina and Lorenzo Valerio, immigrants from Southern Mexico, living in a rented one-bedroom apartment – the best living conditions a worker in a furniture factory could afford.[183] At the time of his death, Julio was enrolled at Metro Tech Vocational Institute of Phoenix, "where he took classes briefly before taking a job at a west Phoenix furniture factory."[184] In the previous year he had received an award for being "outstanding in personal achievement" from the Youth at Risk program.[185] Teachers described him as "a very respectful boy"[186] who "had a hell of a lot of promise."[187] While family friends, social workers and teachers, did not try to deny that Julio was a troubled teenager, he was not the criminal that the police had portrayed.[188]

B. *Textual Dimension of Organizational Processes Mediated in Investigations and Final Reports*

Two official reports were produced under the direction of the Phoenix Police Department, one from the Tactical Review Task Force and the other from the internal investigation. The Tactical Review Task Force, consisting of 11 police personnel and 10 citizens, was formed to examine tactics, training, and less-lethal weapons used by police department and to make recommendations for improvement.[189] The internal investigation was handled by the Legal and Professional Standards Division who issued the report of their investigation to the police chief two months after

---

182. *See generally* Dennis M. Rome et al., *Police Use of Excessive Force: Does the Race of the Suspect Influence Citizens' Perceptions?*, 8 SOC. JUST. RES. 41 (1995) (explaining that the establishment of the fact that the suspect had a criminal record and engaged in threatening behavior at the time of the incident is an important strategy for influencing citizens' perception of police use of excessive force).

183. *See* Jerry Kammer, *Artist, Loner, Troubled Kid: Life of Conflicts Cut Short*, *supra* note 172.

184. Jerry Kammer et al., *Knife-Wielding Boy was Riddled With Bullets; Family Critical of Police in Teen's Death*, *supra* note 144.

185. *Id.*

186. Williams, *supra* note 140.

187. Jerry Kammer, *Artist, Loner, Troubled Kid: Life of Conflicts Cut Short*, *supra* note 172.

188. *See* Jerry Kammer et al., *Knife-Wielding Boy was Riddled With Bullets; Family Critical of Police in Teen's Death*, *supra* note 144.

189. *See* Norm Parish, *Panel Favors Bean-Bag Guns, Hotline, Classes But Not Citizen Police Review*, ARIZ. REPUBLIC, Jan. 3, 1997, at A1.

the Tactical Review Task Force delivered their recommendations to the Police Chief.[190]

1. Tactical Task Force:

After three meetings the task force issued a three page report.[191] Training recommendations included: 1) The need for emphasizing techniques to de-escalate explosive situations, including armed confrontations and defining the supervisor's role in confrontational situations; 2) Improvement for tactics included the development team/group tactics for confrontational situations emphasizing de-escalation, negotiation strategies, and tactics that emphasize peaceful resolution; 3) Strategies for increasing incentives for senior officers and supervisors to accept assignments on evening and night shifts; 4) Strategies for improving community relations, including a monthly report by the chief of police to the citizenry of Phoenix, and the establishment of a hot line to report both positive and negative police-community interaction; and 5) The, major emphasis of the report was the purchase of beanbag shot guns.[192]

While the report was not critical of officers' behavior that resulted in the death of Julio Valerio, the recommendations suggest problems the task force identified. The presence of ten armed officers surrounding one suspect armed with a knife and the "a hail of police gunfire"[193] pointed to the lack of organizational tactic and command for confrontational situation. None of the officers took a position to de-escalate the situation but relied on armed force to resolve the confrontation. Although these problems appear in the internal investigation, they were included in the final summary and remained buried in officers' interviews.[194]

---

190. *See* PHOENIX POLICE REPORT, *supra* note 2.

191. *See* Norm Parish, *Panel Favors Bean-Bag Guns, Hotline, Classes But Not Citizen Police Review*, *supra* note 189; PHOENIX POLICE DEP'T, TACTICAL REVIEW TASK FORCE REPORT (Jan. 10, 1997) [hereinafter TACTICAL REVIEW TASK FORCE REPORT].

192. TACTICAL REVIEW TASK FORCE REPORT, *supra* note 191; *see also* Jerry Kammer et al., *Knife-Wielding Boy was Riddled With Bullets; Family Critical of Police in Teen's Death*, *supra* note 144. Prior to the shooting, police already used a beanbag round that is fired from a shotgun to stun, but not kill, a suspect during a confrontation. "Although at least one officer in each patrol squad [wa]s supposed to be equipped with a beanbag gun, no officer[] certified with the weapon w[as] available at the Valerio incident." *Id.* Early on, police chief Garrett stated, "I think the deployment of the beanbag would have made a difference in this incident. . . . I think the beanbag round is an important tool we need to expand." *Id.* The entire focus of the Valerio case has been on the purchase of new equipment for the police department – bean bag shotguns. After all the meetings and reports the end result thus far has been to equip police with non-lethal weapons. In the end, $250,000 was issued for new equipment to order 639 shotguns that fire a non-lethal cloth sack filled with birdshot. Jerry Kammer, *Tests Find 4 Drugs in Slain Teen; Alcohol, Meth, Cocaine, Marijuana Turn Up In System*, ARIZ. REPUBLIC, Nov. 23, 1996 at A1.

193. Jerry Kammer et al., *Knife-Wielding Boy was Riddled With Bullets; Family Critical of Police in Teen's Death*, *supra* note 144.

194. *See generally* PHOENIX POLICE REPORT, *supra* note 2.

2. The Internal Investigation

The shooting investigation was an internal investigation and concluded that the officers had followed police procedure. That is, the six police who fired responded with deadly force because Julio was within the distance that police officers are trained is dangerous and he was armed.[195] Analyzing the text of the police report reveals how legitimacy and power in the police bureaucracy is enacted and mediated through language, categories, the exclusion and inclusion of information into the final summary, and the how agency is attributed or erased.

The difficulty that the police had in communicating with the Pauline Valerio and her husband was quite apparent. From the 911 call to the time she heard the fatal shots, there was no Spanish speaking officer communicating with the family.[196] When the 911 was received, her call was transferred to the Spanish services provided the department from California.[197] The officers in Phoenix relied on the operator's translation of the conversation. Once an officer arrived to the Valerio home, none of the family was allowed to leave. At the same time the officers present did not speak Spanish.[198] Numerous requests for a Spanish-speaking officer was made. It was after the mother had heard the fatal shots that a Spanish speaking officer arrived to the home and informed her that her son was dead.

Spanish was also an issue at the site of confrontation.[199] Police interviews reveal that not all the officers were completely sure what language Julio was speaking. Since the dialogue between the Julio and officer was so limited and restricted to a few phrases, the officers could not be entirely sure of the suspect's comprehension of their commands. Several officers recognized that he had cussed at the police in Spanish and in English. All the officers used English when yelling the same command to him: "Drop [the] knife."[200] One officer reported he told Julio, "drop the knife, you're not going to win this fight . . .."[201] However, this was the extent of the dialogue. These certainly are not tactics for calming a suspect cornered between a brick wall, a chain fence, and a semi-circle of

---

195. *See* Jim Walsh, *2nd Report on Killing Clears Police "Did What They Were Trained to Do"*, ARIZ. REPUBLIC, *supra* note 181.

196. *See* Phoenix Police Report, Interview with Lorenzo Mendoza-Salazar and Pauline Valerio, *supra* note 2.

197. *See* Phoenix Police Report, Attachment 1 - Phoenix Police 911 Call, *supra* note 2.

198. *See* Phoenix Police Report, Interview with Lorenzo Mendoza-Salazar and Pauline Valerio, *supra* note 2.

199. *See* Mark Shaffer, *Bilingual Officers at a Premium*, Ariz. Republic, Oct. 23, 1997, at B1 (reporting that "[o]ut of 2,606 Phoenix police officers, only 7 percent speak Spanish. . . [an estimated 250,000 Mexican natives live in the metropolitan area] . . . [e]arlier this year, a department review committee investigating the shooting death of Phoenix teenager Julio Valerio ordered the double the number of bilingual officers hit the streets within two years").

200. Phoenix Police Report, Interview with Officer Robert Pitts #5707, *supra* note 2.

201. Phoenix Police Report, Interview with Officer Armando Saldate #5718, *supra* note 2.

police with drawn handguns and shotguns. No one attempted to talk (or even yell) at him in Spanish.[202]

The racial identification of persons throughout the interview is fairly consistent. All persons of Mexican decent were referred to as Hispanic with the exception of one officer who identified Julio as Mexican.[203] Pauline Valerio was asked by the 911 dispatcher if her son was Hispanic and she said yes.[204] Hispanic is the racial descriptor that was released. This in itself is not that unusual; however, the officers noted a racial reference to everyone that was not white throughout the police interviews. The Native American transients were all identified as Indians (and there were three of them) but none of the white transients were racially identified as white transients. One officer directing traffic that night at the scene was also racially described as the Black officer; however, only one of the white officers (or Spanish surname) was racially identified.[205]

The description of Julio given over the police radio to officers identified a Hispanic, thin, kid, guy, armed with a knife wearing a dark shirt and moving eastward from his home.[206] At no time is he identified by tatoos or any other indicator that might suggest he was a gang member or that the suspect had a prior record. The situation is not defined as a gang activity, but rather as a family and domestic disturbance.[207] However, the presence of a knife appears to be an important element in reconstructing Julio into and image of Latino criminality. A commonly held stereotypes of Latinos, particularly Mexicans and Puerto Ricans, is that they carry knives.[208] The kitchen knife was never identified as a butcher knife in any of the radio communications prior to the shooting or in the final report. The first mention of the knife as a "butcher" knife appeared as a quote from police officers to the reporters.[209]

---

202. *See generally* Phoenix Police Report, Interview with Officer Chad Goulding #5743, *supra* note 2, at 5, line 36 (stating that "I couldn't tell if he was speaking Spanish or English").

203. *See* Phoenix Police Report, Interview with Officer Armando Saldate #5718, *supra* note 2.

204. *See* PHOENIX POLICE REPORT, ATTACHMENT 1 - PHOENIX POLICE 911 CALL, *supra* note 2.

205. *See* PHOENIX POLICE REPORT, REPORT OF JOSE GARCIA, *supra* note 2; PHOENIX POLICE REPORT, INTERVIEW WITH RONALD WARNER #5756, *supra* note 2

206. *See* PHOENIX POLICE REPORT, TRANSCRIPTION OF RADIO BETWEEN OFFICERS AND RADIO DISPATCHER, *supra* note 2.

207. *See id.*

208. *See* ARMANDO MORALES, *supra* note 81. Armando Morales states in his study,

> Congress Roybal urged President Nixon to demand FBI Director J. Edgar Hoover's resignation over racist statements made in the December 14, 1980 issue of Time where he said 'You never have to bother about a President being shot by Puerto Ricans or Mexicans. They don't shoot very straight. But if they come at you with a knife, beware.'

Id. at 44. The opinion of police officers seemed to be unanimous that the Mexicans' chief offense was carrying concealed weapons, especially knives.

209. *See* Williams, *supra* note 140.

All the officers acknowledged that Julio was in a very agitated state. Yet none of the officers attempted to calm the suspect.[210] In an interview with reporters, an officer described Julio's behavior as challenging and taunting towards them.[211] In reference to the behavior they classified as challenging and taunting were verbal references to the officers' masculinity.[212] Julio called them "putas" and yelled, "Come and get me. Fuck you cops. Shoot me. Shoote me."[213] Officer Warner, one of the police who shot, stated it was like "he was begging us to shoot him."[214] This last statement reveals how agency was shifted from officers armed with handguns, shotguns, and batons to Julio armed with a knife. This argument was made more directly the following summer when police responded to a situation where a woman, distraught over the death of her two sons, threatened to commit suicide. When police arrived she aimed the handgun at the officer and the officer immediately shot and killed the woman. The department referred to the incident as a "suicide by police."[215]

The police report reveals that all six police officers that shot Julio were wearing body armor at the time of the shooting. All of these officers described the lighting of the area as well lighted by the overhead street light and by the light from the top of the liquor store, as well as by the officers flashlights. All of the officers aimed to shot at the suspects chest. The reasons for shooting were:

1. "Because I was scared for my safety"

2. "Because I felt my life and the lives of the officers around me were in extreme danger."

3. "Because he was advancing on other officers and posing a deadly threat to them."

4. "In fear that the suspect was coming at him with a knife and other officers safety."

---

210. *See* Jerry Kammer et al., *Knife-Wielding Boy was Riddled With Bullets; Family Critical of Police in Teen's Death*, *supra* note 144 (reporting that:

> Paulina Valerio complained that after police responded to her emergency call, they would not let her accompany them onto the streets to calm her son. . . . 'They detained us here, like prisoners in our house,' she said. 'I asked them to please let me go to see my son, so I could calm him down. That is why I called them. . . . Then I heard the shots, and I screamed').

211. *See id.* This was also a theme in several of the interviews with police officers in the Phoenix Police Report. *See* PHOENIX POLICE REPORT, INTERVIEW WITH OFFICER ROBERT CORUEIL #5655, *supra* note 2

212. *See* PHOENIX POLICE REPORT, INTERVIEW WITH OFFICER RONALD WARNER #5756, *supra* note 2.

213. PHOENIX POLICE REPORT, INTERVIEW WITH OFFICER CHAD GOULDING #5743, *supra* note 2, at 5, line 38.

214. *Id.* at 3, line 19.

215. *See* Haker, *supra* note 134.

5. "I believe the suspect was going to harm me or the other officers."[216]

While all six officers offered similar reasons for shooting, they were not consistent about Julio's behavior that posed a lethal threat. The final summary does not acknowledge the different reports but highlights the one that supports a lethal threat; that is "Valerio suddenly raised the knife over his head, lunged at the closest officers . . . ."[217] However the individual interviews are inconsistent and point to the discrepancy over Julio's movement prior to the shooting. Julio's movement was in direct response to the pepper spray. The first time he moved back away from the spray and the officers moved closer to him. The fatal steps may have been in response to the second attempt to spray him. Again he moved away from the cloud but this time the direction of the spray directed him towards the police, placing him 15-20 feet away from the officers.[218] While all the officers agree that Julio was swaying the knife back and forth as they yelled at each other, there is a discrepancy over the position of his arm and the movement of the knife prior to the shooting. Some officers claim that he was holding the knife above his shoulder as he lunged towards the police; others claim that he was preparing to throw the knife at them; and others do not remember his arm at shoulder position.[219]

Officers cannot recall who shot first or last.[220] All present, claim it was a simultaneous reaction to the training they received which specified distance of the suspect and his behavior.[221] Two of the officers present recall yelling "stop firing" or "cease-fire."[222] The other police were unsure who yelled the command and most of those who shot claimed that they had already stopped shooting (because Julio had fallen to the

---

216. PHOENIX POLICE REPORT, *supra* note 2 (citing from interviews with Officers Robert Pitts #5707, Chad Goulding #5743, Ron Warner #5756, Scott Burgess #5757, and Michael Kurtenbach #5346).

217. PHOENIX POLICE REPORT, *supra* note 2 . Had Julio Valerio lived to be arrested, he likely would have been charged with possession of a deadly weapon. The range of objects that may be defined as deadly weapons by the police appears to be highly subjective and circumstances that become racialized are more likely to be characterized as life threatening. *See* PEARL STEWARDT, *Black and Blue: The Oakland Cop Who Would be King*, in INSIDE THE L.A. RIOTS, 58, 60 (Don Hazen ed. 1992).

218. *See* Jerry Kammer et al., *Knife-Wielding Boy was Riddled With Bullets; Family Critical of Police in Teen's Death*, *supra* note 144 (reporting that one of the transients who witnessed the shooting, stated that Julio was on the defensive after he was hit with pepper spray and was not charging officers).

219. *See* PHOENIX POLICE REPORT, INTERVIEW WITH OFFICER SCOTT BURGESS #5757, *supra* note 2.

220. *See, e.g.*, PHOENIX POLICE REPORT, INTERVIEW WITH OFFICER ROBERT PITTS #5707, *supra* note 2.

221. *See* Jim Walsh, *No Evidence of Pepper Spray Found on Teen's Body; Police Chief Suggests Wind Blew it Away*, *supra* note 142.

222. PHOENIX POLICE REPORT, *supra* note 2

ground) by the time they heard "cease fire." Most of the officers were not sure who yelled "cease fire."[223]

While the final report (like the news coverage) highlighted the six officers who shot Julio, there were other officers in the semi-circle who did not shoot. This included officers who had their guns drawn at the time of the shooting but choose not to shoot. One officer acknowledged that the area was a known camp for transients and the nearby apartment building was described as made of "paper thin walls" and thus, was unsafe to discharge a weapon.[224] Two apartments in the building were struck by officer's rounds causing broken windows and damage to interior walls. Although an infant was sleeping in the room struck at the time, there were no injuries.[225] Another reason given by the other officers was the cross-fire.[226] A few of the police interviewed acknowledged that the area behind the fence was a regular place for homeless. There were two mattresses and other material signs of their presence.[227] The report concluded that officers had followed proper procedure.[228]

PART IV: SUMMARY

Constructing the Latino as a criminal becomes essential in order for the Phoenix Police to establish that the suspect had been shot righteously. Julio Valerio, a scared, skinny, pimply teenager, had to be portrayed as posing a lethal threat to officers. The formal representation of the "objective" facts were first introduced into the public record through the media, and then reaffirmed through carefully timed reports. Both the media, and summary of the final report, minimized the lack of command and procedure followed during the confrontation and the officers' inability to use any strategy other than shooting a scared and overwrought teenager. These facts were obscured by the emphasis given to the ways that Julio posed a threat to the officers. Emphasis was shifted away from the as a family or domestic disturbance to an incident involving a gang member and drugs. Attention was placed on Julio's character, his previous arrest record, and family circumstances. Julio Valerio was quickly transformed from a thin Hispanic kid armed with a knife, wearing a dark shirt, and

---

223. PHOENIX POLICE REPORT, INTERVIEW WITH OFFICER ROBERT PITTS #5707, *supra* note 2.

224. PHOENIX POLICE REPORT, INTERVIEW WITH OFFICER ARMANDO SALDATE #5718, *supra* note 2.

225. *See* Jerry Kammer, *Witnesses Condemn Killing of Teen by Police Gunfire*, *supra* note 138 (reporting that "Marta Ruiz, wife of the manager of the Grande Vista Apartments nearby, says she can account for one of the missed rounds. She said a bullet pierced the window of the bedroom where her 3-year-old son lay sleeping").

226. *See* PHOENIX POLICE REPORT, INTERVIEW WITH OFFICER ROBERT PITTS #5707, *supra* note 2.

227. *See* PHOENIX POLICE REPORT, INTERVIEW WITH OFFICER RON WARNER #5756, *supra* note 2.

228. *See* Jim Walsh, *2nd Report on Killing Clears Police "Did What They Were Trained to Do"*, *supra* note 181.

moving eastward from his home, to a drug-crazed-gang-member, wielding a butcher knife, threatening everyone in sight, and with the strength of a super-predator capable of killing armed officers by lunging forward or throwing a knife 13 feet.[229]

The police were successful in constructing the Latino criminal. Segments of the Mexican American community became silenced because they did not want to appear as supporters of gangs, drugs, or crime. They also feared to be perceived as anti-police. The image of the Latino criminal posed a major obstacle for community mobilization because the image focused the discussion on the general issues of gangs and drugs rather than on police violence and police procedure for policing and serving communities of color. Consequently, the message that concerned residents hold police to a higher standard of behavior and expect police to conduct themselves in a professional manner was erased from the record. Other expectations that were minimized by constructing the Latino criminal were: police officers should be trained and competent to disarm a sixteen year old boy with a knife through use of baton or another type of non-lethal weapon, police officers should be competent negotiators; and have the verbal and other interpersonal skills to do conflict resolution.

Having constructed the Latino criminal as an inner-city super-predator, the only "rational" solution to the Valerio shooting becomes purchasing stun guns. Rather than proposing Spanish language and communication skills, the requirement for stun guns becomes part of the police bureaucracy. The purchase of new weapons, or the addition of training to use the new weapons, still does not address the original questions posed by community members: How is it that six armed police officers (all taller and bigger than the suspect) accompanied with four additional officers in a well lighted area feared for their lives or the life of their fellow officer? What did they see that night? Only a paramilitary framework that defines Latino youth as the enemy and reconstructs victims of color into one of criminality explains Julio's death.[230]

At a meeting at one of the community colleges, a Chicana mother expressed fear for her twelve-year-old son's safety. She described the clothing and hair cuts that many of our youth wear and he is six feet tall

---

229. PHOENIX POLICE REPORT, TRANSCRIPTION OF RADIO TRAFFIC BETWEEN OFFICERS AND RADIO DISPATCHER, *supra* note 2.

230. *See* CHEVIGNY, *supra* note 137, at 124, 256 (providing a critique of military analogy and police conduct); *see generally* COLE, *supra* note 10 (providing an analysis on community policing); OGLETREE ET AL., *supra* note 8, at 107 (concluding that the "'[u]s versus them' dynamic must change"); Ron Daniels, *The Crisis of Police Brutality and Misconduct in America*, *in* POLICE BRUTALITY 258-59 (Jill Nelson ed., 2000) (stating:

> The new paradigm of policing must be based on the principle that police are first and foremost servants of the people. Their job is to function at the behest of and in partnership with communities to carry out a special mandate to maintain peace and security consistent with the Constitution).

and two hundred pounds—a big kid—but a kid nevertheless. The fear I heard expressed stemmed from the recognition that Chicano youth have been demonized as super-predators. How could any Latino family ever turn to the police again to assist them in a family crisis; in a time that an adolescent child is in trouble? The motto, "[t]o serve and protect"[231] becomes a farce. [232]

The question remains: What was it that the police saw through their racially saturated field of visibility that solicited their deadly response? How was a cornered sixteen year old with a butcher knife seen as a deadly threat by six armed officers?

The incredible outpour of support for the police demonstrated in the blue ribbon rally confirms that the racially saturated field of visibility or the kind of "seeing" that the police acted upon that night is shared with members of the larger community. The editorials and cartoons printed in the local newspaper demonstrated the degree to which Mexican youth are demonized. While the image of the Mexican male has shifted over the last 150 years from the bandit to the gang member, the image remains one of a criminal.

231. Mark H. Moore & George L. Kelling, *"To serve and protect": Learning From Police History*, 70 PUB. INT. 49, 50 (1983).

232. *See* Edward J. Littlejohn, *Deadly Force and its Effects on Police Community Relations*, 27 HOW. L.J. 1131 (1984) (using surveys, interviews and statistical data to show the long term rupture in community-police relations); *see also* READINGS ON POLICE USE OF DEADLY FORCE 8-9 (James J. Fyfe ed., 1982) (stating that "[i]n addition to its consequences upon its victim, a single shooting can have severe consequences for the community, for the department, for the officer involved, and for the chief . . . shooting can unravel years of good police work. Such a shooting can expose a police agency to great civil liability").