Disorder and the Courts

"Disorder and the Court" by George L. Kelling and Catherine M. Coles, in *The Public Interest* (Summer 1994), 1112 16th St. N.W., Ste. 530, Washington, D.C. 20036; "Graffiti" by André Henderson, in *Governing* (Aug. 1994), 2300 N St. N.W., Washington, D.C. 20037.

Fighting "serious" crime by lengthening prison sentences, banning some semi-automatic weapons, and putting more cops on the beat, as President Clinton's federal crime legislation provides, is all well and good. But the more common "crime" problem in many urban neighborhoods, observe Kelling, a professor of criminal justice at Boston's Northeastern University, and Coles, a cultural anthropologist, is disorderly behavior, such as panhandling, public drinking and drug use, prostitution, public urination and defecation, loitering, and defacing property with graffiti. "For most citizens, disorder *is* the crime problem," Kelling and Coles say. Unfortunately, they argue, the nation's courts frequently fail to grasp this.

Whatever the trend in crime statistics may be, Kelling and Coles say, the "in your face" experiences that citizens have every day on the streets "tell them that things are out of control and worsening." Just to prevent and clean up graffiti, municipalities spent $7 billion last year, Henderson reports in *Governing*. In many places, vandals have progressed from spray paint to etching, using everything from drill bits to diamond rings. "It is the fastest-growing class of graffiti, and authorities seem powerless to stop it," Henderson writes.

In 1982, Kelling and political scientist James Q. Wilson advanced the "broken windows" thesis: Just as an unrepaired broken window signals that no one cares and invites more broken windows, so unattended disorderly behavior leads to more disorder and, in all likelihood, serious crime. Recent research has buttressed the thesis. In *Disorder and Decline* (1990), Wesley Skogan, using data from 40 neighborhoods in six cities, found that disorder was the single most significant "precursor" of serious crime and urban decay.

There is other evidence that controlling disorder works to reduce crime. In 1989, New York City's Metropolitan Transportation Authority began enforcing its rules against panhandling and other disorderly behavior in the city's subways. A homeless-advocacy group sued, and federal judge Leonard B. Sand decreed that begging deserves First Amendment protection. An appeals court, however, overturned his decision and let the antipanhandling rules stand. Between 1990 and the end of the first quarter of 1994, robberies in the subways dropped by more than 52 percent and all felonies by 46 percent.

Other courts have refused to follow that appeals court's lead, however. In one New York City case, for example, Judge Robert W. Sweet averred: "A peaceful beggar poses no threat to society. The beggar has arguably only committed the offense of being needy." The answer, he said, was not to criminalize begging but to address its "root cause."

For most of American history, there were state and municipal laws against begging and vagrancy. In 1972, the U.S. Supreme Court struck down an antivagrancy statute, and 11 years later it overturned a California law requiring loiterers to show identification and account for their presence at a police officer's request. Before long, similar laws in other states were struck down. In 1965, the Supreme Court said that prohibiting "loitering for the purpose of" committing a specific unlawful act, such as prostitution, was acceptable, so states and cities enacted more narrow antiloitering measures of this type.

Recently, however, judges have overturned some of even these laws on First Amendment grounds. Legislators are now enacting still-more-specific laws. One proscribes loitering for the purpose of asking for money more than once. It would be a tragedy, the authors say, if these laws, too, are not allowed to stand.