

The Homeless Court Program: Taking the Court to the Streets

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THREE GRAY CONCRETE handball court walls on San Diego High School's athletic field surround fold-out tables and chairs. Desert military camouflage netting shelters them from the sun. The flag of the United States anchors one corner; The State of California's the other. The defendants appearing before this outdoor Homeless Court are veterans who live outdoors on the streets of San Diego, but for three days they are sheltered in tents, and receive employment counseling, housing referrals, medical care, mental health, and other social services.

The Vietnam Veterans of San Diego, sponsors of Stand Down, began sponsoring this temporary tent city in 1988 to relieve the isolation of homeless veterans while assisting their re-entry into society. The annual event provides comprehensive services for homeless veterans, including employment, housing, medical, legal (civil and criminal), physical and mental health treatment, and numerous social services. But Stand Down is more than a collection of services. The sponsors concentrate on building community and developing the strengths of the participants as members of the community.

At the conclusion of the first Stand Down in 1988, 116 of 500 homeless veterans said their greatest need was to resolve outstanding criminal cases. Homeless veterans of San Diego inspired the misdemeanor criminal court to leave the courthouse and join the Stand Down effort by holding a special session for homeless veterans at the handball courts.

City Landscape

The Regional Task Force on the Homeless estimates the city of San Diego is home to

7,500 urban homeless with 2,417 emergency and transitional shelter beds available to house them on any given night. The cost of an emergency shelter bed is \$5 a night. The average transitional shelter bed with support services costs \$40 a day. The cost of incarceration in the city jail is an estimated \$60 to \$70 a night. If mental health services are required, the cost of incarceration exceeds \$400 a day.

Most of the crimes attributed to the homeless are disorderly conduct offenses such as illegal lodging, blocking the sidewalk, jaywalking, drinking in public and urinating in public, misappropriation of a shopping cart, and riding the trolley without paying.

In 1989, it was not unusual for a person who was homeless to carry a pocket full of 20 or more citations. There were more than a handful of people on the streets with 50 to 100 warrants for "disturbing the peace." The police issued citations as an invitation to get out of town, a clear signal the homeless were not wanted in San Diego. In practice, the police and the homeless were engaged in a game of cat and mouse. The police would conduct a sweep of the streets in downtown San Diego, issue citations, and force the homeless into Balboa Park. In an effort to clear out the park, the "crown jewel" of the city, police issued a new round of citations. This action forced the homeless into the canyons until neighbors complained. Another round robin of citations and movement ensued.

In 1991, the San Diego Police Department reported 8,754 citations and arrests for illegal lodging. Illegal lodging is an exclusive homeless-related offense. When police issue a criminal citation for illegal lodging, they give the homeless person a 4-by-7 inch piece of

pink paper, demanding a total bail payment of \$135 or threat of a maximum penalty of six months incarceration and a \$500 fine. The police issued 727 illegal lodging citations in 1999. Most of the homeless who appeared in court are by way of jail, called by some a "state of the art homeless shelter." The court generally handed down a sentence of fines or public work service to those who appeared in court out of custody, expecting that this would resolve their homelessness.

Thousands of homeless never made it to court at all. The court issued warrants when they did not appear. The criminal justice system was pushing the homeless further outside of society, without resolving either the problems of the homeless or the problems caused by their presence.

Frustration and Despair

In 1989, I was working as a deputy public defender in the misdemeanor arraignment department. I was responsible for introducing defendants to courtroom procedures, the charges against them, their rights and possible defenses, and the proposed plea-bargain and sentence. Misdemeanor offenses account for 80 percent of the criminal caseload in the Office of the Public Defender.

The police complained that the people they arrested were released after serving a few days in custody. Judges were frustrated with the backlog of warrants that accumulate when defendants fail to appear for court. These same judges realized the futility of handing out sentences and making orders that would not—indeed could not—be obeyed.

When homeless people did appear in court out of custody, they tried to explain to the

judge the sorry set of circumstances that had taken them from families, homes, and jobs to sleeping in the dirty bedrolls that lay beside us in court. Some were articulate and educated, and even working, yet they were still unable to afford a rent deposit or a room.

"How do you plead to the charge?" the judge would ask.

"Guilty," they invariably answered.

They would come before the court and walk away with a sentence that required them to pay a fine, serve public work service, or spend time in custody. They picked up their court orders at the clerk's office and walked back to the streets, bearing legal burdens on top of their other troubles. Somehow, this was supposed to resolve their homelessness.

The prosecutors, judges, even the police, were uncomfortable and frustrated with the futility of this revolving-door approach. A person who cannot afford a room to rent cannot afford a fine for being homeless. At the time, there were no alternatives. The criminal justice system had an established routine. The frustration of taking part in this ineffectual enterprise drove me to join a group of criminal justice practitioners determined to find a better way of coping with this ongoing problem.

I started attending monthly meetings of the Bar Association Homeless Sub-Committee. One meeting featured Dr. Jon Nachison and Robert Van Keuren, the founders of Stand Down, a yearly effort to assist homeless veterans to link up with people and services that could help them grapple with their problems. They presented a survey, compiled by the Veterans Administration, with findings that intrigued me. The information in this survey provided the foundation for an idea that became the Homeless Court.

Voices From the Street

The homeless veterans of Stand Down recognized that their outstanding warrants were one large roadblock in the way of addressing their problems and achieving independence. They told the sponsors of the first Stand Down of their willingness to take responsibility for outstanding offenses and asked for assistance.

The Stand Down slogan reads, "A Hand Up, Not A Hand Out." The event strives to empower its participants, providing them with support to achieve readily attainable goals, to make the transition from the streets to self-sufficiency.

"There is more to Stand Down than meets the eye," wrote Jonathan Freedman, Pulitzer

Prize winning journalist,

Showers and shaves can wash off the dirt; new clothes can spark a physical transformation. But wounds of a lifetime heal slowly, and the dark night of the human soul is not banished by three days in the sun. Only people who have shared a common experience can overcome the destruction...by coming together. Coming home.

Upon entering the Stand Down encampment, each veteran receives a tent assignment. A tent leader greets each veteran who enters the tent. Welcome home. Each tent houses 22 veterans. The tent leader introduces them to services on site. The tent participants attend meals, showers, and clothing services as a group. Each tent is a community unto itself. The participants come to rely on each other and realize they are not alone. At the end of the first day, each tent chooses its own leader from its ranks.

From this community, the homeless veterans of San Diego seek to reenter society.

Establishing a Homeless Court

In July 1989, the first homeless defendant appeared before the Honorable E. Mac Amos at Stand Down. He entered a plea, and the court sentenced him to complete his chosen activity in a program offered on site. Then he was free to go. He walked away from the handball court to receive his court papers. The great fear of homeless defendants that they would find the whole court session was a sting operation to allow the police to take everyone off to jail did not come to pass. After the first group of homeless court participants returned to the larger encampment, a deluge of homeless veterans rushed the court to seek resolution of their cases.

Following this first Homeless Court, the San Diego Court reported 130 homeless defendants had 451 cases adjudicated. The next year, 237 homeless veterans addressed 967 cases. Between 1989 and 1992, 942 homeless veterans resolved 4,895 cases in Stand Down courts.

How It Happened

A meeting with the presiding judge was the first step for establishing an outdoor courtroom at Stand Down. The event sponsors, together with members of the local Bar Association's homeless sub-committee, veterans groups, and court personnel, gathered

to discuss the feasibility of taking the court to a tent city. When the meeting started, the judge argued that, "we are open five days a week eight hours a day [at the courthouse]; they are welcome to come here for court."

Representatives from the Vietnam Veterans of San Diego, the founders and sponsors of Stand Down, responded that attendance at a court hearing requires time and planning. Homeless defendants fail to appear, not because of a disregard for the court system, but due to their status and condition. They struggle daily for food, clothing, and shelter. They are not in a position to adhere to short-term guidelines. They do not carry calendars. The participants are scared. In the past, court orders and sentences guaranteed their failure. They could not pay fines. Custody left them, society, and the court, no better off than before they went in.

The Homeless Court provided an opportunity for the court and homeless veterans to resolve a mountain of backlogged cases. The organizers provided a forum to take care of these cases. Playing off the good faith and trust of the event, the court gained access to the participants. The participants gained access to the court.

The clerks assured the judge that a courtroom could be set up and run outside of the courthouse. The judge received assurances from the event sponsors that the event would uphold the dignity of the court. The prosecution and the defense outlined a plea agreement and guidelines for alternative sentencing to facilitate the resolution of cases. The court assured the event sponsors that no one would be taken into custody against their will.

The prosecution and defense met to develop a progressive plea bargain. The plea bargain held defendants responsible for their offenses and recognized that most offenses were a result of their condition. The plea bargain agreement we established anticipated the number and kind of cases the homeless carry. We drew on our experience dealing with homeless defendants at arraignment courts. As mentioned above, most of the crimes attributed to the homeless are public disturbance offenses such as illegal lodging, blocking the sidewalk, drinking in public, urinating in public or riding the trolley without paying. Occasionally, someone will arrive with a more serious offense like petty theft or under the influence of a controlled substance.

The guidelines for alternative sentencing drew upon the services offered on site at the event. Involvement with activities that helped

to move participants off the streets and through programs, toward self-sufficiency, became court orders at time of sentencing.

Stand Down

The first day of the Homeless Courts at Stand Down events, Friday, is dedicated for counseling and plea-bargains of cases. Saturday morning is the day to appear before the judge. The homeless veterans can come before the court seeking general information about the cases they have or take the next step and actively seek to resolve these cases.

Defense attorneys counsel the veterans that these cases do not go away. They add that the court is more inclined to work with defendants when they appear voluntarily as opposed to appearing in custody. Prospects of success are best when defendants who appear are already participating in a program, rather than appearing before the court empty-handed.

Many homeless veterans are used to custody being the only option available to them. They have given up on themselves. We have responded by talking to them about Stand Down. We point to the numerous services available on site. We tag team attorneys to counsel them trying different approaches to pull them out of despair and motivate them to act. When this fails, we have introduced them to services on site and even taken them back to their tents to have their peers talk to them before addressing their case.

Advance planning and a strong commitment from all court representatives accounts for the relative ease in resolving these cases under adverse conditions and in a short period. We perform our regular tasks under different guidelines while working outdoors.

The Homeless Court does not address felony charges. However, attorneys from the Office of the Public Defenders help coordinate the surrender of defendants of felonies in the courthouse proper, indicating they have come from the Homeless Court Program. The few who have felony cases usually carry charges such as petty theft with a prior or a drug offense.

The Program Expands

The continued large numbers of homeless participating in the Homeless Court Program, coupled with their efforts to overcome the obstacles their condition represents, fostered the program's expansion from an annual, to a quarterly, then a monthly schedule. Over

the years, the HCP expanded to serve battered and homeless women (1990), residents at the city-sponsored cold weather shelter (1994), and the general homeless population served at local shelters (1995). In 1999, the HCP started holding monthly sessions, alternating between two shelters (St. Vincent de Paul and Vietnam Veterans of San Diego), with a grant from the Bureau of Justice Assistance/Department of Justice.

The HCP responded to the shelter's list of residents who were seeking assistance in putting their criminal cases behind them. These lists came on a sporadic basis, averaging four per year. With the production of each list, the court clerks and the prosecution and defense attorneys would meet to discuss the deadlines and dates for the court hearing. We would then set dates for the counseling session and negotiations. We then relayed these dates to the shelter, which passed them on to their residents. The prosecution would prepare the discovery for each case with the proposed plea bargains.

We recreated the wheel with the arrival of each list. In retrospect, this was terribly inefficient and made it difficult for the programs to ensure follow-up with their residents. Still, the response from the residents and the shelters, kept the HCP going with quarterly hearings for five years. In July 1999, 10 years after starting with Stand Down, the HCP received a grant to hold monthly court sessions. This grant funds all the key agencies that comprise the HCP: the Office of the Public Defender, City Attorney of San Diego, San Diego County Superior Court, Vietnam Veterans of San Diego, St. Vincent de Paul, and an evaluation by San Diego Association of Governments (SANDAG).

Over the past year, the HCP has received requests for technical assistance from courts across the nation. In July 2000, the Superior Court of California for the County of Ventura held a pilot project Homeless Court where 17 defendants addressed 55 cases. They completed all sentences nearly one month before they were due. A caseworker from Catholic Charities was impressed by how motivated her clients were and their willingness to extend their efforts beyond the court mandates. The Alameda County Superior Court coordinated a three-county effort to help homeless veterans resolve cases at their Stand Down in August 2000. The Los Angeles Superior Court has visited San Diego to observe the HCP. Courts in New Mexico, Florida, and Michigan are currently studying the feasibility and logistics for implementing a HCP for their communities.

Application

The residents at local shelters come to the HCP with a distinctly different attitude from that of the Stand Down participants. While the Stand Down participants are looking to take their first step off the street, the participants, who are already actively involved and vested in a program, come to court with a pronounced fear of custody. During one session, I counseled the participants at the defense table, on one side of the room. I then moved 15 feet, to the other side of the room, to share their advocacy letters with the prosecution. When I looked up I found that all of the people sitting on my side of the room had shifted to the prosecution side to listen to our negotiations. I came to realize their nervousness stemmed from a fear of losing what they have gained. A respect for the court notwithstanding, these participants feared losing their home at the shelter, which represented a significant step up from the street for them. A sentence to custody would send them back to the streets at term's end, resulting in a loss of the progress they had gained. These participants saw a future and did not want to miss it. They had plans and did not want them interrupted or cut short. The court session provided them with an opportunity to come clean when their cases were resolved.

The HCP recognizes each shelter has its own requirements and guidelines that qualify residents for access to court. Some programs require a qualifying resident to complete an assessment, an initial phase of the program, or attend specified meetings. The court does not interfere with this relationship. The court does need tangible evidence of this relationship, such as an advocacy letter and certificates that it can refer to when making an order. Participants who are well prepared and actively involved with a program are more likely to have their cases resolved in one hearing and have a positive court experience. The level of success a client has in court is often commensurate with the level of participation in a program.

The HCP has found that an official reconciliation of their old ways in court proceedings becomes one more step to an independent life on the road through the rehabilitative process. When the court sentence gives credit for participation in program activities, it gives each person a sense that what they were doing was important, not just for their own well being, but for society.

Access to Court

To sign up for the HCP, a participant must gain the trust and confidence of a homeless shelter or program. Each program has developed its own criteria for entry to the HCP. Some programs require attendance in meetings, others completion of a Phase One in their continuum of care. As the caseworkers develop a relationship with their clients, they simultaneously help resolve the underlying cause or obstacle that homelessness represents and provide the court with independent verification of their clients' accomplishments. The caseworkers from each shelter gather lists of people requesting access to court through the HCP.

Delivery of the shelter sign-up list for the HCP to the Office of the Public Defender occurs on the last Wednesday of the month. After the defense attorney reviews the list, it is forwarded to the court and prosecution. The court then prepares the calendar for the hearing. The prosecution runs each person's criminal record, produces a list of their misdemeanor cases (with discovery), and offers a plea-bargain for disposition on the first Wednesday of the month. The list and plea-bargain is provided to the deputy public defender on the second Wednesday of the month.

The deputy public defender goes to the host shelter one week before the actual court session to prepare the participants for court. The one-week advance in preparation provides a number of advantages for the actual hearing. It demystifies the court process. It helps the person anticipate what will happen in court and mentally prepare to face the judge. It strips away the fear of the unknown. It alleviates the distrust of being set up for certain failure through a sentence they cannot afford. During this advance session we review cases and the plea agreement. We then talk about defendants' activities in the shelter, what part of their program has been most meaningful, and their plans for the future.

The attorney then instructs each participant to return to the caseworker for an advocacy letter, gather any certificates and tokens awarded, and bring them to court. The advocacy letter is symbolic of the relationship between the client and the program while providing an important source of information to the court. These documents are the independent verification the court needs to address and resolve their cases. The court sentence might give "credit for time served" in chemical dependency or anger management classes, training or seeking employment, literacy or computer education, life-skills

and more. The participants and the program identified their greatest needs and the tasks necessary to achieve self-sufficiency.

The time spent at the court hearing is the tip of the iceberg for all the preparation undertaken beforehand. Weeks of preparation before the court hearing make the judge's time at the shelter more efficient and meaningful. The information needed to fully address and resolve the cases before the court is at hand. There is no need to set another court hearing to show proof of participation in a program. The prosecution, defense, and defendant have a shared understanding of the position they will take. They have already reviewed and discussed the matters on calendar. They are ready to present themselves to the court for its ruling and orders.

Prior to 1989, the criminal justice system relied on the courthouse and jails to administer justice and order. In the wake of Stand Down, justice and order are found with programs that include rehabilitation, counseling, recovery, life skills, and employment training. Gray concrete walls and shelter meeting rooms house courts that work for the criminal justice system, the homeless, and society. In short, the Homeless Court Program brings law to the streets, the court to the shelters, and the homeless back into society.