Jails Not Homes: Quality of Life on the Streets of San Francisco

Maya Nordberg

Follow this and additional works at: http://repository.uchastings.edu/hwlj

Recommended Citation
Available at: http://repository.uchastings.edu/hwlj/vol13/iss2/5

This Note is brought to you for free and open access by UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Women's Law Journal by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.
Jails Not Homes:  
Quality of Life on the Streets of San Francisco  
*Maya Nordberg*

The best scenario in this game is that as a homeless person you somehow go undetected and unharassed; i.e., you do not become part of the Quality of Life program. If you are spotted and cited for being homeless, you are forced through the judicial and perhaps criminal “justice” system, and will either pay the city in labor or dollars, but will ultimately go back out onto the street. The most you can hope to get out of this program is a detour through a legal labyrinth; on your way back to your “still homeless” life.1

INTRODUCTION

Since the late 1980s, issues of safe, clean public spaces and the crisis of homelessness have clashed at the forefront of San Francisco politics.2 San Francisco instituted a multi-tiered approach to the causes and symptoms of poverty and homelessness.3 But the visible homeless4 “redefined urban

---

* J.D. Candidate, Hastings College of the Law, 2002; B.S. Education & Social Policy, Northwestern University, 1998. I dedicate this Note to the people and political advocacy of the Coalition on Homelessness, San Francisco. Professor Bea Moulton provided invaluable structural assistance and guidance. Professor Kate Bloch encouraged me to write on this current and disconcerting topic. I am also grateful to Sonia Méri, Doug Redden, Kathy Steinman, Joshua Welter and Xia Zhao for their comments. I could not have written this Note without the love, cheerleading, editing and passionate politics of my partner Matthew Fitt.


space,” embodied very real, urban poverty and the dramatic shortage of affordable housing, and served to remind us that the American dream of prosperity excluded a sizeable population. In response, local policy-makers followed the national trend of transforming visibility into criminal conduct. Within a context of a diverse and expansive emergency of homelessness, criminalization emerged as a means of control.

Despite the booming economy of the 1990s, researchers estimate that on any night the national population of homeless people exceeds 700,000. That number, merely a snapshot of homelessness on a single day, may be misleading. The estimate of people who are homeless for some period during the course of a year exceeds two million. Millions more are on the verge of, or one paycheck away from losing permanent housing. In San

[hereinafter HUNGER AND HOMELESSNESS 1999].


7. Joyce v. City and County of San Francisco, 846 F. Supp. 843, 846 (N.D. Cal. 1994); BLAU, supra note 4. “[E]ven though people on the street make up just one part of the homeless population, it is their public poverty that has shaped virtually everybody else’s response to them.” Id. at x.


9. NAT’L COALITION FOR THE HOMELESS, HOW MANY PEOPLE EXPERIENCE HOMELESSNESS? (1999), at http://www.nationalhomeless.org/numbers.html (last visited Mar. 15, 2002) (discussing the problems of estimating homelessness generally, as well as distortions inherent to both point in time surveys and yearly estimates of homelessness). This point-in-time estimate leads to distortion by excluding those facing episodic homelessness, or the loss of permanent housing due to violence, unemployment, or the unavailability of housing. Id. Counts of homeless people are bound to exclude portions of the population because survival strategies often prompt invisibility as a goal. Id. Official counts often miss those who are vehicularly housed, those staying in improvised dwellings, and those “doubling-up” in the housing of friends or family. Id.


11. JONATHAN KOZOL, RACHEL AND HER CHILDREN 11 (1988) ("Any poor family paying rent or mortgage that exceeds one half of monthly income is in serious danger [of eviction]."); Franzese, supra note 10, 1461; NAT’L COALITION FOR THE HOMELESS, supra
Francisco, the current estimate of homeless people ranges from over 7300 to over 14,000. Homelessness is not only a status; it also encompasses the acts that cause individuals to publicly perform life-sustaining activities. Homeless people form a heterogeneous population in diverse communities, crossing lines of age, gender, sexual orientation,

note 9.

12. See, e.g., BARBARA EHRENREICH, NICKEL AND DIMED: ON (NOT) GETTING BY IN AMERICA (2001).


14. Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. § 11302(a) (1988). For the purposes of federal funding, Congress defined a homeless person as:

(1) an individual who lacks a fixed, regular, and adequate nighttime residence; and (2) an individual who has a primary nighttime residence that is – (A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); (B) an institution that provides a temporary residence for individuals intended to be institutionalized; or (C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Id.

15. See BLAU, supra note 4, at ix-xi. Blau discusses the American “myth,” that poor people are somehow responsible for their poverty. The rapid growth of the homeless population represents a wonderful opportunity to test this proposition, because it requires believers to argue that for some mysterious reason, a sizeable group of citizens suddenly became irresponsible at the very same time.... Whatever problems people in the United States have, nothing exacerbates them faster than the lack of money, food, and housing.

Id. at ix-x. “[H]omelessness for many may in fact be a ‘voluntary’ choice made from a range of unacceptable options.” Wes Daniels, “Derelicts,” Recurring Misfortune, Economic Hard Times and Lifestyle Choices: Judicial Images of Homeless Litigants and Implications for Legal Advocates, 45 BUFF. L. REV. 687, 690 (1997) (citations omitted). “[L]ife is a continuous and endless series of choices for everyone. Homeless individuals do make decisions about their lives, and it is fruitless and perhaps harmful to assert otherwise.” Id. at 715.

16. Id. at 720. Cities identified the causes of homelessness as the lack of affordable housing, substance abuse and the lack of available services, lack of mental health services and lack of access to affordable health care. HUNGER AND HOMELESSNESS 1999, supra note 3, at 62-63.

17. “Another potential danger of identifying a category called ‘homeless’ is that it unrealistically homogenizes a group of individuals whose characteristics, circumstances and stories may be very different.” Daniels, supra note 15, at 690 n.11. San Francisco’s 2001 count of 7315 homeless people included individuals visibly living on the streets, as well as those identified as homeless while otherwise incarcerated, hospitalized or institutionalized. Wu, supra note 13. “There are homeless clients in every type of community. The majority of homeless clients, 71 percent, are in central cities, while 21 percent are in the suburbs and
ethnicity and race, familial status, and education. Regardless of varied backgrounds and characteristics, homeless people are homeless because they lack housing. Through displacement from streets to jails, criminalization may temporarily serve to lessen the visibility of urban fringe areas, and 9 percent are in rural areas.” MARTHA R. BURT ET AL., HOMELESSNESS: PROGRAMS AND THE PEOPLE THEY SERVE, INTERAGENCY COUNCIL ON THE HOMELESS (1999), available at http://www.huduser.org/publications/homeless/homelessness/highrpt.html (last visited Mar. 15, 2002).


19. San Francisco’s 2001 count of homeless people “tallied 1,753 men, 480 women, 22 transgenders and 921 unknown genders living on the streets.” Wu, supra note 13. See also BURT ET AL., supra note 17 (describing single homeless clients, “77 percent are male and 23 percent are female”). See generally STEPHANIE GOLDEN, WOMEN OUTSIDE (1992); JOANNE PASSARO, THE UNEQUAL HOMELESS: MEN ON THE STREETS, WOMEN IN THEIR PLACE (1996).

20. See, e.g., Laurie Schaffner, Female Juvenile Delinquency: Sexual Solutions, Gender Bias, and Juvenile Justice, 9 HASTINGS WOMEN’S L.J. 1, 18 (1998) (“Some agencies estimate the proportion of gay and lesbian runaway and homeless youth to be as high as 40% of the total street youth population.”); Sonia Renee Martin, A Child’s Right to be Gay: Addressing the Emotional Maltreatment of Queer Youth, 78 HASTINGS L.J. 168, 178 (1996).

21. BURT ET AL., supra note 17 (describing single homeless clients, “41 percent are white non-Hispanic, 40 percent are black non-Hispanic, 10 percent are Hispanic, 8 percent are Native American, and 1 percent are other races.”). See generally Kim Hopper, Taking the Measure of Homelessness: Recent Research on Scale and Race, 29 CLEARINGHOUSE REV. 730 (1995).

22. Families with children comprised approximately forty percent of the population of homeless people surveyed in the 2001 report by the U.S. Conference of Mayors. HUNGER AND HOMELESSNESS 2001, supra note 18, at ii.

23. BURT ET AL., supra note 17 (“34 percent of homeless service users are members of homeless families. . . . [Of single homeless clients] 37 percent have less than a high school education, 36 percent have completed high school, and 28 percent have some education beyond high school.”).

24. The 2001 U.S. Conference of Mayors Report estimated that “22 percent of homeless people in the [27 surveyed] cities are considered mentally ill; 34 percent are substance abusers; 20 percent are employed; and 11 percent are veterans.” HUNGER AND HOMELESSNESS 2001, supra note 18, at ii. All of those characteristics are noteworthy, but none cause homelessness. KOZOL, supra note 11, at 11, 20-21; BLAU, supra note 4, at ix-xi.

25. KOZOL, supra note 11, at 11. “The cause of homelessness is lack of housing.” Id. (emphasis in original). See also ELLIOT LIBBEW, TELL THEM WHO I AM 223-24 (1993). “People are homeless because they lack housing.” Id. “Lack of affordable housing leads the list of causes of homelessness identified by the city officials [from the 27 major cities participating in the survey].” HUNGER AND HOMELESSNESS 2001, supra note 18, at ii.
homelessness. But the process of charging police departments and court systems with the responsibility of solving this social policy dilemma leads to burgeoning social and economic costs, little quality-of-life improvement, and revolving doors of incarceration, rather than solutions to the underlying causes of homelessness.

Part I of this Note discusses quality-of-life violations, tracing the history and means of implementation, specifically with reference to homeless individuals. Part II details San Francisco’s recent, current and proposed application of quality-of-life citations and prosecutions. Part III outlines non-punitive, community-based alternatives to quality-of-life enforcement policies. These alternatives emphasize the confluence of the city’s objectives in maintaining clean, safe streets, delivering quality social services to homeless people, and respecting the rights and dignity of all San Franciscans. The Note concludes that San Francisco can more effectively fulfill its goals and more efficiently spend its resources if the police department and court system are not responsible for administering homeless outreach programs or mandating compliance with social service programs.

I. EVOLVING QUALITY-OF-LIFE

A. UNDERSTANDING QUALITY-OF-LIFE VIOLATIONS IN CONTEXT

For more than a decade, urban centers in the United States have engaged in a social experiment to clean up city streets, sweeping away the visibly homeless and acts associated with poverty and disorder, such as loitering, sleeping in public, sitting on sidewalks, and camping in parks.26 As an extension of “community-oriented”27 policing, cities have focused on the importance of “order-maintenance.”28 Cities prohibit and prosecute relatively minor acts of disorder, perceived as diminishing a community’s quality-of-life, in an effort to prevent more serious crime and overall neighborhood decay.29 Residual effects of minor crime or infractions, such

26. Rob Teir, Restoring Order in Urban Public Spaces, 2 TEX. REV. L. & POL. 256, 256 (1998). “These efforts, paralleling those in cities from Portland, Maine to Portland, Oregon, are part of a national trend to re-establish a semblance of order, comfort, and security in urban public spaces.” Id.
27. Leena Kurki, Restorative and Community Justice in the United States, 27 CRIME & JUST. 235, 236 (2000). Community justice and policing attempt to integrate community members in the everyday functioning of police activities and address crime as a “social problem” instead of an isolated incident. “Rather than focus solely on punishment, deterrence, or rehabilitation of individual offenders, agencies should broaden their mission to include preventing crime and solving neighborhood conflicts. Operations should be moved to local communities, and citizen involvement should be encouraged.” Id. (citations omitted).
as broken windows\textsuperscript{30} and other minor evidence of community inattention, are perceived as "indications of disorder," and if left un-remedied, "demonstrat[e] a loss of public order and control in the neighborhood and thus breed [] more serious criminal activity.\textsuperscript{31}

1. Vagrancy Laws

For hundreds of years, vagrancy statutes criminally penalized individuals for visible indigence, the appearance of poverty, or failing to demonstrate a "visible means of support."\textsuperscript{32} Various laws and court decisions cast vagrants and migratory poor as threats to safety, public health and economic stability.\textsuperscript{33} The Articles of Confederation guaranteed "the privileges and immunities of free citizens in the several states" for all "free inhabitants", but deliberately excluded paupers and vagabonds from that grant of liberty and protection.\textsuperscript{34} In 1837, the Supreme Court opined: "We think it as competent and as necessary for a state to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts; as it is to guard against the physical pestilence . . . ."\textsuperscript{35} Merely because of their economic status, those without means could be legally excluded, castigated and imprisoned. In contrast to most criminal statutes, vagrancy laws punished the poor for their

---

\textsuperscript{30} KELLING & COLES, supra note 2, at 19-26; Wilson & Kelling, supra note 29.

\textsuperscript{31} Foscarinis et al., supra note 3, at 153.

\textsuperscript{32} Simon, supra note 6, at 633-34.

\textsuperscript{33} Id. at 635-40; I.J. Shiffres, Annotation, \textit{Validity of Vagrancy Statutes and Ordinances}, 25 A.L.R. 3d 792 (2001). Almost a century ago, the Ninth Circuit upheld Alaska's prohibition of idle wandering after 11 p.m. by individuals lacking "occupation or property" because the community was not "without just ground for apprehension that [the wanderer] may be a menace to the peace and order of the city and the safety of its inhabitants." Guidoni v. Wheeler, 230 F. 93, 97 (9th Cir. 1916). In striking down a vagrancy law, New York's highest court held:

\begin{quote}
It is also obvious that today the only persons arrested and prosecuted as common-law vagrants are alcoholic derelicts and other unfortunates, whose only crime, if any, is against themselves, and whose main offense usually consists in their leaving the environs of skid row and disturbing by their presence the sensibilities of residents of nicer parts of the community, or suspected criminals, with respect to whom the authorities do not have enough evidence to make a proper arrest or secure a conviction on the crime suspected.
\end{quote}


Immigration laws codified vagrancy statutes in the realm of citizenship, excluding admission to: aliens with any disability that might "affect the ability of the alien to earn a living," "paupers, professional beggars or vagrants," and those who "are likely at any time to become public charges." 8 U.S.C. §§ 1102 (a)(7), 1102 (a)(8), 1102 (a)(15) (2001).

\textsuperscript{34} ARTICLES OF CONFEDERATION art. IV (1781). See Juliette Smith, Note, \textit{Arresting the Homeless for Sleeping in Public: A Paradigm for Expanding the Robinson Doctrine}, 29 COLUM. J.L. & SOC. PROBS. 293, 304-05 (1996).

\textsuperscript{35} Mayor of New York v. Miln, 36 U.S. (11 Pet.) 102, 142 (1837), \textit{discussed in} Wyman v. James, 400 U.S. 309, 332 n.4 (1971) (Douglas, J. dissenting), and Smith, supra note 34, at 304-05.
impoverished or transient status rather than any specific acts.\textsuperscript{36}

Communities implemented vagrancy laws as a means of controlling undesirables, prohibiting the status of those perceived as potentially causing future crime. In 1812, Congress amended Washington, D.C.’s city charter to include a provision requiring that those perceived as likely to become paupers and those lacking permanent housing pay a monetary deposit “for their good behaviour” meant to “indemnify the city for their support.”\textsuperscript{37} Those “vagrants, idle or disorderly persons” unable to pay the security deposit were confined and required to perform forced labor for up to a year.\textsuperscript{38} Vagrancy laws were legislatively enacted “quasi slavery. In 1865, for example, Alabama broadened its vagrancy statute to include ‘any runaway, stubborn servant or child’ and ‘a laborer or servant who loiters away his time, or refuses to comply with any contract for a term of service without just cause.’”\textsuperscript{39} Vagrancy laws criminalized perceived poverty, effectively controlling and incarcerating poor people based on their employment or housing status.

Beginning in 1972, with \textit{Papachristou v. City of Jacksonville},\textsuperscript{40} the Supreme Court held that vagrancy and loitering laws were unconstitutionally vague, violating the Due Process Clause of the Fourteenth Amendment.\textsuperscript{41} Writing for a unanimous court, Justice Douglas concluded:

\begin{quote}
The implicit presumption in these generalized vagrancy standards – that crime is being nipped in the bud – is too extravagant to deserve extended treatment. Of course, vagrancy statutes are useful to the police. Of course, they are nets making easy the roundup of so-called undesirables. But the rule of law implies equality and justice in its application. Vagrancy laws . . . teach that the scales of justice are so tipped that even-handed administration of the law is not possible. The rule of law, evenly applied to minorities as well as majorities, to the poor as well as the rich, is the great mucilage
\end{quote}

\begin{flushleft}
36. Simon, \textit{supra} note 6, at 640.
37. Those required to pay the deposit included:
vagrants, idle or disorderly persons, all persons of evil life or ill fame, and all such as have no visible means of support, or are likely to become chargeable to the City as paupers, or are found begging or drunk in or about the streets, or loitering in or about tippling houses, or who can show no reasonable cause of business or employment in the City; and all suspicious persons, and all who have no fixed place of residence, or cannot give a good account of themselves . . . .
38. \textit{Id.}
40. 405 U.S. 156 (1972).
\end{flushleft}
that holds society together.\textsuperscript{42}

The Court held that the vagrancy ordinance at issue in \textit{Papachristou} was unconstitutionally vague in failing to provide adequate notice of prohibited behavior and "encourag[ing] arbitrary and erratic arrests and convictions."\textsuperscript{43} Among other prohibited acts, the Court concluded that begging, living off the wages of others, nightwalking, wandering "around from place to place without any lawful purpose or object," and habitual loafing were "normally innocent" activities, "historically part of the amenities of life as we have known them."\textsuperscript{44} The presumption that these acts suggested "future criminality" did not support banning all indicia of "vagabondage."\textsuperscript{45} Due process prohibited the \textit{Papachristou} vagrancy law that equated poverty, immorality and criminality because the ordinance failed to provide notice and lead to unfettered police discretion.\textsuperscript{46}

In the 1980s, the emergence of the "broken windows" theory of community policing, which linked minor disorder to larger crime\textsuperscript{47} and urban decay,\textsuperscript{48} breathed new life into vagrancy laws.\textsuperscript{49} The concept of quality-of-life crimes developed out of "broken windows," building a foundation on the centuries-old legal tradition of criminalizing acts associated with poverty and homelessness.\textsuperscript{50}

Generally, quality-of-life ordinances avoided sweeping prohibitions of the status of homelessness.\textsuperscript{51} In the 1962 decision of \textit{Robinson v. California}, the Supreme Court held that criminalizing an involuntary status violates the Eighth Amendment, imposing a cruel and unusual punishment.\textsuperscript{52} The Court qualified \textit{Robinson} in 1967 with \textit{Powell v. Texas}, holding that communities may prohibit acts associated with status instead of the status itself, such as proscribing drug use rather than drug addiction.\textsuperscript{53} Recent quality-of-life ordinances have passed Constitutional muster, with specifically tailored legislation that prohibits acts and avoids both \textit{Papachristou} vagueness challenges and \textit{Robinson} status challenges.\textsuperscript{54}

\begin{footnotesize}
\textsuperscript{42} \textit{Papachristou}, 405 U.S. at 171.
\textsuperscript{43} Id. at 162.
\textsuperscript{44} Id. at 163-64.
\textsuperscript{45} Id. at 169.
\textsuperscript{46} Id. at 162-63, 165.
\textsuperscript{47} Harcourt, supra note 28, at 363. "Disorder becomes a degree of crime: breaking a window, littering, jumping a turnstile become grades along a spectrum that leads to homicide." Id.
\textsuperscript{48} KELLING & COLES, supra note 2, at 6; Foscarinis et al., supra note 3, at 154.
\textsuperscript{49} Harcourt, supra note 28, at 344 (quoting Wilson & Kelling, supra note 29).
\textsuperscript{51} See infra I.A.3.
\textsuperscript{52} Robinson v. California, 370 U.S. 660, 666 (1962).
\textsuperscript{53} Powell v. Texas, 392 U.S. 514, 532 (1967) (plurality opinion) (distinguishing \textit{Robinson}'s prohibition of status-based ordinances from laws banning instead the acts associated with a given status).
\end{footnotesize}
2. Definitions & Discretionary Enforcement

Quality-of-life violations compose a broad, indistinct group of infractions that may include "squeegeeing, panhandling, prostitution,"\textsuperscript{55} loitering,\textsuperscript{56} fare-evading on public transit,\textsuperscript{57} "street-level drug dealing, under age drinking, blaring car radios" and motorcycle engines,\textsuperscript{58} trespassing,\textsuperscript{59} littering,\textsuperscript{60} "obstruction of sidewalks, lodging, camping or sleeping in public parks,"\textsuperscript{61} "vandalism, public drunkenness, . . . public urination,"\textsuperscript{62} "riding bicycles on sidewalks and jaywalking."\textsuperscript{63}

The enforcement of quality-of-life ordinances addresses "a broad range of offenses occurring on the streets and in parks and neighborhoods. . . . [Such enforcement programs are] a directed effort to end street crimes of all kinds."\textsuperscript{64} A diverse group of people might receive citations as a part of such enforcement.\textsuperscript{65} But these ordinances, banning such acts as loitering, "are usually only enforced against the homeless and not the dad and son hanging around the ballpark for an autograph."\textsuperscript{66} This disparate enforcement results from the discretion that society and the courts\textsuperscript{67} have


\textsuperscript{57} Harcourt, supra note 28, at 381.


\textsuperscript{59} Church v. City of Huntsville, 30 F.3d 1332 (11th Cir. 1994), discussed in Daniels, supra note 15, at 709-10.

\textsuperscript{60} Coombs, supra note 50, at 1373.

\textsuperscript{61} Joyce v. City and County of San Francisco, 846 F. Supp. 843, 846 (N.D. Cal. 1994).


\textsuperscript{64} Joyce, 846 F. Supp. at 846 (quoting from the description of the Matrix program as provided by the City of San Francisco).

\textsuperscript{65} Id. at 847. At least in writing, the San Francisco Police Department adopted a policy of non-discrimination, recognizing the rights of all people and tailoring police intervention to prohibited conduct rather than status:

All persons have the right to use the public streets and places so long as they are not engaged in specific criminal activity. Factors such as race, sex, sexual preference, age, dress, unusual or disheveled or impoverished appearance do not alone justify enforcement action. Nor can generalized complaints by residents or merchants or others justify detention of any person absent such individualized suspicion.

\textsuperscript{66} Ammann, supra note 56, at 815.

\textsuperscript{67} Coombs, supra note 50, at 1370 (citing Whren v. United States, 517 U.S. 806 (1996)). "As Whren made clear, the only constitutional limit on an officer's arrest decision
delegated to police officers for quality-of-life enforcement.\textsuperscript{68} "Inevitably, that discretion is subject to misuse – a misuse that is likely to be directed at members of particular classes and particular races."\textsuperscript{69} The amplified discretion inherent to quality-of-life enforcement focuses inordinate attention on individuals perceived as outsiders.\textsuperscript{70} Though the scope of infractions considered quality-of-life violations is extensive, many are acts historically, and intrinsically, linked to homelessness: obstruction of sidewalks, lodging, camping or sleeping in public parks, and public urination or defecation, often occur because individuals lack alternatives out of the public sphere.\textsuperscript{71} Communities justify the proscription of these status-related acts because the targets are perceived as outsiders, those individuals displaying their status in public.

Homeless individuals may not be the only people cited for loitering or trespassing, but their status, or lack of housing, decreases options and increases the likelihood that in their effort to address the necessity of sleep, they will violate a local ordinance. While housed persons can ultimately return to places of refuge, homeless individuals must publicly perform acts intended for the private sphere and also bear the consequences of public reprobation in the form of citations. "Today’s homeless, if unable to sleep in shelters or friends’ homes, do so in places not intended for human habitation such as bus stations, subway trains, cars, doorways, parks and abandoned buildings."\textsuperscript{72} The act of sleeping in public, for wont of a better location, leads to the quality-of-life citation.\textsuperscript{73} Panhandling and

\textsuperscript{68} Harcourt, \textit{supra} note 28, at 345 (quoting Wilson & Kelling, \textit{supra} note 29). "In fact, the text goes on to say, '[a] particular rule that seems to make sense in the individual case makes no sense when it is made a universal rule and applied to all cases.'" \textit{Id.}

\textsuperscript{69} Coombs, \textit{supra} note 50, at 1371.

\textsuperscript{70} Gwendolyn A. Dordick, \textit{Something Left To Lose, Personal Relations and Survival Among New York’s Homeless} 12 (1997). "Where abuse exists, it tends to focus on homeless individuals who have not cultivated good relationships with the police." \textit{Id.}

\textsuperscript{71} Rob Rosenthal, \textit{Homeless In Paradise: A Map Of The Terrain} 5, 45 (1994). "The person who lacks shelter is constantly occupied with meeting daily and basic needs – eating, sleeping, washing, urinating, defecating – that are often illegal when performed in public. These are ‘status offenses’ which inevitably result from the very existence of homelessness.” \textit{Id.} (citations omitted).

\textsuperscript{72} Smith, \textit{supra} note 34, at 295-96; Ammann, \textit{supra} note 56, at 813 (“In most cities today, it is easy for a poor or homeless person to end up in jail [for such acts as panhandling] and with a record for committing a crime.”). \textit{See also} Rosenthal, \textit{supra} note 71, at 121.

Clearly, long-term homelessness and a decreasing social margin make criminal activity, including public status crimes: When friends will no longer take you in, you are more likely to use the alleys for your bathroom. But further the likelihood of arrest for criminal activities increases with time homeless: Simple probability dictates greater police contact over time; increased time homeless weakens the ability to pass as housed, increasing the likelihood of police surveillance and arrest due to stigmatization.

\textit{Id.} (citations omitted) (emphasis in original).

\textsuperscript{73} Joyce v. City and County of San Francisco, 846 F. Supp. 843, 846 (N.D. Cal. 1994).
squeegeeing may be less inherent to the condition of homelessness than sleeping outside of a home, but many homeless people engage in these underground economies as a means of generating income.\(^{74}\)

Not all offenders of public drunkenness or open container prohibitions are homeless, but homeless people are in a unique position where they often cannot afford, or are not allowed, to sit indoors at a bar, nor do they have anywhere else off the streets to consume otherwise-legal alcohol.\(^{75}\) The nexus between homelessness and evading fare on public transit may also be somewhat attenuated, as fare evasion may suggest general poverty or opportunistic crime. However, visibility and assumptions about homelessness draw increased attention to homeless fare evaders.\(^{76}\) Finally, homeless individuals have no documented propensity for littering or jaywalking (compared to the larger population); however, as applied, quality-of-life enforcement programs have targeted homeless people for these violations.\(^{77}\) Quality-of-life enforcement campaigns erroneously suggest that visible poverty is illegal.\(^{78}\)

74. Josh Brandon, *The Life and Times of a Beggarman Troll*, STREET SHEET (S.F.), Feb. 2002, at 2 (“I live under a San Francisco bridge and panhandle to survive. It’s a hard life—one that I did not choose, nor want to continue.”); Marianne Costantinou, *Living on the Sidewalk; Panhandlers Try to Make Ends Meet with the Generosity of Strangers*, S.F. CHRON., Jan. 6, 2001, at A11 (“Not all panhandlers are homeless. And only a tiny minority of the homeless are panhandlers. Although some panhandlers admit to using the money they collect to buy drugs or alcohol, most insist they are supplementing government income to pay for rent or clothes or any number of things . . .”); but see Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 YALE L.J. 1165, 1193 (1996) (citing anecdotal reports that indicate many panhandlers are not homeless; Ellickson concludes with a citation recognizing that very little empirical data is available).

75. Powell v. Texas, 392 U.S. 514, 551 (1968) (White, J., concurring). While many chronic alcoholics are housed, “many others [are] not. For all practical purposes the public streets may be home for these unfortunates, not because their disease compels them to be there, but because, drunk or sober, they have no place else to go and no place else to be when they are drinking.” Id.

76. Bratton, *supra* note 58, at 450. Former NYPD police commissioner William Bratton celebrated both “continual fare evasion sweeps” and “expand[ing] homeless outreach” as newly instituted elements of quality-of-life enforcement efforts, suggesting that the NYPD may see a direct, if seemingly incongruous, relationship between fare evasion and housing status. Id.


78. See generally Leo Stegman, *Innocent Until Proven Black or Poor*, POOR NEWS NETWORK, May 5, 2001, at http://www.poormagazine.com/index.cfm?L1=news&story=100. The author related being arrested for sitting on a park bench just before eight a.m. Id. “In the City of Berkeley, it is a crime to be poor or a person of color. Law enforcement officials in Berkeley treat innocent poor folks and people of color like criminals, by constantly subjecting them to unlawful stops, detentions, and arrests.” Id.
3. Judicial Reactions

a. Prevailing Trend: Distinguishing the Status of Homelessness from the Act of Being Homeless

While perhaps counter-intuitive, many courts have distinguished a person’s homeless status from the acts committed because a person is homeless. In drafting specifically tailored legislation, communities are constitutionally permitted to prohibit individual acts, even if those acts are intrinsically linked to status.

In one example, Santa Ana, California, in 1988, formed a “vagrancy task force” to implement a quality-of-life enforcement campaign targeted at the community’s homeless population.79 As described by the California Court of Appeals, this amounted to a “harassment sweep.”80 Santa Ana intended to clarify “a policy that the vagrants are no longer welcome,” with a stated “objective [of] cleaning up its neighborhoods and forcing out the vagrant population.”81 The city commenced sweeps, where homeless people were “handcuffed, transported to an athletic field for booking, chained to benches, marked with numbers, and held for as long as six hours before being released at another location, some for crimes such as dropping a match, a leaf, or a piece of paper or jaywalking.”82 After Santa Ana stipulated to refrain from similar sweeps, the city enacted an anti-camping ordinance, assessed by the California Court of Appeals as a continuation of “the city’s war on its own weakest citizens.”83

In Tobe v. City of Santa Ana, the California Court of Appeals issued the homeless petitioners a writ of mandate, forcing the city to halt its anti-vagrancy campaign.84 The court found for the petitioners on the basis that “[a] minority may not be entirely suppressed in the name of otherwise laudable public purposes.”85 The court held that the city’s campaign violated the right to travel.86 Further, the court applied the jurisprudence of “status” crimes and the Eight Amendment’s proscription of Cruel and Unusual Punishment, declaring that “homelessness, like illness and addiction, is a status not subject to the reach of the criminal law; and that is true even if it involves conduct of an involuntary or necessary nature, e.g., sleeping.”87 The court briefly considered the city’s attempt to characterize petitioners as “voluntarily homeless,” and dismissed this as “a somewhat frivolous lawyer’s gambit we thought Anatole France had long since put to

---

79. Tobe, 27 Cal. Rptr. 2d at 388.
80. Id. at 389.
81. Id. at 387-88 (emphasis in original).
82. Id. at 389.
83. Id. at 392 n.4.
84. Id. at 395.
86. Id. at 391-95.
87. Id. at 393.
rest anyway: 'The majestic egalitarianism of the law [ ] forbids rich and poor alike to sleep under bridges, to beg in the streets, or to steal bread.' 

The court concluded by quoting United States Supreme Court Justice William O. Douglas: "'How can we hold our heads high and still confuse with crime the need for welfare or the need for work?'" The California Supreme Court reversed the appellate court's decision in Tobe. The court held that the anti-vagrancy campaign and the challenged anti-camping ordinance were facially valid. "Unlike the dissent, [the majority] cannot conclude that the city intends to enforce the ordinance against persons who have no alternative to 'camping' or placing 'camp paraphernalia' on public property." The court found Santa Ana's policies reasonable regulations of public spaces, holding that "a city not only has the power to keep its streets and other public property open and available for the purpose to which they are dedicated, it has a duty to do so." The court stressed that the ordinance was neutral on its face, and due to procedural defects, did not rule on the ordinance as applied. The dissent criticized this decision as ignoring the purpose and effect of the ordinance, which effectively exiled indigent homeless people to locations beyond the city limits. Ultimately, Santa Ana, like cities elsewhere, gained judicial approval of the validity of juxtaposing public order with the fundamental human necessity of shelter.

b. Anomaly: Quality-of-life Ordinance Invalidated as an Unconstitutional Prohibition of Status

Not all courts have viewed quality-of-life ordinances as specifically tailored, constitutionally permissible prohibitions of acts. In one example, Miami, Florida enforced a quality-of-life ordinance that failed constitutional analysis on multiple grounds. Miami began homeless sweeps as a response to perceived negative effects on business, tourism and the downtown area. Miami police officers "arrest[ed] thousands of homeless individuals from 1987 to 1990 for misdemeanors such as obstructing the sidewalk, loitering, and being in the park after hours." Confiscation and destruction of property often accompanied the arrests. In some instances, police officers and other city officials removed

88. Id. 394 n.10 (quoting ANATOLE FRANCE, LE LYS ROUGE ch. 7 (1894)).
89. Id. at 394 (quoting William O. Douglas, Vagrancy and Arrest on Suspicion, 70 YALE L.J. 1, 12 (1960), cited in Parker v. Municipal Judge of City of Las Vegas, 427 P.2d 642, 644 (Nev. 1967)).
90. Tobe v. City of Santa Ana, 892 P.2d 1145, 1169 (Cal. 1995).
91. Id. at 1150.
92. Id. at 1155 n.8.
93. Id. at 1169 (citation omitted).
94. Id. at 1152-56.
95. Id. 1170-71 (Mosk, J., dissenting).
97. Id. at 1559.
belongings with "front-end loaders and dump trucks." On two occasions, "officers awakened and handcuffed [homeless] class members, dumped their personal possessions – including personal identification, medicine, clothing and a Bible – into a pile, and set the pile ablaze."

The district court held that Miami's program of arrests and property destruction punished the plaintiffs for their homeless status, and thus violated the Eighth Amendment's proscription of Cruel and Unusual Punishment. Further, the program violated the Due Process Clause of the Fourteenth Amendment, the right to travel, and the Fourth Amendment right to be free from unreasonable searches and seizures. The court discussed the involuntary nature of homelessness and focused on the 700 shelter beds available to meet the needs of a population estimated at 6000. In conclusion, the court held "that plaintiffs have established that the City has a [constitutionally impermissible] policy and practice of arresting homeless individuals for the purpose of driving them from public areas."

c. A Vagrancy Law by Any Other Name . . .

The underlying goals of historical vagrancy laws coincide with and reinforce contemporary quality-of-life codes. Contemporary vagrancy laws, by any name, quality-of-life enforcement or otherwise, exist in the gray area between status and act, prohibiting conduct and enforcing these prohibitions against a class of individuals unified by their lack of housing, unified by their status.

The order-maintenance strategy . . . depends on arresting people on meaningless charges. What makes the system work is the availability of broad criminal laws that allow the police to take someone off the streets because they look suspicious. "Until quite recently in many states, and even today in some places, the police make arrests on such charges as 'suspicious person' or 'vagrancy' or 'public drunkenness' – charges with scarcely any legal meaning," Wilson and Kelling write. "These charges exist not because society wants judges to punish vagrants or drunks but because it wants an officer to have the legal tools to remove undesirable persons from a neighborhood when informal efforts to preserve order in the streets have failed."
The enforcement of quality-of-life violations empowers cities to target activities associated with homelessness. In the name of economics and aesthetics, homeless people face arrest for acts inextricably linked to their visible poverty.106

B. ASSESSING THE GOALS AND IMPLEMENTATION OF QUALITY-OF-LIFE PROGRAMS

Enforcement of homeless-oriented quality-of-life violations fails to incorporate communities into policing107 or increase social order through deterrence.108 These arrest and property destruction campaigns disparately target homeless people109 and other minorities,110 perpetuating a cycle of incarceration.111 In practice, the terms “quality-of-life” and “community” are narrowly constructed, often isolating and dividing the very communities these laws meant to serve.112 Quality-of-life programs only succeed in expanding tools of policing, promoting otherwise unjustified detentions and searches and seizures.113

1. Articulated Goals


Quality-of-life prosecutions continue the trend documented in Pottinger114 and Tobe:115 cities arrest, cite, move and harass homeless people, often destroying their property,116 as a short-term fix to the problem of merchant and resident demands that city officials “do something” about public poverty.117 In 1999, George Kelling, co-author of the Broken Windows theory,118 echoed the sentiments: “I don’t advocate a high

111. Ammann, supra note 56, at 813; Daniels, supra note 15, at 694, 723; Foscarinis, supra note 106, at 60.
114. Id.
117. Foscarinis et al., supra note 3, at 162.
118. KELLING & COLES, supra note 2; Wilson & Kelling, supra note 29.
number of arrests. I do advocate *doing something* about the behavior.\textsuperscript{119} “Doing something” is the call to action triggering homeless sweeps and other “misguided” political gestures that clean away “the visible symptoms of homelessness but not its underlying causes.”\textsuperscript{120}

Policies of the late 1980s candidly explained quality-of-life enforcement as a means to rid certain neighborhoods of homeless people and to assert that “homeless people are unwelcome” in city limits.\textsuperscript{121} In 1997, New York Mayor Rudolph Giuliani demonstrated the continued political currency of this cleansing sentiment, explaining to reporters that “it would be a ‘good thing’ if poor people left the city . . . . ‘That’s not an unspoken part of our strategy. That *is* our strategy.’”\textsuperscript{122} Cities no longer appear to officially describe quality-of-life programs in express terms of homeless removal or targeted arrest campaigns, abandoning the publicized attempts to require housing as a pre-requisite to remaining in any given community.\textsuperscript{123} But officials continue to explore methods of “doing something.” These articulated goals demonstrate that while ordinances may purport neutrality, the legislation and requisite enforcement are designed to remove visible poverty, not abate the underlying causes of homelessness within communities.

b. Crime Reduction

Quality-of-life enforcement programs have failed to deliver anticipated\textsuperscript{124} results.\textsuperscript{125} Crime rates declined in cities with quality-of-life programs, but not more so than in those cities without quality-of-life programs. The decline is consistent with dropping national rates and likely caused by a number of factors.\textsuperscript{126} The spokesman for California Attorney

\begin{footnotes}
\item[119] Barnes, *supra* note 62 (emphasis added).
\item[120] Foscarinis et al., *supra* note 3, at 147.
\item[121] Stoner, *supra* note 116, at 163.
\item[123] Foscarinis, *supra* note 106, at 24-25. “Noting the absence of ‘smoking-gun memos, minutes of the city council, or statements by public officials,’ one court wrote that after years of litigation, the city learned this lesson: ‘Do not document an intention to displace the homeless.’” Id. (quoting Tobe v. City of Santa Ana, 27 Cal. Rptr. 2d 386, 342 n.4 (Cal. Ct. App. 1994), superseded, 272 P.2d 559 (Cal. 1994), rev’d, 892 P.2d 1145 (Cal. 1995)).
\item[124] Kelling & Coles, *supra* note 2, at 7. “[C]itizen demands for order have been met in many cities with new police strategies emphasizing order maintenance and crime prevention, as well as citizen involvement in crime control efforts in concert with police.” Id.
\item[125] Harcourt, *supra* note 28, at 295-96.
\item[126] Id. at 332. Factors contributing to New York City’s declining crime rate, include a significant increase in the New York City police force, a general shift in drug use from crack cocaine to heroin, favorable economic conditions in the 1990s, new computerized tracking systems that speed up police response to crime, a dip in the number of eighteen- to twenty-four-year-old males, an increase in the number of hard-core offenders currently incarcerated in city jails and state prisons, the arrest of several big drug
\end{footnotes}
General Bill Lockyer assessed recent reductions in crime rates, noting: "Anyone who tells you that they know why crime rates go up and down is lying." One scholar agreed, stating: "We don't know to what extent it's police activity, to what extent it's the booming economy... to what extent it's the act of God." New research undermines even the basic assumptions of quality-of-life enforcement efforts, analyzing "whether the main premise - disorder increases fear, crime, and deterioration - is correct after all... [T]he premise of these methods has been exaggerated, they have been overused, and they have overshadowed other problem-solving and community-oriented strategies." The link between anti-disorder campaigns and the reduction in serious crime appears tenuous.

2. Realities of Implementation

a. Cycles of Incarceration

Quality-of-life citations perpetuate cycles of incarceration. A 1996 study conducted in Austin, Texas, suggested that "a revolving prison door is a better metaphor for Kelling's theory than a broken window." The study detailed the 5612 arrests for quality-of-life violations in Austin made during a four-month period. "A third of the arrests... were of repeat offenders, of whom two-thirds were homeless. 'Clearly, those who have no permanent residence and those suffering from addiction are particularly prone to commit these types of crimes, and circulate in and out of the municipal justice system.'" A 1999 national study of clients of homeless assistance programs revealed that while eighteen percent of the homeless clients spent time in a state or federal prison, almost half, forty-nine percent, spent five or more days in a city or county jail in their lifetime. The study suggests that the high rate of jail time might be attributable to incarceration for performing life-sustaining acts in public.

The cycle of incarceration begins when law enforcement officials "catch" homeless people in the act of living without housing. Discretion and local ordinances determine the extent of police intervention and the
debt the individuals must repay for their wrong-doing. An example of extreme quality-of-life enforcement tactics occurred in New York City as a part of Mayor Giuliani’s zero-tolerance anti-crime policies. Quality-of-life offenders were “arrested, handcuffed, booked, transported, strip-searched, jailed, and given a criminal record for a minor misdemeanor offense.” More common are techniques in other communities, which include issuing citations for violations of minor infractions with court summonses requiring offenders to appear at a later court date. If the individual misses that court date, the court issues a warrant for that person’s arrest. If police officers later question the individual about a minor infraction, such as suspected littering or loitering, the officers will conduct a routine records check. After discovering the outstanding warrant, the officers will either take the person to jail or explain the potential for arrest, instructing the individual to “move on.” The officers’ request that the detainee leave the area or cease specific activities may not have originally been enforceable, but now the person must comply or go to jail for the past offense. A minor municipal citation, initially punishable by fine or through community service, transforms into a permanent arrest record and probable jail term.

b. Enhanced Surveillance

In both encounters discussed above, the initial violation and the later suspected violation provide police officers with opportunities for

135. See generally Barta, supra note 63. “Giuliani has openly cited the Broken Windows theory as justification for his zero-tolerance anti-crime policies.” Id. at 167.
136. Harcourt, supra note 28, at 369. [T]he arrests themselves are a serious ordeal. ‘Handcuffed, fingerprinted and often strip-searched, defendants spend as much as a day in jail before seeing a judge, who generally considers that punishment enough.’ According to the New York Times, as recently as November 1996, ‘some people were held in cells for more than 60 hours waiting to see a judge for crimes like fare-beating, sleeping on park benches and drinking beer in public.’ Transportation to the precinct, if by van, can take up to four or more hours. In addition, arrest creates a criminal record that may haunt people on future job and school applications.

Id. (citations omitted).
137. Ammann, supra note 56, at 813.
138. Id.
139. Id.
140. Foscarinis, supra note 106, at 23.
141. A refusal to cooperate with police, absent additional reasonable suspicion or probable cause, does not provide the objective basis necessary for police detention. Florida v. Bostick, 501 U.S. 429, 437 (1991). An individual may ignore officers and refuse to “answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way.” Florida v. Royer, 460 U.S. 491, 497-98 (1983).
142. Harcourt, supra note 28, at 344. The disorderly offender “is not coddled, he is not reformed, he is not part of the psychotherapeutic project of rehabilitation. The disorderly is, instead, watched, controlled, relocated, and, ideally, excluded from the neighborhood. The disciplinary techniques captured by the quality-of-life initiative operate on an axis of order and disorder. . . .” Id. at 298.
“enhanced surveillance” of the offender. Quality-of-life violations, from obstructing the sidewalk to panhandling, establish particularized and reasonable suspicion, justifying brief investigatory detentions and subsequent protective pat-down searches. The Fourth Amendment prohibits detentions, searches and seizures based only on officers’ hunches. Available circumstances coupled with officers’ inferences must amount to “some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.” Detention and search of homeless people just because of status would be constitutionally impermissible; the status is non-criminal. But the constitutional assessment changes if the individual engages in status-related criminal activities, such as sleeping in a park or blocking the doorway of a closed business in the middle of the night. Such status-derivative acts open the door to array of police interventions.

Minor infractions convert otherwise illegal, unconstitutional violations of a person’s right to privacy, into permissible police investigations. Quality-of-life encourages police to seek out and detain individuals based on appearance, perceived economic status, or ability to blend into an otherwise homogenous neighborhood. “These mechanisms have little to do with fixing broken windows and much more to do with arresting window breakers – or persons who look like they might break windows, or who are strangers, or outsiders, or disorderly.” Visible poverty and lack of housing amount to the requisite manifestation of criminal activity, justifying increased police inquiry, citation and potential incarceration.

c. Discriminatory Enforcement

Kelling and Coles, in Fixing Broken Windows, acknowledged that, “while it does not have to, order-maintenance policing can enforce a tyranny of the majority, a repression of minority or marginal elements within the community.” Discretion in enforcing quality-of-life codes determines patterns of both police presence and disregard in particular communities. “A community policing model tends to empower those who want more policing at the expense of those who want more control of the police.” White, middle class constituencies more often capitalize on

143. Id. at 339.
146. Id.
147. Harcourt, supra note 28, at 342.
148. KELLING & COLES, supra note 2, at 164.
149. Id. at 179. “Consider the decision by a police officer not to arrest when a crime has been committed. As many authors have noted, not arresting someone for committing a crime is the most invisible decision, and one not subject to judicial oversight or supervision.” Id. (emphasis in original).
150. Coombs, supra note 50, at 1372.
151. Id. “The former group is likely to be more politically organized. Their members and representatives are more likely to go to forums organized by the police to discover the mood
the benefits and opportunities of community-oriented policing programs.\textsuperscript{152} Meanwhile, those who are most disproportionately\textsuperscript{153} the objects of police enforcement of quality of life laws are young black men.\textsuperscript{154}

How do we define minor disorder? Clearly, we are not talking about arresting those who pay their house keeper in cash to knowingly benefit from IRS underreporting, or who pay their nannies under the table. The quality-of-life initiative focuses instead on the type of minor offenses – loitering, fare-beating, and panhandling – that affect the poorer members of society, which, tragically, include a disproportionate number of minorities. Who gets to define disorder? By handing over the informal power to define deviance to police officers and some community members, we may be enabling the repression of political, cultural, or sexual outsiders in a way that is antithetical to our conceptions of democratic theory or constitutional principles.\textsuperscript{155}

As applied, the policing of minor neighborhood disorder concentrates police surveillance and action on marginalized “others.” One author suggests “[n]on-enforcement of low-level criminal laws, though it encourages a certain disrespect for the law, is less troubling than discriminatory enforcement.”\textsuperscript{156} Groups of “others” experience disparate treatment inconsistent with ideals of equal protection and the notion that laws should apply equally regardless of race, gender, sexual orientation, or otherwise minoritized status. Enforcing otherwise neutral ordinances primarily against those perceived as sources of deviance and disorder creates de facto vagrancy codes, where social and economic status determine the degree of policing, punishment and constitutional protections.

d. Us Versus Them: Excluding Homeless People from Definitions of Community

Order-Maintenance theories portray the disorderly, “unattached males, the homeless, and the aimless [who] live in boarded up buildings, seedy

\begin{itemize}
\item[152.] Kurki, supra note 27, at 290. “Community policing in Houston favored the interests of whites and homeowners, while African Americans, Hispanics, and renters were excluded.” \textit{Id.} (citations omitted).
\item[153.] Harcourt, supra note 28, at 382. “The point is that more blacks are arrested for misdemeanors than whites given their proportion in the overall population. The decision to arrest misdemeanants – rather than not arrest them – is a policy that has a disparate impact on minorities.” \textit{Id.}
\item[154.] Coombs, supra note 50, at 1372.
\item[155.] Harcourt, supra note 28, at 383-84.
\item[156.] Coombs, supra note 50, 1370. “The latter is facilitated by the existence of laws that make us all potential criminals and the lack of any effective legal limitation on the officer’s decisions of whom and when to arrest.” \textit{Id.}
residential hotels and flophouses,” as the “true culprits of serious crime.” Designation and disdain attach to disorderly individuals because of their shared economic status, visible poverty and lack of or substandard housing. The literature surrounding quality-of-life initiatives contrasts “honest people and the disorderly,” juxtaposing “‘committed law-abiders’ and ‘individuals who are otherwise inclined to engage in crime;’ . . . ‘families who care for their homes, mind each other’s children, and confidently frown on unwanted intruders’ and ‘disreputable or obstreperous or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed.’” Order maintenance theories, particularly Fixing Broken Windows and its progeny, attribute community decline to survival strategies of individuals living amidst the decline; “marginalized youth, prostitutes, alcohol and drug addicts, beggars, and vagrants are authors of decline rather than its victims.” Attributing crime and urban decay to this group of so-called disorderly marginalizes and isolates homeless people and divides the larger community, “pitting ‘us’ – the housed – against ‘them’ – the homeless.”

The quality-of-life version of “community” fails to recognize homeless individuals as members of the neighborhood. Many authors have internalized the question, asking whose interests are represented in quality-of-life initiatives. Former San Francisco Mayor Frank Jordan designed the Matrix program expressly to remove homeless people from the community, explaining by his actions, “that homeless people [were] not part of the ‘life’ the ‘quality’ of which city government [was] concerned with protecting.” William J. Bratton, former Commissioner of the New York City Police Department, contrasted local communities with perceptions of marauding intruders, describing the need to “deter low-level offenders from coming into New York City neighborhoods.” Marginalized groups, considered disorderly because of their status, “are viewed as outsiders against whom the community needs to defend itself.”

This divisive concept of community prompts policies that criminalize and

157. Harcourt, supra note 28, at 343 (quoting Wesley G. Skogan, Disorder and Community Decline: Final Report to the National Institute of Justice 86 (1987)).
158. Id.
159. Id.
160. Id. at 297 (citations omitted).
161. Kurki, supra note 27, at 289.
162. Id.; Foscarinis, supra note 106, at 59-60. “Aggressive law enforcement against minor nuisance crime is weakening community bonds and destroying social capacity in urban neighborhoods.” Kurki, supra note 27, at 289.
164. Id. “Clyde Haberman of the New York Times recently asked, slightly facetiously, ‘a humble question’ on the quality-of-life initiative: ‘Whose life is it, anyway, that we’re talking about?’” Id. See also Skillman, supra note 2. “[W]e proles are perplexed as to whose ‘quality of life’ our elected officials are interested in. We feel it isn’t ours.” Id.
165. Foscarinis, supra note 106, at 60.
166. Bratton, supra note 58, at 464 (emphasis added).
167. Kurki, supra note 27, at 258.
remove neighbors for minor indiscretions, rather than addressing the long-term needs of the inclusive community.\textsuperscript{168}

Individuals perceived as the disorderly, homeless people and various other quality-of-life offenders, are members of our communities, fellow citizens, voters, library users and parents. Homeless people often live in communities where they were raised or previously housed.\textsuperscript{169} Further, "highly victimized neighborhoods often have high rates of offenders among their residents."\textsuperscript{170} Homeless individuals face alarming rates of violence and victimization\textsuperscript{171} and should be recognized as stakeholders in issues of community and safety. Instead, quality-of-life enforcement programs treat perceived sources of disorder as "others" - outsiders to be punished for invading, disrupting, and tarnishing our neighborhoods. These "others" are our neighbors, and "other-izing" our neighbors only blurs the true reasons for neighborhood decline.

\textsuperscript{168} Id.
\textsuperscript{169} Evelyn Nieves, Prosperity's Loser's: A Special Report, N.Y. TIMES, Dec. 7, 1999, at A1. "[S]tudies of homeless people have suggested that most of them once had homes in the communities where they became homeless." Id. See also BURT ET AL., supra note 17. In this study, more than half (54 percent) of homeless people interviewed were "living in the same city or town where they became homeless." Id.
\textsuperscript{170} Kurki, supra note 27, at 258.
\textsuperscript{171} ILLEGAL TO BE HOMELESS, supra note 6. In 1999 alone, 183 individuals died homeless in San Francisco. Id. at 106. See also BURT ET AL., supra note 17. "While they have been homeless: 38 percent say someone stole money or things directly from them; 41 percent say someone stole money or things from their possessions while they were not present; 22 percent have been physically assaulted; 7 percent have been sexually assaulted." Id.

For recent examples of violence experienced by homeless people, see People v. Engelman, 92 Cal. Rptr. 2d 416, 417 (Cal. Ct. App. 2000), ordered depublished in 997 P.2d 1043 (Cal. 2000) (defendant smashed a bottle over the head of a homeless man, demanded money and finding none, took the victim's cigarettes, later telling a police officer that "he thought he could get away with stealing from [the victim] because homeless persons seldom report crimes"); Huntley v. State, 518 S.E.2d 890, 891-92 (Ga. 1999) (the victim died from strangulation and a head wound; the defendant was found guilty of felony murder, killing the victim in the process of stealing the victim's watch); State v. Ogden, 7 P.3d 839, 842 (Wash. App. 1999) (14 year-old defendant hit homeless day laborer victim over the head at least eight times with a skateboard; when the victim was no longer moving, the defendant stabbed him several times, hit him repeatedly, carved the victim’s upper eyelid, and stole the victim’s money; the defendant was not tried as an adult, and the Juvenile Court, after finding him guilty of first degree felony murder, sentenced him to the maximum penalty of seven years at a juvenile detention facility); People v. Pena, 716 N.E.2d 172, 172 (N.Y. 1999), aff’d 673 N.Y.S.2d 688, 689 (N.Y. App. Div. 1998) (a group of teenagers attacked two homeless people, lighting one victim on fire and striking the other victim with a bottle; the defendant attacked a homeless person at exactly the same location one week earlier); Driver Hit Man and Let Him Die in Her Garage, Police Say, N.Y. TIMES, Mar. 8, 2002, at A14 (25 year-old female nurse hit a homeless man with her car; the man became stuck in the windshield and the woman drove home, leaving the man to bleed to death in her garage; over the ensuing days the woman repeatedly apologized to her victim, and after his death she and a friend dumped his body in a park).
II. SAN FRANCISCO’S QUALITY-OF-LIFE ENFORCEMENT

Candidate positions on homelessness make or break elections in San Francisco.\textsuperscript{172} Issues of homelessness occupy mainstream policy discussions in San Francisco without interference from “compassion fatigue” or “disorder fatigue.”\textsuperscript{173} In 1999, San Francisco spent $57 million of locally generated funds on homeless services, more so than any other city in the United States.\textsuperscript{174} In 2001, that number increased to over $82 million.\textsuperscript{175} But arrests of homeless people for sleeping, loitering and other quality-of-life offenses continue to increase.\textsuperscript{176}

A. THE SAN FRANCISCO TRADITION

1. Jordan’s Matrix

In 1991, city voters elected former police officer Frank Jordan as Mayor, based in part on a platform dedicated to addressing “aggressive panhandling” and “cleaning up” homeless encampments.\textsuperscript{177} Jordan’s administration adopted the nationally endorsed criminalization efforts, using local sales as public and legal justification for Matrix,\textsuperscript{179} a policy of “homeless sweeps” and orchestrated arrests.\textsuperscript{180} Matrix directed police


\textsuperscript{173} Ellickson, supra note 74, at 1168 n.4.

\textsuperscript{174} HUNGER AND HOMELESSNESS 1999, supra note 3, at 55.

\textsuperscript{175} Wu, supra note 13 (discussing the debate surrounding the estimated cost).


\textsuperscript{177} KELLING & COLES, supra note 2, at 206, 209.

\textsuperscript{178} Joyce v. City and County of San Francisco, 846 F. Supp. 843 (N.D. Cal. 1994).

\textsuperscript{179} Id. at 846. “Institution of the Matrix program followed the issuance of a report in April of 1992 by the San Francisco Mayor’s Office of Economic Planning and Development, which attributed to homelessness a $173 million drain on sales in the City.” Id.

\textsuperscript{180} During sweeps, large numbers of police officers, with or without the assistance of other city workers, attempt to clear homeless people from a given area and may forcibly arrest these homeless individuals for petty crimes, remove or destroy their property, or threaten arrest if the individuals do not leave the area. Foscarinis et al., supra note 3, at 147; Smith, supra note 34, at 299, 322-25; William Booth, \textit{City Trying to Make Everyone Feel at Home}, \textit{WASH. POST}, Feb. 8, 2002, at D12. Homeless sweeps are not unique to San Francisco, nor are they techniques relegated to the past. Gregory Alan Gross, \textit{Officers Sweep Homeless Camps}, SAN DIEGO UNION-TRIB., Mar. 3, 2002, at B1 (armed with semiautomatic handguns, Taser stun guns and beanbag shotguns, officers focused on individuals living in a particular area of San Diego, attempting to arrest anyone “arrestable,”
officers to vigorously enforce specific quality-of-life ordinances and issue citations to homeless people for publicly "performing life-sustaining acts,"\textsuperscript{181} such as sleeping in doorways or parks, or urinating in public.\textsuperscript{182} Citations required the payment of a seventy-six dollar fine within three weeks as punishment for violating the local ordinance.\textsuperscript{183} Most citations did not result in immediate arrest, though failure to pay multiple citations could result in arrest.\textsuperscript{184} Underlying this program was the goal of deterring behaviors that "make San Francisco a less desirable place in which to live, work or visit."\textsuperscript{185}

In the legal battle that ensued, the federal district court found that the Matrix arrests did not punish homeless individuals for their status but rather for acts derivative of their homeless status, and thus did not violate the Eighth Amendment's prohibition against cruel and unusual punishment.\textsuperscript{186} The court doubted whether homelessness even constituted a status under Eighth Amendment jurisprudence.\textsuperscript{187} Further, the court held that the

\begin{itemize}
  \item While homelessness can be thrust upon an unwitting recipient, and while a person may be largely incapable of changing that condition, the distinction between the ability to eliminate one's drug addiction as compared to one's homelessness is a distinction in kind as much as in degree. To argue that homelessness is a status and not a condition, moreover, is to deny the efficacy of acts of social intervention to change the condition of those currently homeless.
  \item The Court must approach with hesitation any argument that science or statistics compels a conclusion that a certain condition be defined as a status. The Supreme Court has determined that drug addiction equals a status, and this Court is so bound. But the Supreme Court has not made such a determination with respect to homelessness, and because that situation is not directly analogous to drug addiction, it would be an untoward excursion by this Court into matters of social policy to accord to homelessness the protection of status.
  \item In addition to the fact that homelessness does not analytically fit into a definition of a status under the contours of governing case law, the effects which would ensue from such a determination by this Court would be staggering.
\end{itemize}

\textsuperscript{181} Daniels, \textit{supra} note 15, at 713 (citations omitted).
\textsuperscript{182} Joyce, 846 F. Supp. at 846. "The [Matrix] program addresses offenses including public drinking and inebriation, obstruction of sidewalks, lodging, camping or sleeping in public parks, littering, public urination and defecation, aggressive panhandling, dumping of refuse, graffiti, vandalism, street prostitution, and street sales of narcotics, among others."
\textsuperscript{183} \textit{Id.}
\textsuperscript{184} \textit{Id.} at 848-49.
\textsuperscript{185} \textit{Id.} at 846.
\textsuperscript{186} \textit{Id.} at 853-58.
\textsuperscript{187} \textit{Id.} 857-58. District Judge D. Lowell Jensen outlined the development of the doctrine of status protection and, drawing on the inviolability and potential of legislated social policy to right wrongs, held that he would not expand the status doctrine to the analogy of homelessness.

... By parity of reasoning [to Justice Marshall's Powell decision and Justice Black's concurrence], this Court is convinced that adopting the central thesis of plaintiffs in this case would be an equally revolutionary
Matrix arrests did not violate the Equal Protection Clause, impermissibly burden the homeless plaintiffs’ due process rights, nor interfere with their right to travel. 188

2. Brown’s Sweeping Efforts

In 1995, a five-way mayoral debate focused on criticisms of Jordan’s Matrix program, the quality-of-life plan intended to right the wrongs of homeless-oriented disorder. 189 The San Francisco Chronicle, the city’s highest circulating daily newspaper, endorsed Jordan expressly on the basis of Matrix. 190 With a vow to end Matrix, Willie L. Brown, Jr. won the San Francisco mayoral election, defeating incumbent Frank Jordan. 191 During the campaign, Brown described Matrix as “persons in uniforms operating as if they are occupational officers in a conquered land.” 192

In February 1996, Brown publicly requested that the Police Chief suspend Matrix and its targeted quality-of-life ordinance enforcement. 193 A week later, the Police Chief issued a bulletin affirming the rights of homeless people, and on April 15, 1996, the Police Chief issued a memorandum announcing the official end of Matrix-related law enforcement efforts. 194 The next day a San Francisco Municipal Court judge dismissed all Matrix citations and recalled all Matrix-related warrants. 195 While Matrix officially ended with the beginning of Brown’s first administration, the Mayor’s subsequent “acts and words have created uncertainty as to whether the change is nominal or substantive.” 196

Mayor Brown replaced the orchestrated sweeps of Matrix with an unpublicized policy of aggressive enforcement of quality-of-life ordinances

---

188. Joyce v. City and County of San Francisco, 846 F. Supp. 843, 858-63 (N.D. Cal. 1994). The plaintiffs achieved limited success regarding homeless individuals’ property rights. Id. at 863. The city claimed that destroying the unattended property of homeless people constituted a permissible official act because a reasonable expectation of privacy does not extend to property left in public. Id. The court found that homeless people maintain their Fourth Amendment possessory interests in unattended property if their belongings are not intentionally abandoned. Id. However, six weeks prior to the plaintiff’s injunction hearing, the city instituted a policy facilitating the confiscation and storage of “property of value,” and the court found that this new procedure sufficiently protected plaintiffs’ property rights. Id. at 864.

189. KELLING & COLES, supra note 2, at 212.

190. Id.

191. KELLING & COLES, supra note 2, at 212-13.


193. Joyce v. City & County of San Francisco, 87 F.3d 1320 (9th Cir. 1996); Joyce v. City & County of San Francisco, No. 95-16940, 1996 U.S. App. LEXIS 16519, at *2 (9th Cir. 1996).


195. Id. at *2-3.

196. KELLING & COLES, supra note 2, at 212.
and prosecution of individual homeless people caught violating those ordinances. The San Francisco Police Department's quality-of-life enforcement officially devolved into general "law enforcement," or specific responses to complaints as they arise. Though Mayor Brown publicly declared a departure from Jordan's highly publicized and controversial Matrix program, officers continue to "disperse" loiterers from public spaces and cite people for sleeping in parks. As applied, Brown's policies may differ from Jordan's more in rhetoric than substance. "He might have dropped Matrix in name, but that is still what is happening." Mayor Brown did not tout an organized criminalization campaign in the media, and yet quality-of-life citations have doubled since the initiation of Matrix. Over 11,000 citations in 1994 (during Matrix) increased to over 16,000 in 1996, and escalated to over 23,000 in 1999. Officers gave these tickets to homeless people for sleeping, camping, urinating, trespassing, and drinking alcohol in public.

This increased citation rate may be attributable in part to economic factors. The improved economy of the late 1990s prompted downtown revitalization projects and business improvement plans, and introduced upscale housing, consumers, and money into run-down inner-city neighborhoods. With the influx of wealth, San Francisco enforced

197. Lane, supra note 176.
198. See KELLING & COLES, supra note 2, at 70-107 (criticizing the "crime fighting" techniques that police departments emphasize, at the expense of crime prevention and maintenance of minor community standards).

When the police car pulled up, the dozen of them were sitting in a tired heap with 15 shopping carts and two dogs along a landscaping wall outside the Trinity Plaza Apartments on Market Street.

Not an hour earlier, two officers had chased them all from a park across the street, at the tourist-filled United Nations Plaza. Not 10 minutes earlier, one of them, Caesar Cruz, a resident of the alleys for three years, had said he felt like crumpled paper in the wind, tossed from here to there all day long.

Now, an officer was saying someone had complained about them. Mr. Cruz, holding two $76 summonses for "camping in public" (sleeping in a doorway), worried about getting another. So he nodded again and again when the officer said he would like for Mr. Cruz to "move along." No one uttered a word in protest. Everyone scattered.

Id.
200. Id. (quoting Sister Bernie Galvin of Religious Witness with Homeless People).
201. NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, NO HOMELESS PEOPLE ALLOWED 32 (1994).
202. Foscarinis et al., supra note 3, at 151.
203. Lane, supra note 176.
204. ILLEGAL TO BE HOMELESS, supra note 6, at 103.
205. Nieves, supra note 169.

Ordinances intended for people on the streets have become popular in the last 10 years, and even more so in the last 5, as the booming economy has brought real estate developers, tourists and well-to-do home buyers back to
quality-of-life violations in an effort to increase perceptions of safety and cleanliness.206 The increased wealth of many city residents encouraged a bottom-line emphasis on "order," leading to the dispersal and "clean-up" of homeless people.207 The union of "tough love" and "law and order" rationalizes the use of police officers and citations to force homeless people off the streets, sometimes "banishing" them from the city.208 Paul Boden, board member of the National Coalition for the Homeless and executive director of the San Francisco Coalition on Homelessness, explained: "There is an attitude that with unemployment at record lows, with the stock market at record highs, if you're poor, it's your own damn fault."209 Additionally San Francisco is home to one of the toughest housing markets in the nation, with a vacancy rate of less than one percent.210 Economics have changed the character of homelessness in San Francisco and fueled the soaring quality-of-life citation rate.

The increasing citation rate may also be partially due to police officers’ perceptions about the efficacy of the citation process. With the vigorous enforcement of quality-of-life offenses beginning in January of 2000, the San Francisco City Attorney’s Office demonstrated a commitment to following through with these citations. In cities across the country, "police officers, knowing now that there is a system to deal with these offenses, are issuing more charges."211 Further, quality-of-life citations allow officers to conduct broad investigations with "enhanced surveillance."212 Citations and the accompanying searches, seizures and warrant checks of minor offenders213 lead to increased harassment and institutionalization for life-sustaining acts which are legal when performed by housed people.214

3. Prosecutors in Traffic Court

From January 2000 to June 2001, Mayor Brown gained the cooperation of city agencies in issuing an ultimatum to homeless offenders of quality-of-life ordinances: pay fines or accept deals from prosecutors.215 As an

downtowns. The scramble for space has made once overlooked neighborhoods, the kind where single-room-occupancy hotels thrived and the very poor lived unnoticed, hot properties. The catch is they must be scrubbed clean.

Id.
207. Nieves, supra note 169.
208. STONER, supra note 116, at 163-63.
210. Ilene Lelchuk, Mother, Son To Get Privacy In New S.F. Homeless Shelter; Fourth Facility For Families Will Be City’s Largest, S.F. CHRON., Mar. 8, 2001, at A20 (“an average two-bedroom unit costs about $2,740”).
211. Ammann, supra note 56, at 817.
213. Id.
214. Amman, supra note 56, at 811.
215. Jaxon Van Derbeken, Deputizing S.F. Lawyers Is Upheld; City Attorneys Prosecute
alternative to fines, homeless people who violated quality-of-life ordinances could opt to perform community service or add their names to the city’s extensive wait lists for housing and social services.\textsuperscript{216}

In January 2000, Mayor Brown and City Attorney Louise Renne responded to merchant and resident complaints about loitering, drinking in public, and public urination by assigning two attorneys to represent the city in prosecutions of these quality-of-life violations in traffic court.\textsuperscript{217} The Mayor’s budget provided this prosecution program with $250,000, but did not allocate additional funds to the agencies responsible for delivering the housing, shelter, mental health, and substance abuse services to the homeless population.\textsuperscript{218} District Attorney Terrence Hallinan deputized the two Deputy City Attorneys to represent the city in this “law enforcement” or “criminal prosecution” capacity.\textsuperscript{219} Initially, at least, Hallinan would not take city funds for this “nuisance” prosecution program.\textsuperscript{220} “I did not feel it was appropriate for my office. The City Attorney volunteered to undertake this responsibility and I agreed to swear in their deputies as long as I retained oversight.”\textsuperscript{221} The attorneys worked through the City Attorney’s office, with permission to prosecute conferred by the District Attorney’s Office.\textsuperscript{222}

The deputy City Attorneys in traffic court ensured that homeless people accused of committing quality-of-life infractions would no longer be “let off without penalty.”\textsuperscript{223} The stated purpose of this quality-of-life initiative was to connect homeless people with social services. Renne explained: “Everyone talks about decriminalizing homelessness. That’s what we’ve done. . . . This is a completely civil program. People go through it and get services.”\textsuperscript{224} The deputy City Attorneys approached alleged quality-of-life offenders before the traffic court Commissioner called their cases.\textsuperscript{225} The deputy City Attorneys were authorized to make deals and prosecute these infractions.\textsuperscript{226} In lieu of fines, offenders were offered the option of


\textsuperscript{216} HUNGER AND HOMELESSNESS 1999, supra note 3, at 59, 61. In 1999, the city “experience[d] an average of 25 days a month at full shelter capacity,” thus having to turn away unspecified numbers of homeless individuals and families. \textit{Id.} at 61. Families were on waiting lists for even emergency shelter. \textit{Id.} at 59. \textit{See also} Edward Epstein, \textit{Hallinan Wants Control of S.F. Homeless Project; He Says He’d Do Better Than City Attorney}, S.F. CHRON., June 21, 2000, at A17.

\textsuperscript{217} Van Derbeken, supra note 215. The San Francisco City Charter allowed the District Attorney to deputize others to enforce the city ordinances. \textit{Id.}


\textsuperscript{219} Van Derbeken, supra note 215.

\textsuperscript{220} \textit{Id.}

\textsuperscript{221} Lane, supra note 176 (quoting a facsimile from District Attorney Terrence Hallinan).

\textsuperscript{222} \textit{Id.}

\textsuperscript{223} Epstein, supra note 216.

\textsuperscript{224} \textit{Id.}

\textsuperscript{225} Lane, supra note 176.

\textsuperscript{226} \textit{Id.}
performing community service or enrolling in social service programs, depending on the infraction.\(^{227}\) These services were intended to act as "rehabilitation program[s] for offenders . . . to address the underlying causes of the violation[s]."\(^{228}\)

If the alleged offender accepted the deal, the city waived the monetary fine pending the individual’s completion of a service program managed by the Pre-Trial Diversion Program, a private, non-profit organization that finds community service and social service placements for defendants.\(^{229}\) The City Attorney’s Office publicized the following as among available services: volunteer work,\(^{230}\) temporary shelter, "English as a Second Language" courses, computer classes, alcohol counseling, substance abuse treatment, and mental health services.\(^{231}\)

The prosecution program embraced coercion as a means to influence the decisions of homeless people. If the accused refused the proffered deal, the deputy City Attorney *prosecuted* the infraction. Appearing in front of the traffic court Commissioner, the attorney would present the city’s case, "call" the officer who made the initial report, and question the officer and alleged offender.\(^{232}\) The Commissioner asked the accused individuals for their plea and explanation.\(^{233}\)

Though non-compliance or failure to appear at court dates, compulsory community service, or social service appointments lead to an arrest warrant and potential incarceration,\(^{234}\) Mayor Brown and other local policy makers envisioned the program as a constructive approach to homelessness.\(^{235}\)

"‘We think it’s an opportunity for the city to make sure that additional people get connected with social services,’ said Marc Slavin, spokesman for the city attorney’s office. ‘We’re not taking a punitive approach.’"\(^{236}\)

The *San Francisco Bay Guardian* described one case from February 2000, early in the city’s prosecution efforts, apparently when neither prosecuting attorney made an appearance:

Robert Stenet, who is homeless, was given a $68 ticket for

\(^{227}\) *Id.*

\(^{228}\) *Mayor’s Budget*, *supra* note 218, at 131.


\(^{230}\) *What Quality, Whose Life, and Who’s REALLY “Stuck Between a Rock and a Hard Place?”*, *Street Sheet* (S.F.), July 2001, at 1 [hereinafter *What Quality, Whose Life*]; Epstein, *supra* note 216 (Adam Arms, staff attorney for the Coalition on Homelessness explained that most of this volunteerism involved “licking stamps or sweeping the streets.”).


\(^{232}\) Lane, *supra* note 176.

\(^{233}\) *Id.*


\(^{235}\) *Mayor’s Budget*, *supra* note 218, at 131. "Though these activities are unlawful, the approach of the program is to not to [sic] take punitive action, but to address the underlying causes of the violation.” *Id.*

\(^{236}\) Van Derbeken, *supra* note 215.
sleeping in Golden Gate Park. There was no deputy city attorney prosecuting at his Feb. 3 hearing. Stenet was more punctual than the judge, appearing at 10:30 on the dot, ruddy from exposure.

When Judge Pauline Sloan asked him how he pled, he said, “No contest with an explanation, your honor.”

“OK, so you plead not guilty, right?” she replied, reaching for her “dismissed” stamp.

Stenet kept talking. It was pouring rain, he explained, and he was trying to find a dry spot. “I wasn’t even really sleeping,” he told the judge. “I just had my eyes closed.”

Sloan dismissed his case immediately, but he apologized anyway. “I’m sorry,” he said. “I won’t make that mistake again, your honor.”

After leaving the courtroom he told the Bay Guardian, “I was going to tell her: I was trying to get into a shelter, but I couldn’t. It’s been raining.”

Initially, many of the citations were poorly documented by the reporting officers and were later dismissed by the deputy City Attorneys, who worked to get better police reports. The traffic court Commissioners continued to dismiss some citations either because the city failed to substantiate the violation, or the Deputy City Attorneys made deals with many quality-of-life offenders. Many more citations proceeded to arrest warrants when individuals failed to appear for their court appointments.

In June of 2000, District Attorney Terrance Hallinan informed the San Francisco Board of Supervisors and City Attorney Louise Renne that as of August 1, 2000, he would withdraw permission for the Deputy City Attorneys to continue with these prosecutions. “I think it’s appropriate that my office do it. . . . We’re the prosecutors and we can do it at half the price.” The Board of Supervisors allocated over $151,000 to the District Attorney’s Office to continue the quality-of-life initiative with one lawyer and one paralegal for the 2000-2001 fiscal year. Beginning in August 2000, the District Attorney’s office assumed complete control of the

237. Lane, supra note 176.
238. Van Derbeken, supra note 215.
239. Morrow, supra note 1.
240. Id.; The Big Lies Behind Harassment of the Poorest People, STREET SHEET (S.F.), Oct. 2001, at 4 [hereinafter Big Lies].
241. Epstein, supra note 216.
242. Id.
243. Id.
program, prosecuting homeless people for quality-of-life citations in traffic court. The District Attorney’s office did not position attorneys in traffic court to punish non-homeless offenders of these or other minor local ordinances.

B. THE “SUCCESS” OF CITATION AND PROSECUTION

1. Process

The process of deal-making or subsequent prosecutions in traffic court raised fundamental questions of fairness. The City Attorney’s Office established this deal-or-prosecution program to specifically target homeless individuals for quality-of-life citations. The attorneys made their offers outside of courtrooms and outside the presence of the traffic court Commissioners. The prosecuting attorneys suggested deals one-on-one to the accused with no advocates present, creating an environment of limited alternatives. One person, alleged to have violated a quality-of-life ordinance, described the deal-making process as coercive: “This guy here tried to intimidate me. . . . I think it’s an intimidation tactic. A lot of people are ignorant of the law.”

In California, persons charged with infractions are not subject to imprisonment and are statutorily precluded from the right to counsel and the right to jury trial; infractions result in fines or community service in lieu of fines. Some individuals, ticketed with quality-of-life citations, were arrested and incarcerated at the San Francisco County Jail over night because of warrants arising from these citations. These individuals were generally released on the next court date with “credit for time served.” This incarceration credit cancelled out the individual’s debt for committing an infraction that could not lead to time in jail. Even though an individual cannot be jailed for minor ordinance violations such as sleeping in a park, the reality remains that the individual faces potential incarceration with repeat offenses and the issuance of warrants. If the individual accused of a quality-of-life violation refused to take the deal, then the attorney prosecuted the case. The combined effect of education, experience and authority presented by the prosecutor, police officer and judge created an

244. MAYOR’S BUDGET, supra note 218, at 131; What Quality, Whose Life, supra note 230.
245. Epstein, supra note 216.
246. Van Derbeken, supra note 215.
247. Lane, supra note 176.
248. Id.
249. Id.
250. CAL. PEN. CODE § 19(6) (West 2002). The federal corollary is set forth in Scott v. Illinois, 440 U.S. 367 (1979), which holds that defendants are constitutionally guaranteed the right to counsel if they are subject to any period of potential incarceration.
252. Id.
253. Lane, supra note 176.
environment of intimidation.\textsuperscript{254}

2. Diversion

Some homeless people fulfilled diversionary sentences by performing community service and labor while they continued living on the streets or in precarious shelter situations.\textsuperscript{255} However, the city’s offer of social services, as alternatives to fines, was illusory.\textsuperscript{256} Violators of quality-of-life ordinances were not expedited through the city’s extensive waiting lists for services.\textsuperscript{257}

Because of inordinate demand, San Francisco homeless shelters assign beds on a lottery basis.\textsuperscript{258} Two thousand temporary shelter beds are available\textsuperscript{259} for a homeless population estimated to include at least 7300 people.\textsuperscript{260} Further, shelters have “by and large [] dirty bathing and sleeping facilities and rude and poorly trained staff. Some shelters require people to leave at 7 a.m. and tell them to return by 8 p.m. if they want a bed.”\textsuperscript{261} Overcrowding and underpaid, under-trained staff, contribute to violence at shelters.\textsuperscript{262} Some individuals refuse to play the odds for city shelter because of the perceived danger in residency.\textsuperscript{263}

Waiting lists for mental health services and substance abuse treatment are extensive.\textsuperscript{264} In San Francisco, people without financial resources face “the multiple year wait for [subsidized] housing, the nine month wait for methadone maintenance, or the year long wait for residential mental health.”\textsuperscript{265} These waitlists translate into a non-existent safety net for poor and homeless people in San Francisco. “We continue to discharge people from prisons and hospitals into shelters. We continue to put people who need help with substance abuse on long waiting lists. And now, [we are] putting people in jail for doing in public what other people have the privilege to do in private.”\textsuperscript{266}

These waiting lists do not improve the lives of homeless quality-of-life

\textsuperscript{254} Id.
\textsuperscript{255} Morrow, supra note 1.
\textsuperscript{256} What Quality, Whose Life, supra note 230.
\textsuperscript{257} Interview with Adam Arms, Staff Attorney, Coalition on Homelessness, San Francisco (May 15, 2001).
\textsuperscript{258} Id.
\textsuperscript{259} Jonathan Curiel, Homeless Survey Finds Shelters Are Dirty, Crude; S.F. Coalition Asks City For Help, S.F. CHRON., Oct. 6, 2000, at A23.
\textsuperscript{260} Wu, supra note 13.
\textsuperscript{261} Curiel, supra note 259.
\textsuperscript{263} Brandon, supra note 74; The Streets No More!, STREET SHEET (S.F.), Jan. 2002, at 8.
\textsuperscript{264} Squalor in the Newspapers, STREET SHEET (S.F.), Dec. 2001, at 3.
\textsuperscript{265} Id.
\textsuperscript{266} Nieves, supra note 169.
offenders. Rather than provide housing or treatment, this prosecution program delivered homeless people back onto the streets without taking efforts to address the causes underlying the infractions. Individuals continue living on the streets, presumably committing the same crimes: loitering, sleeping in doorways and in parks, etc., without obtaining services. Meanwhile the office of the prosecuting attorney continued to monitor the individual's diversionary participation status utilizing terms such "ongoing," "deferred," or "satisfactory." "Zero people received medical treatment. Zero people received housing. Many of those claimed by the District Attorney's office to have received 'substance abuse treatment' were simply given information about Alcoholic Anonymous meetings." If homeless individuals received citations for sleeping illegally, they faced detention, court appearances, defending themselves and complying with some form of punishment. But nothing compelled the city to act on their behalf to ensure solutions rather than discipline.

3. Jail Time

Even if homeless people appeared at scheduled court dates, the possibility of losing remained. Oftentimes, these individuals were technically guilty of acts they perform publicly because of inadequate alternatives. Individuals agreeing to complete diversionary community service continued to risk an arrest warrant for failure to complete any step in the process, from initial court appointment to final discharge from the program. Many times, homeless people missed the original court date and arrest warrants issued. Faced with the ordeal of defending themselves in court for an act they in fact committed, many people resigned themselves to an arrest warrant and an eventual night in jail.

4. Wasted Resources

Quality-of-life enforcement, including arrests, court appearances, and sanctions, results in unintended consequences. Oftentimes, homeless individuals are forced to leave belongings unattended: separated from their possessions, records and medications. Facing a court date or arrest on a warrant leads to missed housing, job, and medical appointments, and loss of public benefits or any semblance of a safety net.

Many police officers balk at citing or arresting homeless people for acts associated with living in public. The trivial "transgressions" of

269. Interview with Arms, supra note 257.
271. Lane, supra note 176.
273. Id.
274. Interview with Arms, supra note 257.
275. Big Lies, supra note 240.
quality-of-life violations are viewed as distracting time and effort away from their "proper duties." Police and correctional officers often do not have the training or resources to provide referrals or supervision to individuals who may need specialized services for mental illness or substance abuse. Contemporary society demands that officers expand their professional repertoire beyond mere enforcement of laws, increasing their responsiveness to crime prevention and community life. Conflict arises because police officers often do not want to and are not adequately trained or prepared to perform "social work," while concurrently, "the police and jails appear to be among the most frequent providers of services to the population [of homeless people]." Police departments, jails and courts are not prepared to deal with the specialized and intensive needs of homeless people, "which raises critical questions related to the costs and benefits of such a diversion – questions that must be resolved not only in economic but also in humanitarian terms." We are asking too much of our police officers, prosecutors and court system. Since January 2000, San Francisco has spent over $400,000 prosecuting quality-of-life citations. These prosecutions "take up an inordinate amount of court time since they get re-docketed numerous times due to the failure of homeless people to appear or because the person does not have the funds to pay the fine." Estimated costs of enforcing quality-of-life codes vary, but uniformly exceed the estimated costs for housing. "In 1993, the average cost of detaining one person for one day in jail in the U.S. was over $40, excluding the police resources utilized in the arrest process." But that figure did not incorporate court and prosecutorial expenses. In 1995, prosecuting a typical quality-of-life violation in New York, from initial detention to final court appearance and compliance with the court-ordered remedy, was estimated to "cost upwards of $2000." A realistic local cost

276. Pamela J. Fischer, Criminal Behavior and Victimization Among Homeless People, in HOMELESS: A PREVENTION-ORIENTED APPROACH 102 (René L. Jahiel ed., 1992) (citations omitted). "Police and court officers may view time spent in dealing with individuals 'whose legal transgressions are trivial in comparison [to their psychiatric problems] as time taken from their 'proper' duties; thus they may eventually become less responsive to homeless people's needs." Id. 277. Foscarinis et al., supra note 3. "Detaining individuals who have not committed serious crimes but who may suffer from mental illness or addiction, causes difficulties for jail officials. Correctional officers usually are not adequately trained to provide the necessary special supervision, and they often experience problems interacting with other detainees." Id. 278. Livingston, supra note 121, 670-71. "[L]aw is important to the police role; policing that ignores the ebb and flow of community life does so only at grave peril to both police and the people for whom they work." Id. 279. Kurki, supra note 27, at 251. 280. Fischer, supra note 276, at 102 (citations omitted). 281. Id. at 104. 282. What Quality, Whose Life, supra note 230. 283. Ammann, supra note 56, at 819-20. 284. Foscarinis et al., supra note 3, at 155. 285. Harcourt, supra note 28, at 384.
approximation may be reflected in the numbers cited by then-San Francisco Supervisor, Angela Alioto, in a Resolution proposed in 1993 and adopted in 1995: “Urging the mayor to redirect police activities from the enforcement of quality of life infractions in light of the United States Justice Department’s declaration that such acts violate the Eighth Amendment of the U.S. Constitution because they constitute cruel and unusual punishment.”

The resolution denounced the Matrix program, estimating that average quality-of-life arrests cost between $226 and $584 each. By comparison, “the cost of providing transitional housing, which includes not only housing and food but also transportation and counseling services was approximately $30.90 per person per day.” Whether $40 a day, $226 for an arrest, or $2000 for the whole process, quality-of-life enforcement costs more than providing comprehensive services to homeless persons.

Legal advocacy organizations sometimes represent homeless individuals at quality-of-life infraction hearings in traffic court. That representation counters the resources, legitimacy, and education of the prosecutors and Commissioners. Attorneys may make traffic court appearances on behalf of their homeless clients, ensuring that the quality-of-life citations do not become warrants. However, these pro bono attorneys cannot accept settlement proposals of community or social service assignments from prosecutors “without the participation of the accused.” Because of this constraint, some indigent offenders are sentenced to pay fines that they have no means of paying. These unpaid fines lead to arrest warrants. But many homeless people cited for quality-of-life violations candidly admit, that without advocacy, they would not make the initial court appearance and the citation would have lead to an arrest warrant anyway.

C. CURRENT POLICIES AND PROPOSALS

1. Prosecutors Out of Traffic Court: Old Procedures, New Violations

In July 2001, the District Attorney officially ended the publicized quality-of-life prosecution program. Since that time, homeless people penalized for living in public face no formalized prosecution, confronting only the usual citation experience: paying fines or challenging tickets, a

286. San Francisco County, Cal., Resolution 214-95 (Mar. 20, 1995).
287. Id.
288. Foscarinis et al., supra note 3, at 155.
289. Van Derbeken, supra note 215.
290. Interview with Arms, supra note 257.
292. Interview with Arms, supra note 257.
293. Morrow, supra note 1.
294. Interview with Arms, supra note 257.
Another development includes the expansion of prosecutorial efforts. Instead of confronting prosecutors in traffic court, homeless people are now often charged with homelessness-related *misdemeanors* in Superior Court.

2. Community Courts

San Francisco District Attorney Terrance Hallinan proposed prosecuting quality-of-life violations via the District Attorney's Community Court Initiative. Community courts are a national phenomenon based on the model of New York City's Midtown Community Court which opened in 1993. The New York court attempted to promote "broken windows theory, community empowerment, and problem solving . . . combin[ing] punishment with help . . . to address[ ] social problems."

Community courts began in San Francisco as a means to empower community members in devising local solutions, providing restitution to the community and victims. "The purpose of San Francisco Community Court is to discourage quality of life violations within the city by sanctioning the offenders with financial and/or community service." Loitering, littering, open alcohol container violations, "and other miscellaneous quality of life crimes" may be heard before these courts. Offenders may opt for this Alternative Dispute Resolution program as an informal alternative to Traffic Court. Neighborhood residents and merchants form judicial panels to hear cases, deliberate, and decide sentences. Penalties include community service, anger management classes, drug and alcohol counseling, restitution and mediation. Currently, few if any, homeless people charged with quality-of-life violations choose to appear before these courts. But there have been suggestions that the District Attorney may divert some, or all, quality-of-life cases from Traffic Court to community courts.

---

296. Lane, *supra* note 176.
300. *Id.* at 258-59.
301. S.F. Community Court, *supra* note 298.
302. *Id.*
303. *Id.*
304. *Id.*
305. *Id.*
307. See, e.g., Gabriel Cabrera & Elaine Forbes, *City & County of S.F. Board of*
D. ASSESSMENT: ENFORCERS OF QUALITY-OF-LIFE

A limited definition of community undermines this proposed policy of diverting homeless quality-of-life offenders to community courts. These courts both forestall long-term solutions to homelessness, and further criminalize homeless individuals by tying services to punishment.

When San Francisco reacted to community concerns about restitution and control over sentencing, the city included only residents and merchants in its definition of "community." Homeless people, though they may have significant, long-term ties to the area and concerns about sentencing, are not included in this concept of "community." Community courts perpetuate the division between the community, i.e. those with a residence or property, and the sources of community disorder, i.e. those without residences or property. Homeless people are not included in community courts except as offenders, and their interests in safety, restitution, and alternatives to criminal punishment remain officially unrecognized.

Unlike New York, San Francisco's Community Court Initiative did not expand access or funding to local social services. In New York, service providers are physically located within the Midtown Community Court complex, facilitating referrals for education, job training, drug and alcohol treatment, mediation, health care, counseling and community service. In San Francisco, Pre-Trial Diversion makes referrals to local service providers. But as discussed above, the waiting lists for housing, mental health and substance abuse treatment are prohibitive barriers that the services of the Pre-Trial Diversion do not overcome.

When implemented to penalize homeless people for living in public, San Francisco community courts represent a variation on the theme of criminalizing homelessness. These quasi-judicial community panels are not designed to view homeless people as neighbors and penalties will likely reflect this residency bias. Homeless people are not entitled to any representation in Community Court, facing a panel of neighborhood resources and legitimacy but receiving no advocacy. Without additional funding for social services, the referrals of Pre-Trial Diversion are moot. Homeless quality-of-life offenders leave Community Court with no more access to housing or treatment than they entered with, and they continue loitering and drinking alcohol in public, because they have nowhere else to go. Community courts divert funds into a system of punishment that could otherwise be implemented for the services the community courts intend to
provide. Finally, community courts reinforce the idea that police officers, citations, and court systems are appropriate responses to homelessness. Solutions to homelessness require complex community remedies that are not patrolled and enforced by the police or court systems.

E. QUALITY-OF-LIFE: OBSCURING REAL SOLUTIONS

Quality-of-life enforcement presents the debate about social services for homeless people in terms of false alternatives. The prohibition of acts intertwined with homelessness, “significantly lowers any standards of acceptable survival conditions, converting the debated living options into jail versus the streets, instead of the streets versus a shelter, or a shelter versus housing.” Either society issues and prosecutes citations, with court-enforced services, or we “do nothing,” leaving homeless people with no services and our streets in disarray.

Advocacy for the rights of homeless people becomes “reactive” to these false alternatives. Energy is wasted preventing a cycle of incarceration for basic acts of living. Daily, resources are spent challenging incarceration, begging for a return to “benign neglect.” Success in these attempts only translates to “negative rights,” where homeless people are not punished for poverty, residency status and illness. Attorneys are forced to quibble with the officers’ reporting on citations, rather than address their clients’ underlying needs and the reasons prompting recidivism.

Real solutions, based on economic justice, call for a very different kind of advocacy. Advocates should be arguing for “rights to a job[,] ... the economic means to survive[,] ... and decent affordable housing” rather than “the right to sleep in the park and to beg in the subway[,] ... and for the placement in neighborhoods of mass shelters that no one (including homeless people) reasonably wants to live in or near.”

The economic and social costs of arrest, prosecution, and court-enforced service planning are high. Ultimately, this short-term reactive advocacy obscures and effaces long-term solutions to homelessness.

314. Foscarinis, supra note 106, at 60.
315. Id.
316. Epstein, supra note 216.
317. Ammann, supra note 56, at 820.
318. Wilson & Kelling, supra note 29.
319. Daniels, supra note 15, at 694.
320. Id. at 694, 723; Foscarinis, supra note 106, at 60.
321. Daniels, supra note 15, at 723.
322. Id. (citations omitted).
323. Van Derbeken, supra note 215.
324. Morrow, supra note 1; What Quality, Whose Life, supra note 230; Epstein, supra note 216.
325. Daniels, supra note 15, at 723 (citation omitted).
III. POLICY ALTERNATIVES TO QUALITY-OF-LIFE ENFORCEMENT

Delivering comprehensive services to homeless people is more effective and cheaper than resorting to police and courts. San Francisco must emphasize permanent solutions not emergency Band-Aids to visual disorder. Rather than removing homeless people or forcing them to "move along," San Francisco's outreach and policies should look to abating and alleviating the causes of homelessness. Concentrating efforts and funds on solutions to homelessness does not require that the city ignore the preservation and safety of public places. To the contrary, public safety is of vital importance to all members of our community, especially those vulnerable and marginalized neighbors living on our streets. City policies can be constructed to avoid this false dichotomy: delivering services without citations, prosecution, court appearances or jail time, while maintaining public spaces.

A. SOLUTIONS & SERVICES

Homeless people must be involved in crafting city policies and solutions. "Only homeless people can truly comprehend the realities of homelessness. Positive change in their life conditions is unlikely to result from discussions and decisions in which they do not take the lead, or even participate." In assessing the role of the individual in determining the policies that affect their own lives, Martin Luther King, Jr. recognized that: "When an individual is no longer a true participant, when he no longer feels a sense of responsibility to his society, the content of democracy is emptied." As neighbors and stakeholders, homeless individuals contribute systemic and anecdotal understandings of the problems underlying the macro of homelessness and the micro of public order and safety. Abandoning a model of benign paternalism opens up our democratic process, expands the as applied practice of equality, promotes the knowledge of ordinary people, and increases the legitimacy of the

326. Id. at 735.
327. THE WORDS OF MARTIN LUTHER KING, JR. 19 (selected by Coretta Scott King, 1987). "When culture is degraded and vulgarity enthroned, when the social system does not build security but induces peril, inexorably the individual is impelled to pull away from a soulless society. This process produces alienation — perhaps the most pervasive and insidious development in contemporary society." Id.
328. See generally GERALD DALY, HOMELESS: POLICIES, STRATEGIES AND LIVES ON THE STREET 239 (1996) ("These [homeless] individuals and groups are best equipped, in most cases, to determine what they need in terms of housing and community services and where these facilities should be located."); Making a More Effective and Accountable Homeless Program: The Community Proposal — Jan. 2002, STREET SHEET (S.F.), MAR. 2002, at 6 [hereinafter The Community Proposal] (discussing numerous elements of necessary improvement in local homeless policies, including the prioritization of decision-making by currently and formerly homeless individuals).
The following policy suggestions assume the incorporation and encouragement of homeless people in planning and implementing solutions that address homelessness and, by extension, public order. The policy concern of public order as affected by homelessness is fundamentally a concern about lack of housing. Research strongly suggests that the long term solution to homelessness is “housing, housing, housing.”

“In New York, 80% of homeless families who have been provided with subsidized apartments have remained intact, out of shelters and off the streets, regardless of their other problems.”

Providing long-term housing will, by itself, end homelessness for many people. One scholar suggests the confluence of necessity, stability, skills, and agency in what he terms, “self-help housing,” where homeless persons participate in constructing and managing their own housing. Housing eases the delivery and use of services, lending security to other endeavors. Long-term solutions must first develop the commitment to and reality of low-income housing within San Francisco’s city limits.

Additional efforts addressing systemic change must focus on improving opportunities for poor people and those lacking skills. San Francisco should fight the national trend and assist homeless people and others without means to pursue immediate educational avenues, passing up the reality of low wage laboring for the potential of discovering real opportunity. Minimum wage falls far below a living wage, or the minimum required to provide for housing, food, health and family expenses. Increased educational attainment is a meaningful and cost-effective route toward promoting self-sufficiency. Individuals will only be positioned for educational efforts if supported by health and family services. Parents need to know their children are safe during the day. People need to be assured that illness will not catapult them back into poverty. Increasing funding for mental health services and substance abuse treatment has the potential to eliminate the city’s extensive waiting lists, ensuring care for our entire community. Further, creating services available on demand will enable individuals to receive care without delays and referrals.

Emergency measures will not address structural social and economic causes of homelessness, San Francisco’s housing vacancy crisis, or the city’s soaring rent prices, but they will make immediate improvements in

330. See generally Iris Marion Young, Inclusion and Democracy 3 (2000) (discussing the testing and strengthening of democracy developed through inclusive public discussions and procedure).
331. Franzese, supra note 10, at 1465.
332. Ratnesar, supra note 172.
333. DALY, supra note 328, at 241.
334. LIEBOW, supra note 25, at 229. “Trying to deliver services to people on the run is typically inefficient if not futile. For most homeless people, the first order of business is to help them stop running... The first order of business is housing.” Id.
the lives of homeless families and individuals. Efforts to ensure shelter and services must be made concurrent with San Francisco’s measures to increase permanent housing for homeless individuals. Whatever the exact count of San Francisco’s population of homeless people, the city should expand the number and quality of the 2000 currently available shelter beds.

We must reaffirm our community’s commitment to the civil rights of homeless people, beginning with recognition of their fundamental privacy and property interests. Following the lead of other prescient communities, San Francisco should extend amnesty, clearing away citations and warrants arising from quality-of-life enforcement.

B. PUBLIC SPACES & RESPONSES TO DISORDER

San Francisco should cease and desist the policy of detentions, citations, court appearances and subsequent jail time for quality-of-life violations. The city’s response to homeless people should move beyond a call to the police. The “most common response [of the public] to homeless people is to invoke the formal justice system, to call the police.” But police officers and courts are not equipped with the resources or training to assess and deliver appropriate services. Quality-of-life enforcement exaggerates and misconstrues the role of police and courts in our society. William Bratton, former Commissioner of the New York City Police Department, described community policing, where officers solve all of society’s problems in the guise of “crime prevention,” as “idealized” and “unrealistic.” San Francisco policies should move beyond code enforcement as a means to link homeless people to social services. Police detention and ordinance violations should not form the city’s primary prerequisite for obtaining social services. The city should increase the availability of these services, designating need as the only prerequisite.

Instead of intervening through law enforcement, San Francisco should hire and train former homeless people to perform intake of homeless people for local service agencies. The city currently should expand its current

335. Daniels, supra note 15, at 731.
336. See supra notes 258-63.
337. Fischer, supra note 276, at 102 (citations omitted).
338. Bratton, supra note 58, at 463-64. Bratton described the inability of community policing to serve as a panacea for all society’s ills:

The idealized notion of community policing, in which beat cops organize a community to solve its problems, has always struck me as unrealistic. It is far too much to ask individual police officers, who are often in their early twenties, to be responsible for solving complex problems and bringing the various resources of local government to bear on problem locations. It may work in some small communities, but it is the rare exception in a community as complex as New York City.

Id.

Mobile Assistance Program, providing referrals and transportation. With expansion and targeted hiring, the community could rely on outreach workers rather than police officers, to address the highly specialized needs of a population with which they are intimately familiar. Completing the necessary intake on the streets would provide substantive information to homeless people and begin the process of linking the individual with services. Drawing from the formerly homeless can serve to break down the barriers of intimidation and authority presented by police or professional staff.

The city should foster community meetings where current and former homeless people interact with local housed people and merchants. Unlike community courts, these meetings would serve as policy-setting workshops rather than finger-pointing, blame games regarding the merits of an individual’s membership within the community. “Establishing community councils that bring together business groups, homeless people, and service providers can create dialogue and help forge political consensus.” Community councils or forums would expand traditional notions of “community” and “neighbors” beyond the constraints of residency. More than definitional changes, this interaction would promote understanding of individuals’ complexity and backgrounds. Personal relationships among neighbors would alter perceptions of “us” versus “them,” and the role of community outreach. Further, all participants could receive training about appropriate situations in which to contact social service representatives. Such meetings should be held outside of police environments, where marginalized community members often do not feel comfortable. These community meetings, exchanges and trainings would familiarize homeless neighbors and those possessing residences with each other.

At a micro level, San Francisco should expand the availability and maintenance of free toilets. Many of the city’s “self-cleaning” public toilets are often broken. Installing new toilets is politically difficult because many property owners fight against placement for fear of stench, disorder, or congregations of people. But the city should stay vigilant in expanding this program rather than continuing to fine people who cannot pay those fines. Citing individuals for public urination or defecation does not “combat urban blight;” it punishes stranded people who use streets

341. The Community Proposal, supra note 328.
342. Id.
343. Foscarinis, supra note 106, at 63.
344. NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, supra note 201, at 108.
345. Interview with Ana Bolton Arguello, South of Market Business Improvement Group (So BIG), S.F., CA. (July 25, 2001)
346. Marla Dickerson, Befouled Businesses Near L.A.’s Skid Row Seek Relief in the Law,
because they lack alternatives.

C. FUNDING

The additional funding required by the previous policy suggestions is either currently available to San Francisco or could be made available. While federal aid has been decreasing,\textsuperscript{347} other innovative funding sources should be pursued. Concerns about funding essentially devolve to questions regarding priorities.

A recent study by the \textit{San Francisco Bay Guardian} identified $9.3 million in uncollected property tax revenue that should have contributed to the city’s affordable housing efforts over the last three years.\textsuperscript{348} The city requires office developers with projects larger than 25,000 square feet to build affordable housing or pay a fee to the Mayor’s Office of Housing to build it.\textsuperscript{349} That fee is supposed to be adjusted according to fluctuations in the cost of housing. “But until recently that provision went almost unnoticed.”\textsuperscript{350} San Francisco housing costs have skyrocketed in the last decade but the fee has not changed since 1994.\textsuperscript{351} The law allows this tax money to be retroactively collected. If the city pursued this tax collection, millions of dollars would be available to build affordable housing.

The city could also raise funds through a small tax on restaurants. “In 1993, Dade County implemented a 1% meal tax on restaurant meals at restaurants that gross over $400,000 per year in order to provide additional funding for facilities and services for homeless people.”\textsuperscript{352} With this tax, Dade County raises almost $6 million a year.\textsuperscript{353} San Francisco County may not be as large or have as many restaurants to tax, but the revenue would still amount to a substantial contribution to homeless services.

Disentangling social services for homeless people from policing, detentions, citations, court appearances, prosecution, court monitoring, and jail time will save San Francisco considerable revenue. By ending the District Attorney’s quality-of-life enforcement program, San Francisco annually saved over $250,000. But the costs of this enforcement span far beyond the District Attorney’s office. Utilizing the mid-range estimate, San Francisco spends somewhere between $226 and $584 for quality-of-life arrests.\textsuperscript{354} If San Francisco refrained from punishing homeless people for acts they commit as a result of living publicly, it could dramatically reduce the number of citations given. A 50% reduction in quality-of-life citations, from 23,000 to 11,500, would almost mirror the number of


349. Id.

350. Id.

351. Id.

352. Foscarinis et al., supra note 3, at 162.

353. Id.

354. See supra note 286 and accompanying text.
citations given in 1994, during Mayor Jordan's Matrix program. That reduction would save the city a minimum of more than $2.5 million with additional money saved on diverted sheriff and court costs. Delivering services to homeless people without citations, prosecution, court appearances or jail time requires more of a re-thinking of implementation than an increase in city expenditures.

CONCLUSION

Contrasting the order and safety of public spaces with the rights and needs of homeless people who live in those same spaces presents a false dichotomy. Safe and clean public spaces are vital for the entire community, including people with permanent housing and those without. Policy makers need not prioritize the interests of tourism and other commercial enterprises over the rights and needs of homeless people. Maintaining public spaces is a universally popular and laudable goal that does not necessitate criminalizing individuals for homelessness.

The police department and the court system should not be the primary providers of social services to homeless people. Delivering specifically tailored, high quality services to homeless people is a vital component of any solution-oriented approach to homelessness. But the costs are high and the outcome poor when society demands that the police and courts

355. Ellickson, supra note 74, at 1247-48 (arguing that cities and their citizens should be entitled to prohibit disorder and its source: street people — whom Ellickson describes as not necessarily homeless); Teir, supra note 26, at 260 (positing that cities have two choices: do nothing and resign themselves to urban decay and crime, or legislate away the deviants); Steven R. Paisner, Comment, Compassion, Politics, and the Problems Lying on Our Sidewalks: A Legislative Approach for Cities to Address Homelessness, 4 TEMPLE L. REV. 1259, 1294-95 (1994) (suggesting that one solution to homelessness exists in police actions: officers should offer homeless individuals transportation to a shelter; refusal of the offer should result in arrest); Bella & Lopez, supra note 55, at 93 (1994) (contrasting the interests of homeless quality-of-life offenders with those of the larger community and the government, and describing these as "competing interests").

356. ILLEGAL TO BE HOMELESS, supra note 6, at 106; Daniels, supra note 15, at 690 n.11. See also Foscarinis, supra note 106, at 3. "[E]veryone has an interest in pleasant public places and ... no one has an interest in living on the street." Id.

357. Coombs, supra note 50, 1370-73.

358. Harcourt, supra note 28, at 385-86 (suggesting alternatives to arrest: incorporating homeless offenders into revitalization/ work programs, using their efforts to develop art projects and parks). See also Cities Seen "Criminalizing" Homelessness, BOSTON GLOBE, Jan. 6, 1999, at A7. "'Some concerns about public space are legitimate,' the report said. 'Ultimately, no city resident — homeless or housed -- wants people living and begging in the streets.'" Id.

359. Fischer, supra note 276, at 102, 104. "[I]n the main, the criminal justice system is being burdened with a task that is not within its proper bailiwick ..." Id.

360. STUDY GROUP ON HOMELESSNESS, STEERING COMMITTEE ON SOCIAL POLICY, HOMELESSNESS 52-53 (1993) (report affiliated with the 1991/92 Co-ordinated Research Programme in the Social Field). "The prevention of homelessness involves meeting three main conditions: recognising housing as a basic social right . . . providing advice and information on housing rights, benefits and emergency accommodation . . . [and] changing the official attitudes towards homelessness." Id. (emphasis in original).
solve the problems of homelessness through assessment, referral or
delivery of social services. We are asking too much of our officers and
attempting to turn our courts into social service agencies.

Real solutions demand comprehensive, community-based efforts to
increase the availability of safe, affordable housing, jobs, and substance
abuse, mental health and other social services. San Francisco’s
investment in policing and prosecuting acts associated with homelessness is
irrational and wasteful. The cycle of jail time, from initial police contact
through warrants and probable incarceration, does not change a homeless
person’s permanent housing status. After receiving citations, appearing
for or missing court appearances, completing community service or
complying with waitlists, homeless offenders of quality-of-life ordinances,
are still homeless. In theory, the city mandated criminalization as a
prerequisite to otherwise unavailable housing and community services.
In practice, housing and services remained unavailable and homeless
people received citations in succession without meaningful community
intervention or alternatives. Rather than spending limited resources on
permanent housing or expanding social services, San Francisco’s process
of criminalization moves homeless people from the streets through the jails
and back to the streets without long-term improvement. To provide
effective solutions to homelessness, San Francisco must begin by divesting
its homeless outreach programs from the police department and the courts.

361. BRENDAN O’FLAHERTY, MAKING ROOM, THE ECONOMICS OF HOMELESSNESS 267
362. Fischer, supra note 276, at 103.
363. HUNGER AND HOMELESSNESS 2001, supra note 18; HUNGER AND HOMELESSNESS 1999,
supra note 3, at 62-63. See also BLAU, supra note 4, at 180. “There is no great mystery
about the steps necessary to eliminate the problem of homelessness in the United States.
Homeless people need what everybody else needs: affordable housing, wages and benefits
sufficient to support themselves, and accessible social services.” Id.
364. Nieves, supra note 169. “George Smith, the director of the Mayor’s Office on
Homelessness, and a former homeless drug user, acknowledged that the police crackdowns
had done little to help matters.” Id.
366. Van Derbeken, supra note 215.