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# Beyond the Squabble: Putting the Tenderloin Community Justice Center in Context

MICHAEL COBDEN\*  
WITH JUDGE RON ALBERS

## Introduction

The Tenderloin Community Justice Center (“CJC”) is not new, experimental or revolutionary. Rather, it is one of many courts around the country that make use of a variety of tools besides incarceration to try and solve the underlying causes of a person’s criminal acts. The CJC is modeled directly on very successful courts already in existence throughout the country and the world. The CJC, which opened its doors in March of 2009, is still fighting for survival in the midst of a violent political climate and a fiscal drought, but it deserves our honest and thoughtful consideration. Unfortunately, the depth of misconception surrounding the whole project threatens to make the necessary debate over theory and fact little more than a political skirmish of hyperbole and puffery. Ultimately, I will argue that the CJC warrants our best efforts so that we may realize potential fiscal savings for the government, as well as the true rehabilitation and systemic change that the community justice model offers.

This paper aims to frame the debate more clearly, explaining the theory and models that the CJC is built upon. I will summarize the growth of similar projects around the country and in California, and relate it to some of the data that has been collected about these projects. I will further explain the shortcomings of the traditional

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criminal justice system, which the CJC aims to address, and the reasons why proponents of the CJC regard it as the best solution to some of San Francisco's problems. Finally, I will address two key criticisms of the CJC that recur throughout the current debate. I should note that this paper is not attempting to give a complete or even fully accurate account of the history and implementation of the community court concept. Rather, it aims to provide a brief synopsis of what these courts entail and how they fundamentally differ from what most people would consider a "normal" criminal court.

## I. Theory and Practice of Problem-Solving Courts

A few years ago, I was introduced to the concepts of restorative justice and alternative models of adjudication through readings assigned in a seminar on the theories of punishment. Restorative Justice, discussed more fully below, is based on the theory that crime divides the community, and the government has a unique opportunity to repair that division. The particular example presented in the reading concerned a Native American "sentencing circle" that involved an offender and a victim speaking with one another among family, elders and leaders in order to facilitate reconciliation.<sup>1</sup> A few weeks later, a student who had presented research he conducted on community justice (a concept slightly different from restorative justice, but closely related) was greeted by suspicion because his examples, the class thought, closely resembled the "hugging circle" featured in the prior reading. This was an unfortunate response, and highlighted for me the degree of misunderstanding that surrounds the concept of community justice. Innovative theories of courts and justice centered on the community and alternatives to incarceration are not attempting to coddle criminals. Such courts represent the recognition that crime has causes, communities are victims, and prisons are not the only tools that should be available to the justice system.<sup>2</sup>

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1. Adriaan Lanni, *The Future of Community Justice*, 40 HARV. C.R.-C.L. L. REV. 359, 377 (2005).

2. See generally Gregory Toomey, *Community Courts 101: A Quick Survey Course*, 42 IDAHO L. REV. 383.

Two theories are frequently cited<sup>3</sup> as the bases for the last decade of court innovation: Therapeutic Jurisprudence and Restorative Justice. Therapeutic Jurisprudence rests on the notion that the court has an impact on the life, health and well being of the parties involved in a given case.<sup>4</sup> This is not a difficult concept to embrace; most of us can agree that even in a civil case, the consequences of a legal outcome reach far into the lives of people who are not even parties to the case. Not surprisingly, the collateral consequences of sending a person to jail are tremendous. Recognizing the potential impact of the court's rulings is only part of the theory, however. Most criticisms of the theory focus on the court's use of its power to affect certain outcomes and attempt to assess the effectiveness of those practices.<sup>5</sup> Critics' main concern appears to be the court's paternalistic approach to justice, coercing defendants into decisions that may or may not be good for them or for society.<sup>6</sup> Alternatively, proponents point out that the benefits of using the courts to promote positive changes in the lives of offenders and their communities far outweigh any perceived paternalism, and that the therapeutic approach is no more coercive than more traditional models of adjudication.

Therapeutic Jurisprudence provides the theoretical basis for a subset of "problem-solving" courts known as drug courts.<sup>7</sup> Because merely applying the correct law to the facts of the case will never end the cycle of addiction and crime that parade through courtrooms every day, drug courts attempt to find new tools to address the specific problems that drug abuse presents.<sup>8</sup> Studies have shown that increased judicial supervision over offenders with drug addiction problems can significantly help in overcoming the cycle of addiction, while failure to maintain effective supervision can result in more frequent relapse.<sup>9</sup> There is little question that, in spite of the

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3. *Id.* at 387.

4. Peggy F. Hora, William G. Schma & John T.A. Rosenthal, *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439, 444-45 (1999).

5. Toomey, *supra* note 2, at 388-89.

6. *Id.* at 388.

7. Hora et al., *supra* note 4, at 448-49.

8. See generally Douglas B. Marlowe, *Effective Strategies for Intervening with Drug Abusing Offenders*, 47 VILL. L. REV. 989 (2002).

9. AMANDA B. CISSNER & MICHAEL REMPEL, CTR. FOR COURT INNOVATION, THE STATE OF DRUG COURT RESEARCH: MOVING BEYOND 'DO THEY WORK?' 1 (2005), available at [http://www.courtinnovation.org/\\_uploads/documents/state%20of%20dc%20research.pdf](http://www.courtinnovation.org/_uploads/documents/state%20of%20dc%20research.pdf); Eric L.

“touchy-feely” criticisms often leveled at drug courts and the theory of Therapeutic Jurisprudence, this model for judicial solutions to drug addiction has been successful.

Another example of the Therapeutic Jurisprudence theory in practice is in mental health courts. These courts divert mentally ill offenders to a separate court docket in order to better address the mental illnesses that may be causing criminal activity.<sup>10</sup> Rather than a coddling approach, these courts simply recognize that they cannot treat all offenders equally and expect positive results.<sup>11</sup> Results from mental health courts around the country show that eighty to ninety percent of offenders who participated in the program were not arrested for over a year after completion.<sup>12</sup>

Restorative Justice is another concept that recognizes that a criminal act has many consequences which are not addressed by the traditional model of criminal justice.<sup>13</sup> This approach seeks to mend harms caused by crime by attempting to restore all concerned parties (victim, offender, and community) to relative stability.<sup>14</sup> Under this view, the community has a stake in every criminal case that extends beyond conviction. For example, the youth who vandalizes a shop-front damages the property of the owner and also the community as a whole. As a consequence, that youth owes a debt to the victim as well as the neighborhood, which cannot be repaid through time in a cell. A court attempting to restore the parties to a beneficial position would need options besides fines, probation or jail time.

Community courts emerged as one way of practicing the theories of justice described above. In the United States, the community court movement began in New York City with the Midtown Community Court in 1993.<sup>15</sup> Community courts addressed low-level

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Jensen & Clayton Mosher, *Adult Drug Courts: Emergence, Growth, Outcome Evaluations, and the Need for a Continuum of Care*, 42 IDAHO L. REV. 443 (2006); Douglas B. Marlowe et al., *Adapting Judicial Supervision to the Risk Level of Drug Offenders: Discharge and 6-month Outcomes from a Prospective Matching Study*, 88 DRUG AND ALCOHOL DEPENDENCE (Suppl. 2): S4-13 (2007).

10. Gregory L. Acquaviva, *Mental Health Courts: No Longer Experimental*, 36 SETON HALL L. REV. 971, 985-86 (2006).

11. *Id.* at 974.

12. *Id.* at 991-93; John R. Neiswender, Executive Summary of Evaluation of Outcomes for King County Mental Health Court 2, 4, 7 (2004).

13. Toomey, *supra* note 2, at 391.

14. TODD R. CLEAR & DAVID R. KARP, *THE COMMUNITY JUSTICE IDEAL: PREVENTING CRIME AND ACHIEVING JUSTICE* 102-03, 157 (John Hagan ed., Westview Press 1999).

15. Toomey, *supra* note 2, at 392.

criminal activity by utilizing a combination of punishment and social services.<sup>16</sup> One of the unique features of community courts is the speed with which they respond to individual defendants.<sup>17</sup> A person arrested early in the morning could be before a judge by noon. Once the court decides an appropriate sentence, the offender could very well be performing community service that same day. This close temporal connection between adjudication and punishment helps to emphasize the relationship between the crime and the community that was harmed by it. If the court determines that the crime relates to other problems in the offender's life, it can offer immediate access to social services housed in the same building.<sup>18</sup> Over the years, the court has developed partnerships with neighborhood groups to provide job training, mental health access and homeless outreach. The project focused on information, coordination and efficiency to solve the underlying problems masked by a deceptively simple criminal charge.

The Midtown Community Court model was extremely effective. The compliance rates for community service was up to seventy-five percent, the highest in the city.<sup>19</sup> Arrests for prostitution dropped fifty-six percent and illegal vending dropped twenty-four percent within eighteen months.<sup>20</sup> Both were crimes specifically identified by the community as serious problems before the court was created.<sup>21</sup> The Midtown court served as a model for community courts in the Bronx, Brooklyn, and Harlem. Each community court was specially tailored to the needs and strengths of the neighborhood it served. Eventually, the court served as the template for projects in over three-dozen cities across the country. In 2008, a delegation from San Francisco visited the Midtown Community Court in order

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16. Dana Kralstein, *Community Court Research: A Literature Review 1* (2005), Center for Court Innovation, available at [http://www.courtinnovation.org/\\_uploads/documents/ccresearch.pdf](http://www.courtinnovation.org/_uploads/documents/ccresearch.pdf).

17. Center for Court Innovation, Midtown Community Court, <http://courtinnovation.org/index.cfm?fuseaction=Page.ViewPage&PageID=591&currentTopTier2=true> (last visited Oct. 23, 2009).

18. *Id.*

19. *Id.*

20. Greg Berman & Anne Gulick, *Just the Unwieldy, Hard to Gather, But Nonetheless Essential Facts, Ma'am: What We Know and Don't Know About Problem-Solving Courts*, 30 *FORDHAM URB. L.J.* 1027, 1038-39 (2003).

21. *Id.*

to examine how the model could be applied to the Tenderloin district.<sup>22</sup>

Many people respond to the Tenderloin CJC by asking, “Don’t we already have community courts in San Francisco?” This misconception arises from nomenclature. In San Francisco, there is a system of alternative adjudication programs, sometimes referred to as “diversion” programs that are called “community courts.”<sup>23</sup> These courts are vastly different in purpose and function from the community courts based on the model discussed above and therefore do not compete with the Tenderloin CJC. Furthermore, any data from these previous “community courts” should not be attributed to the CJC model.

The San Francisco District Attorney’s office describes the current community courts in terms that make them seemingly similar to the community courts in New York and the Tenderloin CJC.<sup>24</sup> However, the differences are fundamental and structural. First, the current community courts in San Francisco are not really courts at all. They are technically not part of the court system. Instead, they are actually proceedings overseen by a “judge arbitrator,”<sup>25</sup> in consultation with a panel of community members, rather than by a traditional judge.<sup>26</sup> Additionally, the sanctions available at community courts are limited to fines and community service.<sup>27</sup> Although the courts provide some access to resources, such as counseling, the service providers are not as intimately coordinated with the court as providers at the Midtown Community Court.<sup>28</sup> Drug treatment services are not directly available to participants, who must instead go through a complicated diversion program with

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22. Heather Knight, *S.F.’s New Community Court Opens*, S.F. CHRON., Mar. 5, 2009, at A1.

23. Maya Nordberg, *Jails Not Homes: Quality of Life on the Streets of San Francisco*, 13 HASTINGS WOMEN’S L.J. 261, 296 (2002).

24. San Francisco District Attorney’s Office — Neighborhood Safety, Community Court Program, <http://www.sfdistrictattorney.org/page.asp?id=44> [hereinafter Neighborhood Safety] (last visited Oct. 23, 2009).

25. A judge arbitrator is a person chosen to facilitate the resolution of a dispute. They are not judges, but rather community members who apply for the position with the Community Court Advisory Committee and attend training.

26. GABRIEL CABRERA & ELAINE FORBES, CITY & COUNTY OF S.F. BOARD OF SUPERVISORS, THE COMMUNITY COURTS MODEL AND FEASIBILITY OF IMPLEMENTATION IN SAN FRANCISCO (2001).

27. *Id.*

28. *Id.*

specific criteria for participation.<sup>29</sup> Offenders are not monitored for adherence to the program and the court has no increased sanctions for failing to comply. Offenders who do not successfully complete community service or other sanctions are simply sent back to the traditional court system.<sup>30</sup>

Such restrictions placed on San Francisco community courts imply that the courts are limited to quality-of-life infractions. This limitation makes them unable to impose jail time as a consequence of an offender's failure to adhere to orders or guarantee access to all available resources in the social service system. Key aspects of the Midtown model and the Tenderloin CJC address all these shortcomings. The CJC is a real court, presided over by a judge who can monitor the offender over time and impose a wide variety of sanctions for both minor and major slips in performance.<sup>31</sup> It also offers a wider variety of treatment programs and social services than the San Francisco community courts, and the proximity of such resources means that communication and delivery of services can be nearly instantaneous.<sup>32</sup>

I do not mean to imply that the current San Francisco community court programs are ineffective. To the contrary, they have been shown to save a great deal of money for the city and achieve some positive outcomes for participants.<sup>33</sup> However, they are not a substitute for the type of court that the CJC is intended to be.

## II. The Tenderloin Community Justice Center

The Tenderloin CJC is modeled after similar courts in New York, especially the Midtown Community Court and the Red Hook Community Justice Center in Brooklyn. The CJC is multi-jurisdictional, meaning that it handles different levels of crimes such as citations, infractions, misdemeanors and some felony cases.<sup>34</sup>

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29. *Id.* at 3.

30. *Id.* at 4.

31. Tamara Barak Aparton, *Seeking Justice for Tenderloin Court*, S.F. EXAMINER, Aug. 13, 2009, available at <http://www.sfexaminer.com/local/Seeking-justice-for-Tenderloin-court-53082352.html>.

32. *Id.*

33. Neighborhood Safety, *supra* note 24.

34. Center for Court Innovation — Community Court, Interviews, Commissioner Ron Albers, San Francisco Community Justice Center, <http://www.courtinnovation.org/index.cfm?>

This approach gives the court more latitude to reach those who may need help or intervention the most. Additionally, the court has more leverage to encourage an offender to take advantage of services and programs made available at the court. A drug offender may be less reluctant to realize the long-term benefits of an eighteen-month treatment program if the potential punishment is only six months in jail. More serious crimes are punishable by lengthier terms of imprisonment. The CJC can therefore leverage this power to offer offenders a choice between going to jail or completing treatment, encouraging the latter.

The current court system has almost no input from the communities it serves. On the other hand, the CJC has been the product of the community from the beginning of the planning process. The steering committee is made up of government officers and community members.<sup>35</sup> Planners engaged in a lengthy survey of the neighborhoods that will be served by the CJC, including an extensive effort to survey homeless persons and indigent residents of the Tenderloin and South of Market areas.<sup>36</sup> The survey provided planners with insight into what residents want from the court, what they like about the current state of law enforcement and what they feel are failures of the status quo.<sup>37</sup> As the CJC continues to operate, input from the community will be regularly incorporated into the growth and development of the project, ensuring that the court is truly a product of the community.

One of the more significant results of the survey taken during the planning stages of the CJC indicated residents generally felt that social services in the Tenderloin were not coordinated.<sup>38</sup> The two model courts, Red Hook Community Justice Center and the Midtown Community Court, have each experienced great success in the coordination of service providers in their areas. This approach is

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fuseaction=Document.viewDocument&documentID=961&documentTopicID=17&documentTypeID=8 (last visited Oct. 23, 2009).

35. Mayor's Office of Criminal Justice – Community Involvement, Community Justice Center, [http://www.ci.sf.ca.us/site/mocj\\_page.asp?id=85690&mode=text](http://www.ci.sf.ca.us/site/mocj_page.asp?id=85690&mode=text) (last visited Oct. 23, 2009).

36. *Id.*

37. OFFICE OF COLLABORATIVE JUSTICE PROGRAMS, SUPERIOR COURT OF CAL., COUNTY OF S.F., COMMUNITY JUSTICE CENTER BASELINE SURVEY, FALL 2008 (2008), available at <http://www.sfsuperiorcourt.org/Modules/ShowDocument.aspx?documentid=1967>.

38. *Id.*

particularly effective because the person who is brought into the court for a drug charge may need far more than just drug counseling; he may need job training, assistance with housing issues and health care. The potential exists for a centralized system, allowing the court to examine the totality of an offender's problems to create a solution based on a global view of the available resources and services. This is precisely what the CJC is trying to accomplish, and based on the success of similar courts, what the CJC will be able to do.

### III. Criticisms of the Community Justice Center

The CJC has been the subject of a great deal of public debate and political maneuvering since San Francisco Mayor Gavin Newsom first adopted the project. Besides the inevitable political polarization that tends to accompany any major proposal in San Francisco, there are two areas that seem to be the main focus for critics of this project.<sup>39</sup> First, critics argue that the current economy renders the CJC unaffordable, and would require cutting the very services the CJC would help provide.<sup>40</sup> The second point made by the critics is that delivery of social services to the poor through a criminal court is a disturbing and dangerous model because it ties assistance to criminal conduct and police intervention.<sup>41</sup>

#### A. Fiscal Concerns

Many concerns surrounding the recent political debate over the CJC have centered on the issue of funding. The main argument addresses the reluctance to embark on a new, expensive and risky project when the current budget crisis has reduced the amount of funds available for existing projects.<sup>42</sup> The argument is most

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39. The criticisms I discuss below are distillations of arguments made at the panel discussion on Community Courts at the California Correctional Crisis Conference hosted by U.C. Hastings, as well as printed materials brought to that panel by the Coalition on Homelessness and newspaper articles discussing the project for the past several years.

40. This concern was expressed through the presentation of the Coalition on Homelessness in the Community Courts Panel at the California Correctional Crisis Conference and in personal conversations with homeless advocates by the author.

41. See generally Nordberg, *supra* note 23.

42. Joshua Sabatini, *Tenderloin Court Funding Locked Up*, S.F. EXAMINER, May 15, 2008, available at [http://www.examiner.com/a-1392369~Tenderloin\\_court\\_funding\\_locked\\_up.html?cid=rss-San\\_Francisco](http://www.examiner.com/a-1392369~Tenderloin_court_funding_locked_up.html?cid=rss-San_Francisco).

compelling when proponents assert that the very programs the CJC rely upon to address the problems in the Tenderloin will need to be cut in order to fund the CJC itself.<sup>43</sup> Such a stance makes the CJC appear to be a self-defeating, dangerous and wasteful endeavor. The complexities and nuances of governmental budgets are beyond the scope of this paper, and I cannot predict the actual decisions of the board of supervisors and the mayor's office regarding the programs that will continue to receive funding under future budgets. However, I will provide some examples illustrating how the CJC will affect the budget.

In fiscal year 2008-2009, the City and County of San Francisco had a total budget expenditure of \$6,531,467,931.<sup>44</sup> According to the most recent report from the San Francisco Controller's office, the city faces a projected budgetary shortfall in 2009 of approximately \$438 million.<sup>45</sup> This shortfall represents approximately seven percent of the total budget. Although it is unclear where the city will choose to trim the money, there are many potential areas where a small reduction could conceivably be made so that the total shortfall is distributed among the many programs the city supports. My point is that the shortfall would not have to result in cutting programs for the homeless in the Tenderloin. When confronted with a shortfall, the answer is not necessarily to cut out the newest program on the table, but to see where cuts will be most effective and where they will be most destructive. I contend that cutting the CJC will be extremely unwise because it is the sort of program that would make each dollar spent on other programs more effective.

Human Services Agency projects throughout the city represent approximately ten percent of the total budget, at \$682,217,909.<sup>46</sup> These projects include housing and homelessness programs, children's services, food stamps and workforce development.<sup>47</sup>

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43. *Id.*

44. CITY AND COUNTY OF SAN FRANCISCO, CONSOLIDATED BUDGET AND ANNUAL APPROPRIATION ORDINANCE, FISCAL YEAR ENDING JUNE 30, 2009 12 (2009), available at [http://www.sfgov.org/site/uploadedfiles/controller/budget\\_information/aao/FY\\_2008-09\\_FINAL\\_AAO\\_OCR\\_V1.pdf](http://www.sfgov.org/site/uploadedfiles/controller/budget_information/aao/FY_2008-09_FINAL_AAO_OCR_V1.pdf).

45. CITY AND COUNTY OF SAN FRANCISCO, THREE-YEAR BUDGET PROJECTION FOR GENERAL FUND SUPPORTED OPERATIONS, FISCAL YEARS 2009-10 THROUGH 2011-12 1 (2009), available at [http://www.sfgov.org/site/uploadedfiles/controller/budget\\_information/3year/Joint\\_Report.pdf](http://www.sfgov.org/site/uploadedfiles/controller/budget_information/3year/Joint_Report.pdf).

46. CITY AND COUNTY OF SAN FRANCISCO, *supra* note 44.

47. *Id.*

Many of these projects, as well as several groups that operate independently of the government, will be called upon by the CJC to be partners. Because the CJC ultimately relies heavily on these programs, it would indeed be unfortunate if the city chose to cut these programs in order to fund the CJC itself.

The CJC is expected to cost approximately \$1.7 to \$2.8 million annually.<sup>48</sup> However, the project will actually cost the city only half of that projected amount after federal grants totaling \$1,334,000 are approved for the project.<sup>49</sup> The resulting cost of the CJC represents less than half of one percent of the budgetary shortfall predicted for the upcoming year, which literally translates to a drop in the bucket. Many people may argue that seemingly insignificant expenditures can add up to serious burden, and others may point to services that could have been purchased for needy people with the money allocated to the CJC. It is vital to take into account that the CJC has the potential to make every dollar spent on community assistance more effective by coordinating the efforts of disparate organizations and streamlining delivery of services with a holistic view of the individual offender's needs.

By taking lessons learned from the drug courts and the mental health courts that have been operating successfully for many years, it is shown that courts can be very effective mechanisms to ensure maximum efficacy for substance abuse and mental health programs.<sup>50</sup> In many ways, it is the power of the court to compel orders and monitor progress that makes the programs suitable for people with serious addictions.<sup>51</sup> But the community justice center model can take this idea further. By acting as a hub for existing programs, the CJC can offer any citizen, offender or victim, a single location to access a wide variety of services and support systems. As discussed above, one of the most significant problems identified by residents of the Tenderloin and South of Market areas in the needs assessment survey was that access to services was chaotic, disorganized and difficult.<sup>52</sup> However, the CJC provides a central

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48. Aparton, *supra* note 31.

49. Fact Sheet, San Francisco Community Justice Center January 2009, *available at* <http://www.sfsuperiorcourt.org/Modules/ShowDocument.aspx?documentid=2156>.

50. *See supra* note 9.

51. Marlowe et al., *supra* note 8, at 1019-21

52. *See* OFFICE OF COLLABORATIVE JUSTICE PROGRAMS, *supra* note 37.

point around which hard work and tax dollars can rally to achieve maximum effectiveness.

Aside from the hub model of coordinating services, the court has a unique ability to provide central oversight from both the perspective of the person needing help and from that of a government officer. Because a judge can identify all the roadblocks preventing an offender from reaching his goal of living independently, including cessation of SSI benefits as a result of a misdemeanor conviction, lack of access to medical care, or drug dependence, courts are in a better position to understand how these problems work together and simultaneously implement direct action. No social worker can do this alone. It is possible to increase funding five times over for homelessness and mental health services, but the tangle of bureaucratic and legal obstacles will consistently prevent full access to the services designed to help people in need who may lack the understanding and patience necessary to navigate the social services system. Mere funding of the status quo is not enough. The CJC represents reorganization and a new way of addressing the problems that plague society. Most importantly, the cost of this program is miniscule compared to what it can do.

Finally, as the fiscal analysis of the drug courts has shown, collaborative courts can save significant amounts of money over the long run. If the cost savings of drug courts were applied to the CJC, the result would be a new system with reduced court and incarceration costs that will pay for itself within a few years, all for a relatively minor investment. There needs to be an effective way of maximizing the worth of every dollar in the face of severe budget restraints. The community has an opportunity to save money tomorrow by making a small investment today.

## **B. Criminalization of Poverty**

The second significant criticism of the CJC is that it further criminalizes the activities and status of poverty itself. This particular critique is central to the opposition against the CJC recently voiced by the Coalition on Homelessness (“Coalition”). According to materials written by the Coalition and presented at the California Correctional Crisis Conference in March 2009, they have several

specific objections to the overall concept of a community court that ties needed services to a guilty plea. There is added cause for concern when the offense is an act that is necessary for survival on the streets.<sup>53</sup>

The first misconception held by the Coalition is that one would need to plead guilty to a crime in order to receive services. The steering committee for the CJC has made clear since last year that services in the CJC would be available to all residents of the city and not merely to criminal defendants.<sup>54</sup> It is accurate that drug courts, and many of the community courts across the country, require a guilty plea before an offender can enter into treatment programs, but such a requirement has more to do with the legal rights of a criminal defendant than the desire to obtain increased convictions. In some cases, the CJC would have the power to dismiss charges after successful completion of programs, resulting in a clean record as well as access to services.<sup>55</sup>

Another concern of the Coalition is that the CJC will increase the criminalization of poverty. People who are homeless engage in the same acts as non-homeless people, yet many of these acts become illegal when performed in public places. Examples of such behavior might include urination, bathing, eating and sleeping.<sup>56</sup> The history of legislation targeting the poor by addressing quality-of-life crimes explains the degree of suspicion directed towards any criminal justice project that seeks to address problems peculiar to homeless populations.<sup>57</sup> These laws are often enacted specifically to remove homeless people from the streets and thereby keep public areas clean and uncluttered for the rest of society.<sup>58</sup>

There is no doubt that these laws transform homelessness into a series of criminal acts. Nevertheless, would critics of such laws prefer that the homeless be left alone to continue living in a cycle of poverty without public regard? I believe we would all prefer to see homeless persons provided with help, support and direction to attain a minimum standard of living. Rising up to this standard would also

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53. See generally Nordberg, *supra* note 23.

54. San Francisco Mayor's Office of Criminal Justice, Community Justice Center Plan — April 2008, [http://www.sfgov.org/site/mocj\\_page.asp?id=86588](http://www.sfgov.org/site/mocj_page.asp?id=86588) (last visited Oct. 23, 2009).

55. Aparton, *supra* note 31.

56. Nordberg, *supra* note 23, at 269.

57. *Id.*

58. *Id.* at 263-69.

likely insulate them from laws that tend to target the poor disproportionately.

Any complaint with the existence of quality-of-life statutes cannot be a complaint about the institutions that adjudicate them. A criticism of quality-of-life laws is a criticism of the city government itself. Courts do not generally make policy, but rather are instruments of policy. The Legislature decides to enact laws and sets the agenda for the government, the Executive generally chooses how to enforce that agenda, and the courts are the instrument by which such enforcement is actually accomplished. Therefore, if homeless advocates are to have compelling arguments against the CJC, it must be in how the CJC addresses the problem of homelessness, rather than in the existence of unjust laws.

The Coalition further argues that the method of enforcement that the CJC would employ would encourage police to arrest more homeless people than they currently do. There is a strong argument to be made that the police selectively enforce quality-of-life statutes against homeless people.<sup>59</sup> As applied here, the argument is that police in the Tenderloin will understand that a homeless person will receive help at the CJC, thereby giving the officer an incentive to arrest a homeless person and get them access to services, rather than simply leave them alone or issue a citation.

Although many local governments have attempted to implement quality-of-life campaigns to “clean up” their cities, most have failed.<sup>60</sup> Homeless persons tend to bear the burden of such efforts, frequently resulting in a cycle of incarceration that they are powerless to resist.<sup>61</sup> San Francisco currently operates under what might be called a “light switch” model for dealing with homelessness-related offenses. A police officer who sees a homeless person committing a quality-of-life crime can either issue an infraction or file more serious charges (assuming that she does not want to ignore the problem altogether). When an infraction is issued,

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59. Nordberg, *supra* note 23, at 269-71.

60. Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291, 295-96, 332 (1998).

61. Patricia G. Barnes, *Safer Streets at What Cost? Critics Say the Homeless and Substance Abusers Are Most Likely to Suffer When Police Crack Down on Petty Offenses*, A.B.A. J., June 1998, at 24; John J. Ammann, *Addressing Quality of Life Crimes in Our Cities: Criminalization, Community Courts and Community Compassion*, 44 ST. LOUIS U. L.J. 811, 813-14 (2000).

there is no way to follow up and determine if that person was able to find housing or assistance. The public tends to pay the costs of benign neglect through increased use of emergency rooms and fire department services by the homeless, the poor, and the victims of crime. Further, even though the city spends more money on programs designed to help people find homes and jobs, the number of homeless people continues to steadily rise.<sup>62</sup>

The second option under the “light switch” model is to file formal charges against a homeless person. This selection can have disastrous consequences for the person charged. Once a charge is filed, the person can lose valuable SSI benefits, access to other forms of assistance, be subject to significant fines, and spend time in jail.<sup>63</sup> The public also suffers under this approach by paying the costs of processing and incarcerating individuals who usually do not pose any danger to society.<sup>64</sup> Additionally, the community suffers from the ultimately ineffective use of police resources. When the process of arrest and incarceration repeats, as it has, the community must expend the same amount of taxpayer dollars over and over, achieving little more than a guarantee that the cycle will continue. Some critics argue that the problem with such programs is that they do not address the underlying causes of poverty and homelessness.<sup>65</sup> This is precisely the angle that the CJC has adopted: trying to identify the underlying causes of poverty for the individual and address them directly and comprehensively. The whole purpose of the CJC is to find alternatives to incarceration, such as providing shelter, treatment programs and job training, and remove roadblocks that prevent a person from rising above the poverty that brings them into conflict with the law, such as cessation of benefits or criminal records.

The argument that a well-intentioned police officer may feel more inclined to arrest a homeless person out of a sense of compassion because he thinks the CJC will help that person, has some merit. However, this is not always the case. First, it is not

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62. Nina Wu, *Street Hope: City Money Doesn't Answer the Problem*, S.F. EXAMINER, Dec. 10, 2001, at A1; Ann Lane, *Quality Control: Why Is The City Attorney Prosecuting Homeless People?*, S.F. BAY GUARDIAN, Feb. 16, 2000.

63. Maria Foscarinis, *Downward Spiral: Homelessness and Its Criminalization*, 14 YALE L. & POL'Y REV. 1, 23 (1996); Harcourt, *supra* note 60, at 344; Nordberg, *supra* note 23, at 278; Ammann, *supra* note 61, at 813.

64. Ammann, *supra* note 61, at 820; Nordberg, *supra* note 23, at 303-04.

65. Nordberg, *supra* note 23, at 276.

necessary for an officer to make an arrest in order for a homeless person to receive services at the CJC. The ability of the court to make positive changes in a person's life does increase dramatically with the additional power to impose criminal sanctions, because the court can compel a person to follow through with treatment programs or other services that require reciprocal effort from recipients. Still, the court could also dismiss charges, leaving the accused with a clean record, no jail time and access to valuable services that have been specifically coordinated to achieve the maximum effect. This option is a more preferable plan than the status quo.

Currently, there is no opportunity for courts to effectively help homeless people, and the social service community needs assistance to make good use of the court's hard work. There is nothing that the court can do about the city's decision to make sleeping in public a crime. The CJC can, however, manage how a person accused of sleeping in public is treated in the system. The debate over quality-of-life crimes is not specific to the CJC, and the focus should shift to the most beneficial way to enforce such laws.

## **Conclusion**

The Tenderloin CJC is not an experimental parallel justice system, as some critics have labeled it, but rather it is the next logical step towards an intelligent approach to criminal justice. The model of a community court that attempts to address the root causes of offensive behavior in a way that is effective and meaningful has been successful in every community that has adopted it for over a decade. Results show reduced recidivism rates, community support and lower costs to the public. In an era of bloated prison populations and failed "get tough" policies, there needs to be an awareness, now more than ever, that there are other options for dealing with crime. The CJC represents one such option.

California has had great success with drug and mental health courts introduced over recent years. It has incurred significantly lowered costs by adopting the idea that the court can help people overcome addictions and escape a cycle of poverty and criminality through oversight and monitoring progress. The Tenderloin

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community should apply what has been learned from drug courts to all types of non-violent crimes.

San Francisco has a rare opportunity to rise above petty political differences and the fear of systemic persecution to become the first community in California to take the current court model to the next level. The investment of transitioning to a community court system would be minimal compared to the potential savings that could be reaped even if the CJC was modestly successful in reducing the impact of minor crimes on the justice system.

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