

Lynn Lewis
Testimony to the NY State Advisory Committee
US Commission on Civil Rights
Regarding Broken Windows policing and the Unconstitutional Targeting of Homeless People
March 20, 2017
New York, New York

Overview

Good morning. Thank you for inviting Picture the Homeless to testify this morning. My name is Lynn Lewis and my testimony today addresses how Broken Windows policing is currently and has been applied to homeless people in New York City in violation of their civil rights. Homeless New Yorkers certainly are experts on Broken Windows policing, and you will note that every panelist before me mentioned the harassment of homeless people by the police as a result of Broken Windows policing. The goal of Broken Windows policing is not law enforcement but the regulation of who has access to public space based on their status, including through the selective enforcement of Quality of Life violations and Zero Tolerance policing. Broken Windows policing is often accompanied by abusive language and in and of itself, an abuse of authority. Being awakened with a nightstick or the heel of an officers shoe and told to “move”, or “I don’t want to see you when I come back this way” or taking someone into a precinct and either letting them go with a ticket that a homeless person can’t afford to pay, or putting them through the system to see a Judge for a non-criminal violation is abuse, pure and simple. The harm caused to the individual, and the disparate impact to homeless communities generally is devastating. This isn’t a question of police being “mean”. Broken Windows is illegal police practice as applied to homeless and other persons based on their status.

Indeed, the point in history when Broken Windows put homeless people in its cross hairs convergences with the increase in homelessness during the Giuliani administration. This increase in homelessness was the result of failed housing policies from the Federal to the local levels and not an increase in crime. Crime was actually decreasing during this period. But homelessness – and in NYC we are talking about mostly Black and Brown men who are visibly street homeless – remind the “general public” of crime, making them afraid and give them a generalized sense of social decay. This is the intersection of homelessness, race and policing within the Broken Windows paradigm in NYC. This shift is described here: “Removing the homeless by restricting access to and activities allowed in public parks, using the police to forcibly remove homeless people from shopping areas, and criminalizing sleeping, panhandling, and sitting on the sidewalk are very different from consistently enforcing existing laws against drug dealing and violent crime...as homelessness increased, Kelling was repeatedly asked to help cities and police departments apply the theory to homelessness. The most important example of this is when Kelling was hired in 1989 to work with William Bratton, who was the chief of the NYC Transit Police, to develop new rules designed to remove homeless people from the subway system. ” (Vitale, p 48) William Bratton was Bill de Blasio’s first appointment, and he quickly retained Kelling again as a paid consultant. One of Bratton’s first actions under DeBlasio was to attempt to use the NYPD to forcibly remove homeless people from the E train – based on simply being homeless, not because they hadn’t paid their fare, less than a month after he became Police Commissioner.

Lynn Lewis
Testimony to the NY State Advisory Committee
US Commission on Civil Rights
Regarding Broken Windows policing and the Unconstitutional Targeting of Homeless People
March 20, 2017
New York, New York

Picture the Homeless and our CPR partners organized a successful push back and prevented this from happening. Among our principle strategies is to create counter narratives to those that support Broken Windows policing – which rely heavily on racist, anti-poor stereotypes which in turn justify abusive public policies that extend far beyond policing.

My background

I have organized around, documented, gathered testimonies from homeless people, conducted public education, supported homeless people to tell their stories to win justice, assisted in the filing of lawsuits and discussed legal and political strategy, and conducted participatory action research on the issue of the criminalization of homeless people for 28 years in New York City and nationally. I have literally heard thousands of stories, and personally witnessed the targeting of homeless people by the NYPD, peace officers, and private security officers. I am the founding Executive Director of Picture the Homeless, where I worked for the past 17 years, including 8 years as the Civil Rights organizer. I am a past Board member of the National Coalition for the Homeless, where I served on the Civil Rights working group. I am a founder of the Florida and the Jacksonville Coalitions for the Homeless where I lived for 11 years.

My experience outside of New York City is relevant because there is a pattern and practice of local communities – with NYC as a national leader - restricting access to public space through criminalizing life sustaining activities. This happens through the creation of new laws and regulations as well as the selective enforcement of existing laws and regulations. Many of these laws and regulations are ultimately found to be unconstitutional. Rights on paper, even the Constitution, must be defended yet the burden of proof is on the persons suffering discrimination. It is a heavy lift to say the least to expect a homeless person to file lawsuits proving selective enforcement against a police department. I am grateful that the New York State Advisory Committee of the US Commission on Civil Rights is looking into how Broken Windows harms homeless people and violates their basic civil rights. What happens in NYC impacts the rest of the country. Local police departments “import” practices from other communities, and New York City is often the testing ground for many of them. Indeed, through the current and previous two Mayoral administrations Picture the Homeless has received phone calls from people in other cities stating that their local elected officials were going to “clean up” their cities like NYC has.

Intersectionality, Homelessness and Discriminatory Policing in NYC

The harassment of homeless people by police departments and both private and quasi- public security forces through the selective enforcement of Quality of Live violations and Zero tolerance policing which are less than misdemeanor offenses has a disparate impact on homeless people and the multiple communities to which they belong. In New York City these communities are best described as those with the least financial resources to sustain housing: Black and Latino single adults and families, low

Lynn Lewis
Testimony to the NY State Advisory Committee
US Commission on Civil Rights
Regarding Broken Windows policing and the Unconstitutional Targeting of Homeless People
March 20, 2017
New York, New York

wage workers, the unemployed, persons who are disabled, immigrants, the elderly, youth, and the LGBTQ community. These intersections compel us to also take into consideration how discriminatory policing targeting homeless people is also based on the criminalization of other communities which are over represented among the homeless, particularly Black and Latinos in NYC. 98% of shelter residents in the family shelter system are Black and Latino – many of whom are also black. During the same time period for which we have racial demographic data for Stop and Frisk, there were even more summonses issued and the racial demographics mirror those of Stop and Frisk. We do not have data on how many of those who received summonses were homeless because summonses nor arrest records document housing status. However, the life sustaining activities for which people are ticketed and arrested are those frequently carried out by homeless people. “This research brief reports that within one year of defendants’ release from custody in 2013, 60% of the street homeless, 50% of the shelter homeless, and 29% of the non-homeless in New York City were re-arrested for a new offense. To a large extent, their higher re-arrest rates are due to enforcement of low-level offenses aimed at the homeless, such as inappropriate use of public space, blocking access in the transit system, fare beating, and panhandling. The findings suggest that permanent housing is a strong protective factor associated with a lower rate of re-arrest.” (Peterson)

Regulation of Homeless People Pre-Broken Windows

The creation and enforcement of laws, rules, and regulations of by local governmental bodies, law enforcement and quasi law enforcement entities such as Business Improvement Districts, to regulate and prohibit the bodies of homeless people through the criminalization of basic life sustaining activities pre-dates Broken Windows policing. Broken Windows policing is only the latest example in a long history in this country of the criminalization of homeless bodies. As noted by the Western Regional Advocacy project, “The United States has a long history of using mean spirited and often brutal laws to keep “certain” people out of public spaces and consciousness. Jim Crow, the Black Codes, Sundown Towns, Anti-Okie laws, Operation Wetback and Ugly Laws targeted various populations based on their racial, economic, social, immigration or disability status. “ WRAP .

Broken Windows and the Specific Impact on Homeless New Yorkers

In New York City, how Broken Windows targeting homeless New Yorkers plays out as verbal and physical abuse and threats, intimidation, humiliation, collusion of city agencies to remove homeless people and their belongings from public space (NYPD and Sanitation for example), and quotas for tickets and arrests.

Picture the Homeless filed a lawsuit against Mayor Bloomberg and the NYPD in 2003, after a widely reported crackdown on Quality of Life issues such as aggressive panhandling, and prostitution among others. Under headlines that decried the “Seven City Sins”, listing a series of violations with the seventh being “homeless”. During this period, Quality of Life tickets and arrests increased 300%.

Lynn Lewis
Testimony to the NY State Advisory Committee
US Commission on Civil Rights
Regarding Broken Windows policing and the Unconstitutional Targeting of Homeless People
March 20, 2017
New York, New York

New York City Legal Counsel immediately reached out to Christopher Dunn, of NYCLU, to offer to settle with Picture the Homeless because there were police officers who opposed this Zero Tolerance crackdown on homeless New Yorkers and who would have testified accordingly. However, the settlement agreement was not enforceable and the arrests and targeting continue to this day.

Unpaid tickets turn into warrants which result in jail time. Arraignments often result in community service or Adjudgment in Contemplation of Dismissal (ACD). When an ACD is offered it includes an amount of time arbitrarily set by the Judge between 1 day and 6 months (although we've seen longer) during which time the person is prohibited from having police contact. As Jean Rice, a long time civil rights leader at Picture the Homeless, says "The homeless live in the streets where the police do their work. It is impossible for persons who are street homeless, or who work in the streets, to avoid police contact." If the person has police contact, then they are jailed in Rikers for a time (again), set arbitrarily by the Judge. The offenses for which folks are ticketed or arrested include most often the impossible to defend "Disorderly Conduct", public urination, open container, misuse of Parks property (that is, laying down on a park bench), being in a Park after curfew, trespassing, and aggressive panhandling. For these noncriminal offenses an officer has the discretion to issue a warning, write a ticket, arrest and take you into the precinct only to release you, sometimes hours later, or to put you through a criminal system for arraignment before a Judge. Sometimes, it even results in you being transferred to Riker's Island where you may spend days or weeks for a non-criminal offense or if you have warrants for non-payments of tickets for other Quality of Life violations, or if you were issued an Adjudgment on Contemplation of Dismissal and were not able to go without police contact for the time stipulated by the Judge – often because you are homeless and so can't avoid police contact. If you are arrested and are homeless, the Judge will often not set bail according to Defense Attorney Mark Taylor, and you will end up in Riker's Island awaiting trial. This was the case with Jerome Murdough, a homeless man arrested for trespassing because he went into a NYCHA housing development to get out of sub freezing temperatures. He was sent to Rikers Island where he was found dead in his cell, baked to death because of extremely high temperature. (Blau)

Move on orders and other forms of verbal abuse are used by the police to intimidate homeless people to move from public space. The police (with their guns and badge) will approach a homeless person and demand that they leave the area. Picture the Homeless filed a complaint with the Human Rights commission in 2016 because this is a violation of the Community Safety Act which prohibits profiling by police officers based on a range of statuses – including housing status. However, the NYPD in their response to the complaint filed by Picture the Homeless denies the allegation but then says that if they did direct homeless people to leave an area it isn't a "law enforcement action" and that further, it is within their duty to regulate pedestrian traffic. Any time a police officer gives a civilian an order it is a law enforcement action.

Lynn Lewis
Testimony to the NY State Advisory Committee
US Commission on Civil Rights
Regarding Broken Windows policing and the Unconstitutional Targeting of Homeless People
March 20, 2017
New York, New York

In fact, the NYPD issued a Finest Memo on January 19, 2016 to all precinct commands, defining homeless encampment and creating a new term – homeless hotspot. A homeless hotspot is defined as when 2 or more homeless people congregate in any public space. If the term hotspot were used to describe any other group it would immediately be denounced as unconstitutional. Defining homeless hotspots in a Finest Memo legitimizes law enforcement interaction simply if two or more people are in public space. And what then does anyone imagine will happen when officers approach two or more homeless people on a corner? Ask them for ID? Tell them to move on? Search them? It is a scenario ripe for abuse. Indeed, asking for an ID for someone who is homeless or extremely low income may lead to being taken to a precinct because of the lack of address on the forms of ID many homeless and poor people carry: either a public assistance benefits card (EBT) and/or the IDNYC card. For both, proof of identity was established at the time of obtaining the ID but EBT cards do not have an address on them, nor do the IDNYC cards if the holder doesn't have proof residence. The NYPD have been given written instructions to not issue a summons for persons who have an IDNYC card without an address, which dictates that they will arrest someone.

The NYPD and Department of Sanitation have colluded to remove homeless people by destroying their property, and in the case of the NYPD physically assaulting sleeping homeless men. When three Picture the Homeless members filed a complaint with New York City Comptroller Scott Stringer over the destruction of their property by the NYPD and Department of Sanitation in December of 2015, the NYC Legal Counsel settled the claim in December of 2016 reimbursing three homeless men for the value of all property lost.

Bogus tickets are often used as a form of harassment of homeless New Yorkers. The NYPD issues tickets with incorrect addresses – that they know are incorrect. One blatant example is listing the address of homeless men in E Harlem as that of the New York Psychiatric Hospital.

Harm caused to homeless people includes when arrested, beyond humiliation has been: the loss of shelter beds, the loss of property, the loss of employment, or public assistance benefits if you miss work or an appointment because you have been arrested. Increasingly, under the Trump administration, arrests for being homeless can get you detained and deported.

Loss of property occurs when the police force people to move and they are unable to take all of their belongings with them in that moment. It also results when the police confiscate homeless people's belongings and/or throw it in the garbage. It also results when persons are arrested but their property isn't properly vouchered. It can also result from property being properly vouchered but upon release, the person doesn't have the funds to go pick up their property using public transportation.

Lynn Lewis
Testimony to the NY State Advisory Committee
US Commission on Civil Rights
Regarding Broken Windows policing and the Unconstitutional Targeting of Homeless People
March 20, 2017
New York, New York

Arrests and tickets for non-criminal offenses make you ineligible for NYCHA for a period of 2-6 years. When Picture the Homeless obtained information from NYCHA through a Freedom of Information Request in 2008, we learned that Disorderly Conduct was the most frequent charge for which applicants for public housing were deemed ineligible.

Recommendations

City-level Policy Change

- Especially during the current period of NY seeking to expand how it can be a "sanctuary city", it's critical that we change local policies and practices to reduce abusive over policing of communities of color. Over policing of communities of color, including broken windows & other abusive policing, is a primary pipeline to detention and deportations of immigrants, and will continue to be under Trump.
- End broken windows policing.
- PTH and our CPR partners have requested that the Inspector General to investigate Broken Windows policing in relation to homeless people by the NYPD. We would like this Commission's finding to include a request of the Inspector General to investigate the NYPD's profiling and interactions with homeless people as a means to obtain information – orders, directives and outcomes not available to the general public.
- Share your findings with the NYC Human Rights Commission. PTH currently has a complaint under the Profiling Bill prohibiting profiling based on housing status in front of the Human Rights Commission. This Commission's findings will provide additional information for them to more thoroughly investigate how policing practicing target homeless people based on their status and not based on any criminal activity.
- Pass Right To Know Act (Intro 182 and Intro 541 in the City Council) as law to increase accountability in the most common interactions between the NYPD and New Yorkers. We need to change the front end of abusive policing to be able to decrease risk for immigrants of color who get summonsed/charged w/low-level non-violent offenses that are deportable offenses by code; as well as because the Trump administration has expanded immigration enforcement priorities to include minor non-violent offenses without due process (when immigrants are charged, and even if not charged but found to have engaged in a "chargeable offense" which can arguably include civil offenses that have parallel criminal charges). The Right To Know Act begins to address this front end of abusive policing. [Right To Know Act polices were part of President Obama's 21st Century Policing recommendations and has been endorsed by over 200 organizations, the New York Times, Amsterdam News, El Diario and others]
-

Lynn Lewis
Testimony to the NY State Advisory Committee
US Commission on Civil Rights
Regarding Broken Windows policing and the Unconstitutional Targeting of Homeless People
March 20, 2017
New York, New York

- End Mayor de Blasio/NYPD (mis)re-interpretation of NY Civil Rights Law Section 50-a, which has increased secrecy of police disciplinary actions and shields abusive officers and NYPD patters from public accountability.

State-level Policy Change

At the State level, pass the Police STAT Act (S147/Squadron; A5946/Lentol) to create police transparency related to enforcement of minor offenses (summons and arrests) and deaths of civilians in police interactions (killings by police and deaths in custody).

Pass legislation to End Unnecessary Arrests Act (A3201/Aubry) to end arrests for minor non-criminal offenses (e.g. violation-level offenses and similar offenses in Parks/transit/health codes that may be misdemeanors but have a parallel violation offense).

Pass special prosecutor legislation (A5617/Perry) to make a special prosecutor for police killings permanent beyond the current executive order. This bill passed out of Assembly a few weeks ago, we're working on Senate side strategy.

Repeal NYS Civil Rights Law Section 50-a to end police secrecy and lack of transparency of police officers' misconduct.

Support passage of marijuana decriminalization and legalization-related legislation.

Blau, Reuven. "Homeless Veteran "basically baked to death" at Rikers Island while being held on trespassing charge" Daily News. March 20, 2014.

Peterson, Richard, R. PhD. "Re-arrests of Homeless Defendants in New York City". New York City Criminal Justice Agency Research Brief. No. 39. February 2016.

Vitale, Alex S. City Of Disorder: How the Quality of Life Campaign Transformed New York Politics. NY University Press, 2008

Western Regional Advocacy Project Historical Criminalization Fact Sheet, www.wraphome.org