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The Writing on Our Walls: Finding Solutions Through Distinguishing Graffiti Art from Graffiti Vandalism

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THE WRITING ON OUR WALLS: FINDING SOLUTIONS THROUGH DISTINGUISHING GRAFFITI ART FROM GRAFFITI VANDALISM

Marisa A. Gómez*

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Graffiti has been called everything from urban blight to artistic expression. Associating graffiti with gangs, community decline, and rising crime, governments, transit authorities, neighborhood groups, and private property owners spend millions of dollars and hours every year trying to stem its tide. They paint over it, outlaw it, try to catch "them" at it, sue parents for it, and increase their security against it. Yet, graffiti endures. The medium, the tools of the trade, and the responses to it may change but the graffiti keeps appearing.

Different motivations drive different types of graffiti, and graffiti cannot be understood or controlled without an understanding of the motivations behind its creation. Although they

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1. I use the terms "they" and "them" loosely to refer to those who want to stop graffiti and those who create graffiti because the identities of the individuals and organizations that comprise both groups have changed and probably will continue to change.

2. See infra Part III. The general type of graffiti to which this Note refers when using the term "graffiti" is "public" graffiti, that is graffiti that is written, carved, or spray-painted on objects such as buildings, trees, fences, billboards, buses, and subway cars. This Note will not discuss graffiti found near toilets, known as "private" graffiti or "latrinalia." For a more detailed discussion of private graffiti, see ERNEST L. ABEL & BARBARA E. BUCKLEY, THE HANDWRITING ON THE WALL: TOWARD A SOCIOLOGY AND PSYCHOLOGY OF GRAFFITI (1977) (discussing the motivations behind, and the cultural worth of, private graffiti).

This Note also does not discuss the larger topic of "wall art." Wall art encompasses paintings directly on walls, such as graffiti, as well as paintings made independent of the wall and then pasted onto the wall. For a discussion of the wall art movement in New York, see John Tierney, A Wall in SoHo; Enter Two Artists, Feuding, N.Y. TIMES, Nov. 6, 1990, at B1 (noting that although wall art has entered into what some term as the postgraffiti period, it is still split into two schools: those who believe in asking for the wall owner's permission and those who do not).

This Note does not attempt to analyze in detail the content of graffiti or enumerate the messages of past graffiti. For a listing of graffiti alphabetically by subject, see ROBERT REISNER & LORRAINE WECHSLER, ENCYCLOPEDIA OF GRAFFITI (1974). The authors also discuss other scholars who have made similar compilations. Id. at vii. Nor will this Note discuss the techno graffiti found in computer programs. For more information on techno graffiti, see Ashley Dunn, A Window on Techno Graffiti, L.A. TIMES (Home ed.), Nov. 22, 1992, at A1.
cannot capture fully the entire spectrum of graffiti, two particular classifications encompass most types of graffiti and the motivations behind it. First, "graffiti art" describes graffiti-type works that exhibit many of the characteristics of pieces normally termed "high art" or "folk art." The more intricate works of graffiti entitled "pieces" belong in this category because they result from a desire to create artwork. Second, "graffiti vandalism" describes those mere scrawlings that are motivated by a desire to mark territory, create notoriety, or show one's defiance of the law and society. Graffiti termed "gang graffiti" or "tags" belong in this category. These works are done most often without the permission of the property owner and possess few of the qualities of pieces normally deemed "high art" or "folk art.

Although graffiti possessing the characteristics of both art and vandalism is difficult to classify under the above scheme, the distinction is useful nonetheless because it recognizes that such works are stimulated by both types of motivations.

This Note argues that outlawing graffiti completely is not an effective solution. The only effective means of controlling graffiti is to develop laws and policies which accommodate graffiti art while discouraging graffiti vandalism and which attack the root causes of graffiti. Part I briefly outlines the origins of graffiti. Part II describes the different types of graffiti and the motivations of their respective creators. Part III analyzes the arguments for and against the legalization of certain types of graffiti and concludes that, because of the multitude of different types of graffiti, both graffiti proponents and opponents have meritorious arguments that need to be addressed. Part IV details the methods that cities and states have used to prevent graffiti and concludes that most methods do not discourage graffiti vandalism but do endanger legitimate graffiti art by failing to account for the motivations that drive graffiti's creation. Part V proposes comprehensive legislation

3. Lisa N. Howorth, Graffiti, in HANDBOOK OF AMERICAN POPULAR CULTURE 549, 556-57 (M. Thomas Inge ed., 1989). According to Howorth, graffiti has the "high art" characteristics of a "strong and identifiable aesthetic theory" and a similarity to such recognized art movements as abstract expressionism, pop art, conceptual art, and new realism. Id. at 556. Graffiti often is similar to folk art because it "demonstrates much that is 'folk' in urban culture," reflects other cultures, has a communal aesthetic, transmits its traditions of forms informally, relies on words, signs, and images that are universal, and "incorporates the everyday elements of popular culture." Id. at 556-57.

4. See generally id. at 550.
and policies which take into account the causes of graffiti and thereby work towards the eradication of vandalism while preserving graffiti art. This Note concludes that because of the costs saved in the long term, all of the proposed solutions are feasible, even when fiscal resources are limited.

I. GRAFFITI'S ROOTS

Written graffiti originated in Western culture with the Greeks, "whose common people were the first to learn to write and therefore to express themselves graphically." A number of other cultures have documented the existence of graffiti as well. The Italians were great writers, and the preserved Pompeiian graffiti is one example of their artwork. The Mayans of Tikal, Guatemala produced graffiti dated between 100 B.C. and 700 A.D. The Phrygians of central Turkey produced writings dated around 1200 B.C. The Egyptians produced some hieroglyphics which are considered graffiti. Medieval England also had its share of graffiti writers who incised the walls, pillars, and floors of churches, monasteries, and dungeons. Middle Europe also felt graffiti's mark. Pictorial graffiti had its beginning with cave art and continued through sixteenth century Italian street

5. Id. at 551.
6. Id. Pompeii graffitti is valuable not only for its artwork, but also for its historical significance. Epigraphologists used the graffiti found on the walls of the city to discover what life was like. ABEL & BUCKLEY, supra note 2, at 4 (citing M. D'AVINO, THE WOMEN OF POMPEII (1964); J. LINDSAY, THE WRITING ON THE WALL: AN ACCOUNT OF POMPEII IN ITS LAST DAYS (1960); and H. HELEN TANZER, THE COMMON PEOPLE OF POMPEII (1939)). In fact, the term graffiti "originates with the Italian verb graffiare, meaning 'to scratch.'" Howorth, supra note 3, at 551.
7. Howorth, supra note 3, at 551.
8. Id.
9. ABEL & BUCKLEY, supra note 2, at 5.
10. Id. at 6; see also ROBERT REISNER, GRAFFITI: TWO THOUSAND YEARS OF WALL WRITING 39-51 (1971) (discussing English graffiti).
12. See NORMAN MAILER, THE FAITH OF GRAFFITI ch. 1 (Mervyn Kurlansky & Jon Naar photographers, 1974); see also REISNER, supra note 10, at 23-37 (detailing the early beginnings of graffiti with prehistoric people); id. at 68-69 (noting that Native American pictorial graffiti dates back as far as 10,000 B.C.); Bryan Brumley, It's in the Gallery, So It Must Be Art, Not Graffiti, CHI. TRIB. (Sports Final ed.), Nov. 21, 1985, § 5, at 13A. Pictorial graffiti was often used to convey messages when language barriers existed. See, e.g., REISNER, supra note 10, at 69 (arguing that one reason that Native Americans never really used written inscriptions was that tribal languages were so distinct from each other).
art (often being combined with written graffiti) to the present.

American graffiti began in early colonial America. For two centuries, American graffiti mainly focused on drinking, defecating, and politicking. A few examples, such as the once ubiquitous Kilroy peering over a wall with a scrawled "Kilroy was here" underneath, have become internationally known.

After World War II, graffiti began to change in character. In the 1950s, America's first real youth culture came into existence, as did a rise in ethnic pride and identity among different racial groups and nationalities. For both the youth and ethnic cultures, graffiti became a useful method of communication, particularly when the two cultures overlapped. Graffiti became a form of group expression as newly-formed gangs used graffiti to mark their territory and to propagandize.

In the late 1960s, graffiti became increasingly individualized. The writing of one's identifier (such as one's initials and a street number), known as "tagging," became popular in New York City and touched off the graffiti explosion that still exists today. This type of graffiti differed from simple vandalism because it had territorial significance and because it represented a powerful youth subculture which cared little about the values and laws of society, developing a language, aesthetic values, and standards all its own.

It is believed that graffiti first appeared on New York ghetto and barrio walls as scrawlings of "TAKI 183." The tag soon

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15. For example, Daniel Boone inscribed a Tennessee tree "D. Boon Cilled a Bar in the Year 1760." Howorth, supra note 3, at 551-52.
16. Id. at 552.
17. Id. Kilroy was the mascot of World War II and his image could be found from the Marshall Islands to the Arc de Triomphe. Id. It is speculated that Kilroy was born of an age-old Army-Air Force rivalry and represented lowly infantry sergeant who could beat everyone, especially the Air Force, to any battle scene. Id.
18. Id.
19. Id. at 552-53.
20. Id. at 553.
21. Id.
22. Robert R. Harris, Nonfiction in Brief, N.Y. TIMES, Dec. 19, 1982, § 7 (Book Review), at 14 (reviewing CRAIG CASTLEMAN, GETTING UP: SUBWAY GRAFFITI IN NEW YORK (1982)); see also Howorth, supra note 3, at 553. Howorth notes that Taki stated that
spread to subways and walls along Broadway, at Kennedy National Airport, and in the surrounding suburbs of New Jersey and Connecticut. Taki was finally identified as a teenage Greek immigrant named Demetrius who lived in a blue-collar, Manhattan neighborhood. Taki was the Greek diminutive of his name and he lived on 183rd Street. Soon after, tags like Frank 207 and Chew 127 appeared as graffiti exploded into New York's urban society and soon spread to other cities.

As graffiti grew in popularity, the techniques used were innovated and refined. In 1972, Super-Kool 223 used spray paint instead of, or in combination with, markers to create large works that could be painted very rapidly. To paint broader or smoother areas, Super-Kool 223 replaced narrow spray paint caps with "fat caps" that he took from oven cleaner or spray starch cans. Distinctive styles evolved and began to merge. Broadway or Manhattan style graffiti had long, slim letters; Bronx style graffiti was characterized by bubble letters; and Brooklyn style graffiti used a pseudo-Celtic style which featured flourishes and arrows. Wild Style was a mix of Brooklyn-structured lettering crossed with Manhattan spray techniques.

Other cities developed their own graffiti styles as well. Although writers created graffiti on all surfaces, they clearly preferred the subways. Because of their mobility, subway trains guaranteed a wide audience and provided a means of communication with other writers in distant neighborhoods. The risk of getting caught or killed also made graffiti writing on subways more attractive. Intensified efforts to eradicate graffiti only stimulated more daring and spectacular tags by individual writers, or "style masters," and graffiti gangs, or "crews."

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he was inspired by the tag "JULIO 204" which he observed around his neighborhood, but Howarth still gives Taki credit for being the motivator of the graffiti explosion because his tag was visible in more areas. For more detail on New York subway graffiti history, see Craig Castelman, Getting Up: Subway Graffiti in New York (1982).

23. Howorth, supra note 3, at 553; see also Harris, supra note 22, at 14.

24. Howorth, supra note 3, at 553.

25. Id. Taki is also credited with popularizing the use of wide magic markers.

Id.

26. Id.

27. Id.

28. Id. at 554.

29. Id.

30. Id. The term "clique" may be used to describe graffiti's gangs. See Caryl S. Stern & Robert W. Stock, Graffiti: The Plague Years, N.Y. Times, Oct. 19, 1980, § 6 (Magazine), at 44. "Posse" or "tribe" are also terms that might be used to describe writers' groups. See John M. Glionna, Pals in the Posse, L.A. Times (Home ed.), Feb. 26, 1993, at B1. This Note will use the term "crew" to refer to a writers' group.
Competition among writers heightened the graffiti craze and spurred graffiti's development. Writers developed "3D" technique to add the illusion of mass and depth. They also developed the techniques of shading, highlighting, and overlapping letters. Consequently, the writing less resembled words than an abstract or pop art painting. Graffiti pieces grew in size, sometimes covering an entire subway car, including its windows and doors. Composition was now carefully planned. Writers often incorporated illustrations of cartoon, comic book, and television characters into their work, or developed and used their own characters.

Los Angeles developed its own graffiti culture in the 1970s. Much of the mural art that appeared in Los Angeles evolved from gang graffiti. Los Angeles graffiti differed from the graffiti in other cities in a number of ways. Most of the writers were Latinos and the style and content of this graffiti were unique because of their ethnic origin. Murals were organized and painted for a multitude of reasons: to beautify the barrios, to stop gang graffiti and random scrawls, to create a sense of community, to educate barrio children, to provide role models, to change attitudes, to get children off the streets, to celebrate heritage, to provide opportunities for self-expression, to give youths jobs, to teach children responsibility and dedication, and to bring gangs together to work rather than to fight.

Today, graffiti is so extensive that the term describes everything from random scrawls to mural work. Graffiti has proliferated throughout major urban areas and across the

31. Howorth, supra note 3, at 554.
32. Id.
33. Id. This type of piece is known as a "top-to-bottom whole car." Id.
34. Id.
35. For excellent discussions and photographic compilations of the murals of Los Angeles, see Melba Levick & Stanley Young, The Big Picture: Murals of Los Angeles (1988) and Stefan Merken & Betty Merken, Wall Art: Megamurals and Supergraphics (1987).
36. Murals of East Los Angeles (La Luz Cinema Video Productions 1977) (examining the artistic, cultural, and social significance of murals in East Los Angeles and interviewing the muralists who were involved in creating them).
37. See generally Howorth, supra note 3.
38. Graffiti also occurs, and has proliferated, in rural and wilderness areas. See Amy Pyle, Nature Wears the Stain of Graffiti Artists' Impulses, L.A. Times (Home ed.), Mar. 27, 1989, pt. II, at 1, 6 (describing the problem of rural graffiti and noting that cleanup is difficult because painting over or sandblasting does not restore nature to its original condition and can be ecologically unsound). This Note, however, concentrates on urban graffiti because it is more widespread and because solutions to it are being explored and debated to a greater degree than with rural graffiti.
Graffiti appears on both public and private property in ghetto, middle-class, and upper-class neighborhoods.  

Moreover, a solution for urban graffiti will help fight rural and wilderness graffiti: although not all methods that help to control urban graffiti will be effective against nonurban graffiti, both types of graffiti are similarly motivated.

39. Denmark is one example. Graffiti has become an immense problem in Copenhagen, both on public and private property. The suburban railway has been a frequent-target of graffiti. Along with the more common approaches of protective coverings and vandalism prosecutions, Copenhagen transit authorities have worked to establish a program called “alternative conflict solving” in which the authorities and kids have monthly talks which are designed to remove hostility and create mutual understanding. Katrine Bohr, Copenhagen, Denmark's Ancient Capital, Becomes Evesore Courtesy of Graffiti, L.A. TIMES (Bulldog ed.), Jan. 24, 1988, pt. I, at 15.

Graffiti also has become a problem in Great Britain. The London Underground, that city’s underground transit system, estimated that it would spend $1.7 million during 1988 to remove graffiti as soon as it was sprayed. Craig R. Whitney, New Plague for London: Graffiti Tags, N.Y. TIMES, Oct. 13, 1988, at A9. The Underground has been trying to get the courts to impose stiff penalties and fines on graffiti vandals who are caught and prosecuted. The maximum penalties are up to 10 years in jail or an unlimited fine. Id. Sentences, however, usually consist of a fine of £100 or less or a community service sentence of a few hundred hours of cleanup. Id. Programs to combat graffiti vandalism in Britain have gone beyond criminal penalties, however. Several groups are working to channel the creativity and energy of kids into something more constructive. Art programs have been started in community centers to move graffiti off the streets and into galleries and exhibition halls. This solution developed due to the realization that graffiti writers “wouldn’t stop just because we told them to stop it; there had to be an alternative.” Id. (quoting David Curtis, coordinator of the Tabernacle Community Center in Notting Hill, England); see also Robert Glass, Graffiti Transforming Look of London Underground Subway; Removal Cost Soars, L.A. TIMES (Bulldog ed.), June 12, 1988, pt. I, at 14.

Stockholm, Sweden is another city for which graffiti has become a recent problem. Stockholm has adopted a unique program to combat graffiti vandalism—sending graffiti vandals to art school rather than to jail. See Eva Janzon, School Scores “A” in Art of Rehabilitation, L.A. TIMES (Bulldog ed.), Feb. 11, 1990, at A13. For more details on the program, see notes 298–299 and accompanying text.

Paris recently has been plagued with inappropriately placed graffiti. See Alan Riding, Parisians on Graffiti: Is It Vandalism or Art?, N.Y. TIMES, Feb. 6, 1992, at A6 (noting that France’s Culture Minister, Jack Lang, supports the distinction between graffiti art and vandalism in an effort to communicate with the youth of France); John Savage, Graffiti on the Metro? C'est Execrable!, N.Y. TIMES, Mar. 2, 1991, § 1, at 22 (letter to the editor). For a compendium of some Parisian graffiti, see JOERG HUBER & SEAN C. BAILLY, PARIS GRAFFITI (Charles L. Clark trans., 1986).

The interesting aspect of these countries’ solutions is that they have gone beyond the efforts most often tried in the United States by attempting to deal directly with the graffiti writers and their motivations, and they have been successful.

40. See Alan Citron, Writing Is on the Wall—Graffiti Problem Growing on the Westside, L.A. TIMES (Valley ed.), Mar. 31, 1988, pt. II, at 15 (noting that although graffiti was not a problem in West Los Angeles neighborhoods in the past, even upscale neighborhoods have become targets); Christopher B. Pollak, Islip Moving Against Graffiti, N.Y. TIMES, Dec. 15, 1985, § 11, at 20 (quoting Islip, New York Supervisor, Michael LoGrande, as stating that graffiti exists in both high- and low-income areas); Bob Pool, Woodland Hills Residents Voice Outrage: Graffiti Spreads Amid Cleanup Dispute, L.A. TIMES (Valley ed.), Mar. 6, 1996, pt. II, at 6 (discussing graffiti problems “in the upper-middle-class neighborhood where graffiti has never before been a problem”).
Although subways and buses are still the major targets of graffiti because of their visibility, graffiti increasingly has moved from transit surfaces to walls and other stationary objects.\(^1\)

Graffiti is no longer confined to the streets. Graffiti art now appears, and sells, in galleries and at art exhibitions.\(^2\) Museums which exclusively exhibit graffiti have appeared in New York City\(^3\) and in Paris.\(^4\) Graffiti artists have been commissioned to design backdrops, nightclubs, magazine covers, record jackets, billboards, postcards, and upholstery.\(^5\) Graffiti has influenced textile, clothing, and jewelry design.\(^6\) Commercials depict youths painting graffiti.\(^7\) Movies have been made about graffiti and its writers.\(^8\) "Disneyworld even has its own graffiti-covered New York subway car."\(^9\)

\(^{41}\) Once the subways were clean in New York, graffiti started appearing on buses, trucks, and buildings. See Fox Butterfield, *On New York Walls, the Fading of Graffiti*, N.Y. TIMES, May 6, 1988, at B1 (noting that as the subways became more difficult targets, graffiti surfaced in other areas); Kevin J. Farrelly, *Graffiti Come Out of the Subway Into Light of Day*, N.Y. TIMES, June 10, 1989, § 1, at 26 (letter to the editor by the president of the Bayside Hills Civic Association). With the efforts of transit systems to keep their surfaces clean, writers have begun to use walls for their graffiti more frequently, usually those along the transit route or a major thoroughfare to ensure their tag's visibility. Constance L. Hays, *Transit Agency Says New York Subways Are Free of Graffiti*, N.Y. TIMES, May 10, 1989, at Al.

\(^{42}\) Howorth, *supra* note 3, at 555 (noting that in 1985, a graffiti painting by Jean-Michel Basquiat sold for $20,900 at a gallery auction).


\(^{44}\) See Howorth, *supra* note 3, at 559 (noting that a museum exists in Paris under the directorship of Serge Raymond).

\(^{45}\) Id. at 555.

\(^{46}\) Id.

\(^{47}\) Id.

\(^{48}\) Id.

\(^{49}\) Some examples of such movies are: *Beat Street* (Orion 1985); *Style Wars* (Newday Films distributor, 1984); *TURK 182* (Twentieth Century Fox 1985); *Wild Style* (First Run Features 1983). See also Howorth, *supra* note 3, at 562 (discussing audio visual resources available on the subject of graffiti); Richard Harrington, "Wild Style: Art to Go," WASH. POST, Jan. 26, 1984, at B4 (reviewing *Wild Style*). Documentaries also have been made on the subject of graffiti, such as *Bombing L.A.* (Cinema Guild distributor, 1989). See Claudia Puig, *Graffiti Chronicler's Video Delves Into Urban Scrawl*, L.A. TIMES (Home ed.), June 6, 1989, pt. VI, at 3 (interviewing Gary Glaser, creator of *Bombing L.A.*).

\(^{49}\) *N.Y. Wants Disney to Erase Stigma*, CHI. TRIB. (North Sports Final ed.), Nov. 24, 1989, § 1, at 26. New York Metropolitan Transit Authority's (NYMTA) David Dunn demanded that Disney clean up the street car that is displayed on the park's MGM Studios Tour. *Id.*
Graffiti is considered to be one element of a larger movement in the youth subculture known as "Hip-Hop." The youngest writers of graffiti start at age eight or nine and some may continue into their twenties or thirties. Writers are mainly inner-city Blacks and Latinos, but an increasing number of Whites and Asians, as well as children from middle- and upper-class backgrounds, are writing. Writers traditionally have been males, but that, too, is changing.


Writers above the age of sixteen rarely practice graffiti, because after age sixteen they are considered adults and can receive severe penalties and a criminal record. See CASTLEMAN, supra note 22, at 67-68; Jorge Casuso, Gangs Apply Paint in War for Respect, Chi. Trib. (City ed.), May 12, 1991, ¶ 1, at 4; David Haldane, A Hunger for Attention Propels Taggers on Their Nightly Rounds, L.A. Times (Home ed.), Apr. 8, 1990, at B1.


Abel and Buckley have examined the reasons posited for the lack of female graffiti writers. Explanations for the paucity of female graffiti include: "women's greater regard for moral codes and social conventions" (Kinsey); the lack of female artistry and creativity generally (Sechrest & Flores); that women use different outlets for expression than men (Landy, Steele, Rudin, & Harles); "cultural factors which inhibit women from engaging in aggressive or defiant acts" (Martilla); and that men's envy of women's ability to have babies causes men to use graffiti as a symbolic surrogate.

50. L.A. City Cultural Affairs Dept & The Getty Ctr. for the History of Art & the Humanities, Street Art/Graffiti Vandalism: Conference Report (Sept. 14, 1991) (hereinafter STREET ART) (draft manuscript on file with the University of Michigan Journal of Law Reform). This conference was an ingenious effort to get writers and community members together to discuss the problems and benefits of graffiti writing. This report seeks to capture both sides' sentiments and help forge a common path for future action. See also Dana Parsons, Getting a Close Look at the Handwriting on the Wall, L.A. Times (Orange County ed.), Aug. 9, 1991, at B1.


54. See Stern & Stock, supra note 30, at 60 ("Females, by and large, are not part of the subway graffiti scene."). When asked why this is so, most writers say that the "tunnels are too dangerous and dirty" and are "no place for a girl." Id. There is some suspicion among psychologists that graffiti enables younger boys to put off dealing with the opposite sex because the time and energy it takes to go bombing night after night leaves male writers little time for socializing with females. Id.
Writers may be part of a gang, graffiti crew, or work alone. A writer's chosen group association, lack of association, or desire for association will define her motivations, her code of ethics as to where and how the graffiti is done, and the actions she will take if her graffiti is defaced by others.

The most popular medium employed by graffiti-writers is spray paint, but writers also use felt-tip markers, grease pencils, paint sticks, wax, and even shoe polish. A variety of tools which enhance the work may be used, such as "skinny caps," which provide a fine line of paint, or nozzles from other types of spray cans, which give a different texture to the work. Writers use metal objects, sharp rocks, or cutting tools for carving into glass or other hard surfaces. These materials are often stolen, or " racked," even by those who can afford them.

for the act of giving life (Dundes). Abel & Buckley, supra note 2, at 133-34. "[W]hen women do write graffiti, 'the most recurring theme' seems to be the women's liberation movement. Id. at 134-35 (quoting Luana Martilla, a female graffitologist from Berkeley, California). According to Abel and Buckley, women are motivated purely by the desire to give voice to their "preoccupations" rather than to find an outlet for their aggressions and their graffiti "have very little humor," "consist of bland statements," and are "sparse and unimaginative." Id. at 136-37.

Other evidence contradicts these characterizations. See Castlemans, supra note 22, at 68-69 (stating that although males predominate as writers, there are a number of well-known female writers and many graffiti groups include active female members); Citron, supra note 53, at 29 (discussing one of the better known and well-respected taggers on the Westside of Los Angeles named "Fantasy" who came from a wealthy background and was known for scribbling her tag on police cars, even when occupied by police); Bob Sipchen, Call of the Wild, L.A. Times (Home ed.), June 25, 1989, pt. VI, at 1, 9 (discussing a middle-class Latina tagger with the tag of "Secret").

55. See discussion infra Part II.
56. For example, if the graffiti delineated gang territory, its defacement could provoke retaliation and lead to violence. If, on the other hand, the graffiti was used to compete artistically or to communicate, the stimulated response would be to paint more creative graffiti or communicate further.
57. See Anne Keegan, He's Tired of Batting Clean-up, Chi. Trib. (Sports Final ed.), Oct. 27, 1986, § 2, at 1, 2. Materials other than spray paint are used because they are much easier to carry and conceal. Moreover, legislation in some states and cities bans the sale of spray paint and mandates its lockup. See infra Part IV.E.1.
59. Stern & Stock, supra note 30, at 54 (describing writers who use a variety of nozzles taken from starch and oven-cleaner cans to vary the width of the stream of paint).
61. Citron, supra note 53, at 29; Jane Hulse, Cost of Graffiti Removal Eating Up City Budgets, L.A. Times (Ventura County ed.), June 9, 1990, at B1, B4 (quoting Rod Mendoza, Senior Crime Prevention Officer for the Ventura County Sheriff's Department,
Often some ritual accompanies the use of a particular tool. Some writers paint their tag on empty paint cans and discard them. Other writers smash the cans and save the mixing balls inside to wear as jewelry.

II. TYPES OF GRAFFITI AND THE MOTIVATIONS OF ITS CREATORS

There are many different types of graffiti, each with a different type of creator. Therefore, understanding what motivates a given creator is essential to controlling graffiti. This Part divides the range of graffiti into somewhat discrete types and pinpoints the motivations behind each type's creation. The descriptions are arranged from the lowest level of intricacy to the highest.

Gang graffiti is the most notorious type of graffiti and the category into which most observers incorrectly place all graffiti. In fact, very little of the graffiti in urban areas actually is done by gangs. Gang graffiti most often consists of primitive scrawls focusing on the gang name or symbol. Gang graffiti serves very particular purposes: to mark territory and war zones, to send messages, to insult other gangs, and to warn away intruders. Gang graffiti in an area may lead to increased 

as stating that despite laws outlawing the sale of spray paint, kids still get spray paint because "[t]hey go in stores and rip it off").

In graffiti lingo the term "boged" also may be used to describe the spray paint or markers as being stolen. Stern & Stock, supra note 53, at 50. The term is a "kind of backhand tribute to the actor Humphrey Bogart." Id.

63. Id.
64. See, e.g., Casuso, supra note 51, at 4 (citing National Graffiti Information Network statistics that "[a]lthough graffiti is often associated with street gangs, much more prolific and widespread are an estimated 5,000 local taggers—up from 500 four years ago . . ."); Citron, supra note 53, at 1 (noting that Los Angeles authorities say that "as much as half" of the graffiti in many parts of the city is not the work of gangs); id. at 3 (noting that according to Project Heavy, a nonprofit graffiti eradication program, "the amount of graffiti in the San Fernando Valley has doubled in the last year, with non-gang members responsible for 75% of it").
65. Wong, supra note 53, at E5.
criminal activity and to violence over defacement of such graffiti by others.67

"Tagging" is the second type of graffiti. Tags are simple, stark letterings of a signature nickname,68 which often incorporate the creator's chosen label or that of the graffiti crew with whom she paints.69 Each creator has a distinctive style that he develops, unless he is a "biter" who copies someone else's style.70 In tagging culture, a tagger must develop a creative tag or acquire sufficient notoriety to achieve an appropriate level of respect before she can join a graffiti crew. "Crews" are simply groups of individuals who go out writing together and are a resource for each other.71 These groups can range in size from as few as three to as many as several hundred.72 Crews usually are nonviolent and, unlike gangs, war with art rather than with guns or knives.73 Crews do not seek to intimidate the citizenry.

IX, at 1.

Experienced police authorities recognize that gang graffiti is distinctive from other types of graffiti. See Citron, supra note 53, at 3 ("[T]here are clear differences between tags and gang markings . . . . While gangs usually write the names of their groups in block letters, taggers tend to be more colorful and stylized. Gangs also tend to stick to their own turf. Taggers prefer major commercial thoroughfares . . . for their high visibility."); Denise Hamilton, Artists to Take Can in Hand for Wall-to-Wall Showdown, L.A. TIMES (Home ed.), Jan. 3, 1990, E3A.

67. Racist graffiti could be included in this category because such graffiti is commonly, but not exclusively, done by gangs. This Note, however, will not address this kind of graffiti as it is of a different caliber and is better classified as hate speech and dealt with under that rubric.

68. Wong, supra note 53, at E5.

69. The creator's nickname may be chosen for a variety of personal reasons. When graffiti first started, the tags were representative of creators' names and addresses. See supra notes 22-26 and accompanying text. Today, most writers have different criteria. Some may choose their tag for practical reasons, such as the speed with which it can be written. For some, the tag may have personal significance. Others may just like the way the tag looks. See Stern & Stock, supra note 30, at 50.

70. Citron, supra note 53, at 29.

71. Stern & Stock, supra note 30, at 58. Although there is a tendency for writers of similar backgrounds to belong to the same crew, talent may sometimes allow a prospective member to overcome background differences which might otherwise have prevented her membership. Id.

72. Casuso, supra note 51, at 4; Stern & Stock, supra note 30, at 58. Crew names tend towards superlatives. Stern & Stock, supra note 30, at 58. Some examples are: OTB for Only The Best; CIA for Crazy Inside Artists; and NSA for Non-Stop Action. Id.

73. Wong, supra note 53, at E5. Graffiti crew members disdain associations with true gangs. See, e.g., Haldane, supra note 51, at B1 (quoting a member of a crew as saying "[i]t's better than being in a gang . . . . This is a hobby."); Sipchen, supra note 54, at 1, 9 (discussing a crew member who distinguishes the crews from gangs because even though crew members "wear gang-style clothing, listen to rap music, and paint graffiti," crews battle with spray paint, not weapons, do not paint graffiti to mark territory, and dress in such a way to distinguish themselves from the gangs).
Crew members benefit from being part of a crew, because the tagger's work may not be written over and she is protected from being attacked or taunted by members of other crews.  

The primary motivation of taggers is fame and recognition. A tagger's objective is to paint his tag or that of his crew in as many places as possible, because a tagger's recognition depends on how much he is "up." The country's most notorious tagger, CHAKA, exemplifies this drive for recognition, having tagged over 10,000 locations from San Francisco to Newport Beach.

Graffiti crews may engage in competitions called "battles." The crews decide what the rules are. The winner may be the side that gets the most paint "up," or the crew or artist who is the "freshest" or has the "most wild style." Casuso, supra note 51, at 4; Sipchen, supra note 54, at 1. Victory may bring the right to use the other crew's name or a prize of spray cans. If the victory is a "romp," the losing crew sometimes must disband. Casuso, supra note 51, at 4.

A tagger who is not a member of a crew is considered a "toy." "[A] graffitist becomes a member of a recognized clique only when his pieces achieve a level of proficiency and he has tagged enough to be considered up. Until then, he's a toy, fair game to have his tags written over or 'slashed' by a felt tip, to be pushed around and bad-mouthed, and to be forced to surrender his paints to his graffiti 'betters.'" Id. at 50. Writers in crews see toys as pests who are inexperienced and attract police. The only way to be promoted from toy status is by getting respect through the quality and number of tags up. Id.

Being accepted by a crew does not mean that an artist may relax his standards. Taggers may be "booted" from the crew if the quality of their tagging styles falls below crew standards. See Haldane, supra note 51, at B3 (mentioning a tagger who said he had personally "booted" several taggers whose work had fallen beneath the crew's standards, which require tags to be attractive and letters to match).

Psychiatrists have offered a number of explanations for graffiti writing, many of which focus on fame-seeking motives. Other psychiatrists characterize graffiti as "an effort to deal with deep feelings of fear" by seeking out experiences that involve facing that fear and as an effort to rebel against authority. Stern & Stock, supra note 30, at 50. Some psychiatrists argue that taggers express a kind of territoriality "like male dogs who raise their leg every 10 feet," a territorial motivation different from gangs who mark their territory as a warning that they will defend it. Id.

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Where a tagger is up also may make a difference. The more visible a tag, the more recognition the artist is likely to get. Citron, supra note 53, at 1; Stern & Stock, supra note 30, at 50. Where a tagger is up also may make a difference. The more visible a tag, the more recognition the artist is likely to get. Citron, supra note 53, at 1; Stern & Stock, supra note 30, at 50. Where a tagger is up also may make a difference. The more visible a tag, the more recognition the artist is likely to get. Citron, supra note 53, at 1; Stern & Stock, supra note 30, at 50. Where a tagger is up also may make a difference. The more visible a tag, the more recognition the artist is likely to get. Citron, supra note 53, at 1; Stern & Stock, supra note 30, at 50. Where a tagger is up also may make a difference. The more visible a tag, the more recognition the artist is likely to get. Citron, supra note 53, at 1; Stern & Stock, supra note 30, at 50.
California with his logo. Thus, unlike gangs who seek to mark their territory, taggers seek notoriety and respect.

The third category of graffiti is a more elaborate form of tagging, called “throw-ups.” These works are multicolored and use large block or sausage-shaped letters. They are more intricate and detailed than simply a tag. These works are “often accompanied by personal symbols or a tiny self-portrait.”

“Pieces,” or murals, are the most elaborate and “colorfully explosive” of all graffiti. They can be as large as billboards and often entail “dazzling, enormous, highly abstract signatures, interwoven with human figures, dragons, otherworldly creatures, urban structures and, at times, social-advocacy slogans.” Pieces are what are most commonly described as graffiti art and may be done by an individual or by a crew. Pieces may be commissioned or they may be done without permission. The more artistic writers often keep “piece books” which contain sketches of their own designs and those of other writers, as well as photographs of completed works. The piece books and photo albums are widely discussed by writers, and prized photos are traded and copied.

78. Wong, supra note 53, at E5.
79. Id.
80. Id. These works may also be known as “burners.” Stern & Stock, supra note 30, at 60 (noting that burners are the largest and most elaborate kind of piece). “Most graffitists and graffiti observers feel that the best burners of today are better than those of yesteryear. . . . [and] are ‘far more sophisticated from a design point of view.’” Id. (quoting Hans Spiegel, who teaches a course on urban life at Hunter College).
81. Wong, supra note 53, at E5.
82. See, e.g., STREET ART, supra note 50, at 1 (explaining that the term “piece” is derived from the word “masterpiece” and that those who express themselves through the creation of “pieces” are regarded as artists).
83. Keith Haring, known for his magnificent subway pieces, worked solo. See Michael Kimmelman, A Look at Keith Haring, Especially on the Graffiti, N.Y. TIMES, Sept. 21, 1990, at C19 (“His subway drawings represented one of the most visible attempts in recent history to broaden the public’s interest in art, and to bypass the network of galleries and museums by which artists have always had to establish their careers.”). Aero Soul is one example of a group that collectively paints murals. See Hart, supra note 58, at 22.
84. See MARTHA COOPER & HENRY CHALFANT, SUBwAY ART 33-34 (1984); Stern & Stock, supra note 30, at 50, 60.
85. See COOPER & CHALFANT, supra note 84, at 33-34. Getting the photo may add an added element of risk for the writer. Taking photographs without a special permit has been outlawed in many subway stations. Taking photographs may also alert police who know writers’ habits. Stern & Stock, supra note 30, at 60. The more intense cleanup efforts of transit authorities have not discouraged this activity. Id. (noting that some graffiti writers wait to capture their feats on film just before the cars are
Not all writers are sophisticated enough to create pieces, but those who are often acquired their skills from their days as taggers. These writers are self-taught and seek to explore their artistic abilities through painting. For many such writers, graffiti art is not just a hobby, but a means of economic support and an escape from the ghetto. These writers seek more than just notoriety; they use graffiti to build their portfolio and practice their skills so that they can obtain employment and receive scholarships. For many, graffiti is also a means of expression and a way to improve their community.

The numerous styles of graffiti and the motivations behind each illustrate the different objectives of various writers.

washed); see also Jennifer Toth, Recognition at Last for an Underground Man, L.A. TIMES (Home ed.), Oct. 10, 1990, at F1, F8 (quoting Chalfant as saying that “[k]ids now paint trains and take pictures of their work before the cars are cleaned . . . [and] then send the pictures [to] graffiti newsletters.”).

Traditionally, writers had “writers’ corners” on favorite subway benches “where they would sit and keep tabs on who was up, reaching a consensus as to who was the most respected writer, the ‘King of the Line,’ at any given moment.” Stern & Stock, supra note 30, at 60. Writers’ corners have gone out of style over the years “in part because some have been taken over by tough neighborhood gangs, in part because so many arrests for loitering have been made there.” Id.

86. Chris Pape is just one example. Pape began tagging at 13 as a “toy” and “planted” his name on as many places as possible to gain recognition and a reputation. Toth, supra note 85, at F8. He moved from tagging into more complex pieces when he was inspired by a completely graffited train, painted as a giant, white cloud with the words “Stay High.” Id. Pape’s work on a subway car of two white hands reaching towards each other (similar to Michelangelo’s “Creation”) accompanied by the questions “What Is Art? Why Is Art?” was showcased recently in the New York Museum of Modern Art’s “High and Low: Modern Art and Popular Culture” exhibition. Id.

87. Wong, supra note 53, at E5.

88. Citron, supra note 53, at 29 (“Raymond Roker and Rick Wyrgatsch, who started as taggers, now work solely on murals, or ‘pieces.’ Both attend art school and are hoping to make a living from the skills they mastered on the streets.”); see also Barbara Gilford, Graffiti Group in Film, N.Y. TIMES, Dec. 7, 1986, § 11, at 10 (discussing the fact that a number of writers use their skills to decorate shirts at a salary of $250 a week); Eve Heyn, When Graffiti Artists Grow Old: Officials Fear Gang Members Turning Towards Violent Crime, NEWSDAY, Dec. 7, 1990, at 23 (discussing a tagger who now studies graphic arts and advertising, wants to open his own firm, and still does illegal graffiti because, in his words, “[n]ight now, I’m nobody. I want to be somebody. That’s why I do graffiti.”).

89. See Laura Kaufman, Vandal or Artist?, L.A. TIMES (San Diego County ed.), July 27, 1990, at F21B, F21C. Brett Cook uses unauthorized murals to convey a message to the community. He claims that his mission is to spread understanding among blacks and tolerance among ethnic groups. He believes that the importance of his artistic themes overshadows the stigma of their illegal placement. Id.

Aero Soul is another example of a graffiti group whose professed purpose is to cover up “gang graffiti with brilliantly hued artistic statements inspired by comic books, pop-song lyrics and personal relationships.” Hart, supra note 58, at 22. Once taggers, Aero Soul now can be hired at cost to do commissioned paintings to cover up gang graffiti. Id.
WHAT IS ART—WHY IS ART?

Painted by Freedom. Photographed by Henry Chalfant, 1983
Graffiti is not merely one type of painting motivated by the same factors in every instance, nor does simply one type of person paint graffiti. Gangs seek to be deliberately destructive and instill fear. Taggers seek notoriety and respect. Artists who create throw-ups or pieces seek not only fame and respect, but also an opportunity for artistic or social expression. What distinguishes a graffiti vandal from a graffiti artist is whether the writer creates the graffiti for the thrill of breaking the law or for the joy of artistic expression. Even if both are at play, society often can determine the dominant motives of a given writer. Additional education, greater social censure for unsanctioned graffiti, higher punishments for vandalism, and greater opportunities for legal painting will make it easier to distinguish between the artist and the vandal.

III. PROPONENTS V. OPPONENTS: SKETCHING OUT THE ARGUMENTS FOR AND AGAINST GRAFFITI

Graffiti has been called everything from destructive vandalism to art. It has invoked a range of responses ranging from being painted over to being preserved and photographed. People's reactions to graffiti vary from hatred and condemnation to understanding and appreciation of it as an art form. These conflicting reactions reflect the reality that although the removal of graffiti from undesirable places can be costly, the time, effort, and significant messages behind many graffiti pieces make them works of art that merit study, rather than destruction.

From the viewpoint of many of those who consider graffiti to be vandalism, all graffiti is vandalism regardless of a piece's artistic value. For these opponents, there is no room for differentiation between mere scrawls or a mural. Graffiti is
ugly, indicative of decay, invites crime and additional graffiti, and is done by criminals who should be punished. \(^{92}\) Graffiti should be eliminated even when it is on private property or was commissioned. \(^{93}\) Such a view leaves no room for the preservation of even the more intricate pieces of graffiti recognized as art. Opponents are against any encouragement of, or support for, graffiti and often claim that any write-up of graffiti incidents by the press encourages more vandalism. \(^{94}\) Opponents

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\(^{92}\) Leonard Bernstein, *It's the End of the Line for Graffiti in San Diego*, L.A. TIMES (Orange County ed.), Nov. 15, 1987, pt. II, at 8 (stating that graffiti is widely assumed to reduce ridership, despite the fact that no systematic research has been done on the subject, and quoting Albert Engelken, deputy director of the American Public Transit Association, as saying "[g]raffiti breeds graffiti"); Jim Carlton, *Graffiti Smudge Mission Viejo*, L.A. TIMES (Orange County ed.), Jan. 17, 1989, pt. II, at 1, 5 (noting that Commission Vice-Chairperson Craig Galbraith likened graffiti to a "cancerous growth on the community" and stated that graffiti implicates the "social problems of gang activity" and has "an important economic and visual impact" which, "conservatively" estimated, could reduce property values and business activity by as much as 10 percent and cost "hundreds of millions of dollars"); Hulse, *supra* note 61, at B1 (stating that graffiti is a vital tool for gangs who use it to establish their territory and quoting David Keith, senior crime analyst for the Oxnard Police Department, as stating that "[g]raffiti feeds itself .... The more kids see it, the more they get the idea to do it."); William Recktenwald, *Graffiti's Enemies Pushed to the Wall*, CHI. TRIB. (Final ed.), Mar. 31, 1988, § 2, at 3 ("[G]raffiti mark the surrender of the neighborhood to street gangs, police say. .... 'Graffiti are a message that gangs control a certain area.'"); Felice Reston, *Graffiti Around the Southland: Youthful Art or Vandalism?*, L.A. TIMES (Home ed.), May 7, 1988, pt. II, at 9 (letter to the editor) (stating that graffiti is "an assault on our quality of life" and a "form of visual pollution"); Robert Valdez, *Irresponsible Article on "Ozone"*, L.A. TIMES (Valley ed.), May 27, 1988, pt. II, at 14 (letter to the editor) (arguing that "[g]raffiti create an eyesore in the community, decrease property values, scare and demoralize the community, drive away customers and businesses" and cause gangs "to gravitate to areas where graffiti abound, using these areas for illegal drug activity, which leads to terror, shootings and deaths"); Sonia Wachstein, *Subway Graffiti Can Deface the Skyline Too*, N.Y. TIMES, Apr. 28, 1981, at A18 (arguing that graffiti deprives subway riders of their legitimate rights to see the skyline because it covers the windows). Even when writers are not part of a violent gang, it is expected that their graffiti crew will drift into violence and other crimes. See Heyn, *supra* note 88, at 23.

\(^{93}\) See Kim Kowsky, *Painted into a Corner: Murals on Lawndale Shop Upset Neighbors, City Officials*, L.A. TIMES (Home ed.), June 22, 1991, at B1 (noting that many people cannot tell the difference between commissioned murals and illegally scrawled graffiti, tend to have negative feelings about the art form because its originators are minority youths from low-income neighborhoods, and think murals "cheapen" the neighborhood). The controversy has been framed as a culture clash: "when they see a spray can and minority using it, they say 'Oh, no, it must be vandalism.'" Id.

\(^{94}\) J. Jeffrey Miller, *Death of Young Graffiti Artist*, L.A. TIMES (Orange County ed.), Jan. 18, 1987, pt. II, at 14 (protesting Lily Eng's *Graffiti Marks the Passing of a "Restless and Bored" Teenager*, L.A. TIMES (Orange County ed.), Jan. 2, 1987, pt. II, at 1, and arguing that graffiti is not art and that boredom is no excuse for graffiti); *A Protest Against Graffiti "Art,"* CHI. TRIB. (Final ed.), July 24, 1985, § 4, at 14 ("One man's graffiti is another man's art? Humbug! Vandalism by any other name would smell as bad. Graffiti is a manifestation of what the ersatz artist, with his spray can,
fail to appreciate what graffiti represents to the youth culture and what motivates the writer. Their only solution is to outlaw all graffiti and punish all writers.95

Those who consider some graffiti to be art often differentiate more carefully between types of graffiti. Graffiti art proponents recognize that some pieces have extraordinary merit and deserve recognition.96 Proponents recognize that the motivation of many writers is not to deface property intentionally, but rather to express themselves or to gain respect by the only means that are accessible to them.97

Graffiti’s most ardent proponents often fail to acknowledge, however, that the art form often results in the defacing of property.98 At the same time, many proponents do recognize

thinks of his city."); S. Skelly, Art Attack, NEWSDAY, Dec. 11, 1989, at 46 (protesting the publishing of an article on writers as lacking in journalistic responsibility because it legitimizes "the criminal act of vandalism as a viable art form [and] classifying such wanton destruction of public property as art only encourages those who are involved to continue"); Gordana Swanson, Graffiti, L.A. TIMES (Home ed.), Mar. 18, 1990, at M6 (letter to the editor) (objecting to the running of articles such as Linda Blandford's Making One's Mark on the World, L.A. TIMES (Home ed.), Feb. 27, 1990, at B7, and stating that "[t]he last thing we need in Los Angeles is for someone to declare that those who destroy public property aren't understood and that maybe it's OK for people to deface school walls and RTD buses"); Valdez, supra note 92, at 14 (protesting the Los Angeles Times' decision to run an article on a tagger as "both irresponsible and disheartening" because it gave that tagger "the publicity and notoriety he was looking for and made his 'art' an inspiration for others to imitate").

95. See, e.g., Reston, supra note 92, at 9 (arguing that graffiti violations should be considered more than a misdemeanor and that police should "catch these self-centered egomaniacs and . . . make an example of them").

96. See, e.g., Wong, supra note 53, at E1 (stating that urban researchers recognize serious graffiti painting as a valid art form and a new street subculture worthy of study).

97. Gilford, supra note 88, at 10 (quoting a writer as stating that "[w]e don't go around destroying beautiful walls. We go around and clean up what other graffiti is there and turn it into something"); Harris, supra note 22, at 14 (noting the variety of explanations for graffiti, such as self-expression, peer recognition, and a desire to strike back at society); Jill Walker, Handwriting on the Wall: 10,000 Chakas, WASH. POST, May 4, 1991, at A4 ("As graffiti proliferate, their content is being analyzed closely. Once considered primarily a gang-related phenomenon, they now represent . . . the language of protest or simply a means of personal expression."); Wong, supra note 53, at E1 (quoting Mike Krampach, a Los Angeles graffitiist as stating that "guys like us aren't graffiti hoodlums, but most people don't understand that . . . . We're out to create. We just want to do our own thing—our kind of art").

98. Norman Mailer's THE FAITH OF GRAFFITI is notorious for such one-sided treatment of graffiti. See, e.g., MAILER, supra note 12, chs. 3-4 (celebrating graffiti as an art form). Others argue that subway graffiti is more of an attraction than a defacement. See Charles Bigelow, New York City Graffiti, N.Y. TIMES, Nov. 23, 1980, § 6 (Magazine), at 174 (arguing that graffiti has not caused decreased ridership and stating that "I ride the subways precisely because of the graffiti, in order to enjoy that ephemeral flowering of rebellious spirits through graphic design. It is commendable that the
that defacing property is wrong. They therefore work to prevent writers from vandalizing public and private property by creating alternative outlets for writers' energies. Such alternatives include work on commissioned property or participation in sponsored exhibitions and programs which hone skills and can help writers find employment or win scholarships.\footnote{For example, consider the programs created and administered by the Philadelphia Anti-Graffiti Network, the Los Angeles Cultural Affairs Department, and Stockholm, Sweden, which are discussed infra Part V.B.}

Both sides have persuasive reasons for their beliefs, but neither is completely correct. The opponents of graffiti correctly argue that graffiti is very costly to both public agencies and private owners who must clean their property in order to return it to its pregraffiti condition.\footnote{In Chicago, for example, officials of the Chicago Transit Authority (CTA) estimated that they would spend up to $1.5 million alone in 1986 to remove graffiti from stations and equipment. Val Mazzenga, Defaced Stations Get a "Fresh" Look, CHI. TRIB. (Sports Final ed.), Oct. 29, 1986, § 2, at 1 (photo and caption). The defacement of 10 stations alone was estimated to cost $5000 in cleaning and painting. Graffiti Vandals Hit 10 Stations, CHI. TRIB. (Chicagoland North ed.), Nov. 17, 1990, § 1, at 5. The Willy Wonka Company suffered $2500 in graffiti damage from one defacement of its building. Itasca, CHI. TRIB. (Du Page Sports Final ed.), Dec. 4, 1991, § 2, at 5.}

Graffiti costs go beyond the costs of cleaning and include the costs of preventive measures.\footnote{In California, a tagger named CHAKA is estimated to have caused at least $30,000 worth of damage to Southern Pacific Railroad cars and more than $500,000 in damage to other property from Orange County to San Francisco. Walker, supra note 97, at A4. The California Department of Transportation was expected to spend $28,000 in 1991 to erase graffiti from signs, walls, and art projects in the San Diego area alone, as compared to the $3000 to $5000 it used to spend per year to clean up the Imperial-Riverside-San Diego three-county area. Monica Rodriguez, Graffiti, Cleanup Cost on the Rise, L.A. TIMES (San Diego County ed.), Feb. 22, 1991, at B2. Artists who paint commissioned murals can no longer receive government funding to remove graffiti and restore their works, but must provide their own materials and, as a result, must seek funding elsewhere. See, e.g., id. (discussing the defaced "Big Sky Church" mural). It was estimated that the state of California would pay two million dollars statewide to clean up graffiti in 1991. Faye Fiore, Taggers Rule: The Unfinished Century Freeway Is One Big Concrete Canvas for Graffiti Writers, L.A. TIMES (Home ed.), Dec. 6, 1990, at B1, B4. From 1978 to 1990, the Orange County Transit Authority spent approximately $350,000 to repaint buses and remove logos from bus seats and interiors. In 1990, the county specifically budgeted for graffiti cleanup, but fell woefully short of the estimated $10 million necessary to clean the buses in Los Angeles. Mark I. Pinsky & David Reyes, Orange County Newswatch, L.A. TIMES (Orange County ed.), Mar. 27, 1990, at A1.}

\begin{itemize}
  \item Many argue that transit authorities also suffer costs in the form of lost revenues
\end{itemize}
The costs of graffiti prevention run the gamut from graffiti-proofing surfaces to increasing security in graffiti-prone areas. Both public and private owners spend millions of dollars and countless hours trying to remedy the problem of graffiti. Graffiti incites fear because its opponents mistakenly believe that because gangs use graffiti, any graffiti necessarily brings about increases in gang activity, violence, and crime. Furthermore, because graffiti's roots were in the ghetto, opponents all too often cite graffiti as a sign of urban decay. Neither of these beliefs is true because much graffiti is done by nonviolent individuals or graffiti crews, and is done in wealthy neighborhoods, or to successfully revitalize ghetto areas. Graffiti is more likely to be the voice of youth, who either do not understand the consequences of their actions or feel that society has no place for them, rather than the harbinger of urban decay and crime. Thus, contrary to opponents' beliefs, graffiti is not a cause of urban problems, but rather a mode of expression for persons already living with these problems.

Opponents of graffiti also exaggerate the effects of publicity on graffiti writing. Publicity may contribute to a glorification of graffiti in some cases, but alerting the public to incidents of vandalism or publicizing graffiti as a style of art does not. As from passengers who stop riding because they dislike or are frightened by the graffiti. See Stern & Stock, supra note 30, at 44. No figures exist to support these assertions, however. The NYMTA asserted, without any empirical support, that half of its estimated $10 million annual graffiti-related costs were attributed to decreased passenger use. Id. Arguably, a number of passengers ride the subway for the graffiti. See, e.g., Bigelow, supra note 98, at 174. Furthermore, it is just as likely that ridership really does not decline by any significant amount as a result of graffiti, as there are few alternative means of transportation.

102. See infra Part IV.

103. See supra note 64 and accompanying text; Wong, supra note 53, at E1 (noting that urban researcher Devon Brewer has found that "'aerosol art' groups generally exist apart from gangs and other violent behavior"). Moreover, serious graffiti painting can be distinguished from other types of graffiti. See, e.g., Wong, supra note 53, at E1, E5 (paraphrasing Brewer's assertion that "murals can be technically stunning and artfully sophisticated, far beyond the more primitive, regimented and turf-restricted style of 'gang graffiti' "). In Los Angeles, authorities state that over half of the public scrawling in the city is not the handiwork of the Bloods or the Crips (the two major gangs in L.A.), but rather that of taggers. Citron, supra note 53, at 1.

104. For example, although graffiti always has been evident in the poorer sections of Santa Monica, it has started to appear in office districts and tourist areas. See Citron, supra note 40, at 15.

105. Psychologists suggest that vandals have little understanding of the property damage they cause, and that even if they do realize the extent of the damage they cause, they usually feel as one tagger did: "We don't care . . . [Property owners] don't do nothing for us." Haldane, supra note 51, at B3.
The Writing on Our Walls

graffiti is discussed now, youths do not and cannot understand the difference between art and vandalism. If the media makes a clear distinction between vandalism and art, the creators of graffiti will no longer receive the mixed signals that result from the conflict between those who support graffiti and those who think it a crime. Moreover, if graffiti writers see their peers and those they respect fighting graffiti vandalism, writers will feel less of an incentive to rebel and more pressure to join their peers in the fight. The opponents of graffiti vandalism will no longer be only those people who graffiti writers perceive to be the "establishment." Graffiti vandalism will become "uncool."

Graffiti proponents are correct in arguing that much graffiti does have artistic merit and should be exalted as such. Although some graffiti truly can be considered art, many proponents incorrectly preach that graffiti work necessarily supersedes the interests of property owners. Proponents should better differentiate graffiti art from graffiti vandalism. Proponents should place a greater emphasis on style and context when determining what they praise as art. Although


A number of artists have used graffiti in their works. Andy Warhol and graffiti-writer Jean-Michael Basquiat collaborated on 16 pieces for a joint exhibition of their work. The estimated value of these pieces is between $50,000 and $80,000. See Brumley, supra note 12, at 13A.

Artist Keith Haring began his career in the subway and is noted for his subway mural art. His work has been shown in exhibitions such as "High and Low" at the MoMA and "Keith Haring: Future Primeval" at the Queens Museum. See Kimmelman, supra note 83, at C19 (describing the Queens Museum exhibit as having "about a dozen of [Haring's] subway sketches on view, photographs of several dozen more, as well as other works on paper, paintings, sculptures and objects ... all of which Haring adorned with his characteristic repertory of dancing figures, radiant babies, copulating bodies and anthropomorphic appliances"). West Germany commissioned Haring to work on the Berlin Wall. Toth, supra note 85, at F8.
proponents are more cognizant of the problems and needs that drive graffiti's creation, proponents' sponsorship and recognition of graffiti, independent of the context in which it is done, can breed more unwanted graffiti. If graffiti proponents want to sponsor and recognize graffiti as art, they should make more of an effort to create legal canvases and to discourage the use of illegal ones.

Both opponents and proponents recognize the problems of graffiti, yet neither address them fully. Opponents fail to appreciate the artistic value of, and motivations behind, graffiti, while proponents fail to appreciate the property damage and social costs associated with graffiti vandalism. Both groups must rethink their positions on graffiti and their approaches to it. Graffiti will not go away if we simply ignore it or outlaw it completely. Such approaches have been tried, yet graffiti endures. It is time for a new approach and a new attitude.

IV. METHODS USED TO COMBAT GRAFFITI

Vandalism has become an enormous problem for America's communities. The National Graffiti Information Network estimated that municipalities spent four billion dollars to clean up graffiti and replace vandalized material in 1990 alone.107 Graffiti affects both public and private property: buses, subways, freeways, buildings, tunnels, billboards, signposts, pillars, doorways, and sidewalks. The cleanup costs of graffiti are staggering, and these costs continue to increase.108 Both

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108. In 1986, cleaning each car vandalized with graffiti cost the CTA $300 to $500; in just one weekend 130 cars were hit and required cleaning. Gary Washburn & Dawn Willett, CTA Draws Price Tag on Graffiti, CHI. TRIB. (Sports Final ed.), June 12, 1986, § 2, at 1. In 1985, the CTA spent $250,000 cleaning graffiti from rapid-transit stations and $800,000 cleaning graffiti from buses and rapid-transit cars. Gary Washburn, Killer Dogs Urged in CTA Graffiti War, CHI. TRIB. (Sports Final ed.), Feb. 6, 1986, § 2, at 1. In Washington, D.C., the Metro Transit Authority (Metro) spent one million dollars in 1988 to combat vandalism. John Lancaster, Graffiti Incident Unleashes Metro Cleanup Squad: Spray Paint Mars Escalators at East Falls Church Station, WASH. POST, June 15, 1988, at D1. The Southern California Rapid Transit District (SCRTD) estimated that it would spend six million dollars in 1988 to fight graffiti. Citron, supra note 53, at 3.

Anaheim, California spent $240,000 in 1991 to clean up graffiti. James M. Gomez, Tackling the "Taggers": Police Swoop Down on 11 Youths They Say Are Part of "Writing Crew" Behind Most of Anaheim's Graffiti, L.A. TIMES (Orange County ed.), Dec. 18, 1991, at B1, B11. In Santa Ana, California, the city planned to spend $600,000 in 1989
private property owners and the government also bear graffiti-avoidance costs beyond immediate cleanup, such as increased security and anti-graffiti materials which facilitate cleanup. Yet despite the increased effort and money spent to combat graffiti, it has not gone away. Most current methods aimed at fighting graffiti vandalism are ineffective and demonstrate that it is time for a change in both law and policy. In response to the problem, cities and states have enacted legislation and adopted policies designed to prevent the purposeful destruction of property. Many of these policies and laws, however, fail to reduce vandalism because they fail to address, and in fact often purposely ignore, the reasons behind graffiti vandalism. This Part discusses the various methods currently used to prevent graffiti vandalism and each method’s weaknesses and benefits.

A. Criminal Prosecution and Penalties

In their battle against graffiti, many cities first have sought to encourage more arrests and prosecutions of vandalism under

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109. A whole industry of anti-graffiti technology has developed to meet the prevention needs of property owners. Casuso, supra note 51, at 4. For some examples of the types of anti-graffiti materials and processes available, see infra Part IV.E.3. Property owners' needs for these materials have increased with the number of states and municipalities that have passed or are considering laws which require property owners to clean up their property. See infra Part IV.E.4.

110. In 1986, the CTA’s Chief Administrative Officer, Larry Pianto, noted that graffiti “definitely has increased from what it was 12 months ago . . . . We see a doubling from what it was last year.” Washburn, supra note 108, at 1. The SCRTD expected to spend six million dollars to clean up graffiti in 1988, up from the one million dollars it spent in 1985. Citron, supra note 53, at 3. In 1989, the SCRTD spent $10 million cleaning graffiti, three times what it spent four years previous. Haldane, supra note 51, at B3. The number of hits on New York subways doubled from 1989 to 1990. Stephanie Strom, Subway Graffiti Back and Bothersome, N.Y. TIMES, Feb. 11, 1991, at B1. The number of major hits has increased from 350 out of 23,000 total hits in 1989 to 700 out of 46,000 total hits in 1990. Id. New York’s continued battle with subway graffiti also shows that the one system often claimed as having won the battle on graffiti is still fighting the war.
criminal mischief, malicious mischief, intentional destruction of property, or criminal trespass statutes. 111 Often such


A number of states have specific criminal laws against the destruction of, or damage to, property. These laws may supplement existing criminal or malicious mischief provisions or may operate in their stead. See, e.g., COLO. REV. STAT. §§ 18-4-508 to -509 (Supp. 1993); GA. CODE ANN. §§ 16-7-22 to -25 (Michie 1992); 720 ILL. COMP. STAT. act 5, § 21-1 (1992); KY. REV. STAT. ANN. § 512.020 (Michie/Bobbs-Merrill 1990 & Supp. 1992); TEX. PENAL CODE ANN. § 28.04 (West 1989 & Supp. 1993); WYO. STAT. § 6-3-201 (1988 & Supp. 1993).

Many states have criminal trespass statutes that could be enforced if the graffiti was done on private property. See, e.g., CAL. PENAL CODE § 602 (Deering Supp. 1993); COLO. REV. STAT. §§ 18-4-502 to -504.5 (Supp. 1993); CONN. GEN. STAT. §§ 53a-107 to -110 (West Supp. 1993); GA. CODE ANN. § 16-7-21 (Michie Supp. 1992); 720 ILL. COMP. STAT. act 5, § 21-3 (1992); KY. REV. STAT. ANN. §§ 511.060–.080 (Michie/Bobbs-Merrill 1990 & Supp. 1992); see also Youth Is Accused of Causing $500,000 in Graffiti Damage, N.Y. TIMES, Dec. 15, 1990, § 1, at 11 (stating that “CHAKA” was charged with 20 misdemeanor counts of vandalism and trespassing by the Los Angeles city attorney). Seattle, Washington also has a criminal trespass statute. SEATTLE, WASH., CRIM. CODE § 12A.08.040 (1992).


Vandalism statutes may be used to prosecute apprehended writers. See, e.g., CHICAGO, ILL., MUN. CODE § 8-4-060 (1992); John Chandler, 4 Students Arrested in Graffiti Spree, L.A. TIMES (Valley ed.), Nov. 28, 1991, at B3, B5 (noting that sheriff’s deputies intended to ask the district attorney’s office to charge apprehended juveniles with misdemeanor vandalism); Gomez, supra note 108, at B1 (noting that 11 youths were arrested and charged with misdemeanor vandalism); Mayor Backs Graffiti War But Not Jailings, CHI. TRIB. (National ed.), July 26, 1986, § 1, at 7 (noting that three 17-year-olds and a juvenile were charged with criminal damage to property and vandalism in Chicago, Illinois).

Graffiti itself may be illegal. San Diego makes it unlawful to write graffiti on any building, fence, or structure, with or without permission. It is also unlawful for any landowner or person in control of property to allow graffiti to be put on such property when visible from the street or from other public or private property. SAN DIEGO, CAL., MUN. CODE § 95.0127(C)(1), (2) (1992).

Apprehended youths may be charged criminally with violating curfew, theft of spray paint or markers, or illegal possession of spray paint or markers. See, e.g., 11 Arrested
legislation already exists and only needs to be enforced. But enforcement is easier proposed than accomplished.112

The judicial system traditionally has characterized graffiti-related offenses as minor and low priority. Reasons for the treatment writers receive at the hands of the judicial system may include judicial dockets crowded with more serious crimes, overcrowded jails, and a belief in the basic moral goodness of the young violators.113 Convictions on graffiti-related charges are rare and sentences, if given at all, are short.114 Contributing

in Police CTA Graffiti Sweep, CHI. TRIB. (Sports Final ed.), July 22, 1987, § 2, at 2 (stating that 11 youths were charged with criminal damage to property, vandalism, and possession of marker pens and spray paint); Graffiti Suspect Freed Until Trial, CHI. TRIB. (Chicagoland ed.), July 23, 1986, § 2, at 3 (discussing the filing of juvenile charges for vandalism, criminal damage to property, curfew violation, and theft against a Chicago youth). For a further discussion of the use of curfew restrictions and prohibitions on the possession of spray paint and markers, see infra Parts IV.E.1-2.

112. For a good discussion of the tension between law enforcement officers and the courts, see CASTLEMAN, supra note 22, at 144 (quoting John deRoos, former senior executive director of the NYMTA, stating that “[a]lmost all graffiti can be traced to people who have been arrested at least once. But the courts let them off. Six, seven, eight, or nine times,” and quoting former transit police chief, Sanford Garelik, as saying that “[t]he transit police are doing their job but what’s the use of making arrests if the courts refuse to prosecute?”).

113. Chief Judge Reginald Matthews of the Bronx Family Court described the problem from his perspective:

Graffiti is an expression of social maladjustment, but the courts cannot cure all of society's ills. We have neither the time nor the facilities to handle graffiti cases; in fact, we cannot always give adequate treatment to far more serious crimes. Graffiti simply cannot be treated by the juvenile justice system as a serious thing, not in New York.

Id. An attorney who has represented taggers noted:

The judges lecture them up one side and down the other, but what can you do when you have a kid coming in at 14 for a minor offense while you have other guys coming in for rape and murder? Looking at the judges’ caseloads, [they] can’t spend much time on this kind of offense.

Haldane, supra note 51, at B3; see also Suzanne Daley, Vandals Mar Debut of New IRT Cars, N.Y. TIMES, June 7, 1985, at B1, B4 (quoting Chief Meehan of the transit police as saying that “[t]he courts don’t consider [graffiti] too seriously”).

114. The New York criminal justice system is one example:

[T]he Transit Authority relies heavily on the criminal justice system. In 1973, the transit police put together a special 10-man squad that concentrated on graffiti and racked up hundreds of arrests. But judges, unable to handle their already heavy caseloads of murders, rapes, and arson, had little interest in the graffitiists, and the Transit Authority cut back its efforts. Most writers caught in the act were not even formally booked; they were simply held by the transit police to be picked up by their parents. Later, they might get visits or letters from overburdened social workers.
to this effect is the fact that most writers are young and are tried as juveniles.\textsuperscript{115} Additionally, prosecutors do not view graffiti cases as having much prosecutorial merit and therefore do not bring charges very frequently.\textsuperscript{116} Although commitments have been made to enforce graffiti laws more strictly,\textsuperscript{117} such

Stern & Stock, supra note 30, at 54; see also George Frank, \textit{Graffiti Cleanup Is Possible Punishment}, \textit{L.A. Times} (Orange County ed.), Apr. 12, 1990, at B3 (quoting the presiding judge of the Central Judicial District in Los Angeles, California as saying that "jail overcrowding militates against incarceration"); Haldane, supra note 51, at B3 ("Getting caught isn't much of a deterrent. Although tagging is a misdemeanor carrying fines of $40 to $250 for repeat offenders, law enforcement officials say first-time offenders often get off with a warning or probation."); \textit{Mayor Backs Graffiti War But Not Jailings}, supra note 111, at 7 (quoting then Mayor of Chicago Harold Washington as saying that judges "are not going to throw kids in jail for [graffiti], so why even waste time"); \textit{Putting the Tag on the Taggers}, \textit{Chi. Trib.} (Sports Final ed.), Aug. 7, 1986, § 1, at 18 (editorial) ("The threat of mandatory imprisonment might help soothe public anger, but it would not greatly worry graffiti vandals. Judges are not likely to imprison any youth for a petty, if infuriating, crime like that."); \textit{Tough Sentence for Gang Graffiti}, \textit{L.A. Times} (Home ed.), Mar. 4, 1989, pt. II, at 2 (quoting city attorney's office spokesperson Ted Goldstein as stating that a sentence of 130 days in jail, 100 hours community service, and two years probation was "very unusual" because graffiti offenders usually receive community service sentences and "little to no County Jail time").

Lenience may be less common when writers are charged with a felony. See Bob Pool, \textit{Graffiti Artist Reforms Too Late; Charged with Felonies}, \textit{L.A. Times} (Valley ed.), May 20, 1988, pt. II, at 8, 12 (noting that a felony charge "will prevent [the offender] from merely being counselled and released, as misdemeanor vandals usually are"). A felony may be charged when damages exceed a certain monetary amount. \textit{See, e.g., id.} (indicating that "[f]elony vandalism can be charged if damage exceeds $5,000").

\textsuperscript{115} In the words of Kevin Hickey of the New York Transit Police Department's graffiti squad:

The majority of [the writers] will stop graffiti by their sixteenth birthday because they realize that once they turn sixteen they're not kids anymore. They'll be treated as adults and whether they're given a severe penalty in court or not, they will be fingerprinted and photographed as a criminal and they will retain this record for the rest of their lives.

\textit{Castleman, supra} note 22, at 67.

\textsuperscript{116} A case in point is that of Cool Disco Dan, the District of Columbia's notorious tagger. Even though he has been caught eight or nine times by the police, he has never been charged and there is no traceable record of him ever being booked. Official spokespersons for the police department explain: "We enforce these laws. The problem is it's hard tracking down these people, seeing them in the act, getting a witness." Paul Hendrickson, \textit{Mark of the Urban Phantom}, \textit{Wash. Post}, Oct. 9, 1991, at C1, C11. Mark Liedel, spokesperson for the U.S. Attorney's office, has explained the repeated dropping of charges by stating: "I guess you could say it falls under the rubric of a lack of prosecutorial merit." \textit{Id.} Two other circumstances further explained the lack of prosecution: a possible lack of enough technical evidence to go forward with the case and that the ceaseless violent crime in the District requires their full attention. \textit{Id.}

\textsuperscript{117} Stephanie Chavez, \textit{Anti-Graffiti Plan Targets Pacoima Park}, \textit{L.A. Times} (Valley ed.), July 29, 1988, pt. II, at 8, 11 (discussing the concerted effort of the Pacoima Park,
actions usually are not effective at stopping graffiti vandalism.118

For a juvenile misdemeanor even to be prosecutable, vandals
must be caught in the act.119 Too often, they are not.120 A

California police to increase efforts to catch writers, the city attorney’s office to
prosecute more writers, and the juvenile court judges to increase sentences to as much
as 300 hours of community service); Connelly, supra note 108, at 3 (discussing the
efforts of city officials to get all of the “‘components’ of the criminal justice system
working together” by adopting community service sentences as an alternative); 6 Youths
that the Los Angeles County Sheriff’s department began an “aggressive anti-graffiti
crackdown”); Pool, supra note 113, at 12 (quoting Captain John Higgins of the Los
Angeles Police Department as saying that “[w]e have begun taking the position that
this type of vandalism is a very serious thing . . . Now we file petitions with juvenile
probation officials and send them to court”); 6 Youths Nabbed Writing Graffiti, CHI.
TRIB. (Du Page Sports Final ed.), Aug. 29, 1989, § 2, at 3 (stating that the police caught
six youths writing graffiti because they patrolled the area more heavily in response
to residents’ complaints); Task Force Planned to Halt CTA Graffiti, CHI. TRIB.
(Chicagoland ed.), Aug. 5, 1987, § 2, at 4 (stating that the transit police have made
aggressive efforts to crack down on graffiti and that the transit authority, police
department, state’s attorney’s office, and Cook County Circuit Court have formed a
task force to fight graffiti).

But city agencies have not always increased enforcement on their own initiative.
In a number of instances, community action has motivated agencies to move much
faster than they might otherwise have done. In San Fernando Valley, a 500-member
community action group named VOICE extracted pledges from elected officials that
they would increase their efforts to combat graffiti. Jack Cheevers, Anti-Graffiti Rally
20, 1989, at B3, B5. The council promised to attempt to earmark three million dollars
in the next year’s budget for anti-graffiti activities and to pass a law requiring spray-
paint sellers to keep their paint locked up. Id. VOICE also extracted a promise from
the city attorney’s office that it would convene a meeting of judges to encourage them
to sentence more offenders to graffiti removal. Id. In the Chicago area, 45 residents
of an area struck by graffiti vandalism appeared in court to send a message to the
defendants charged with the crime, the judge, and the prosecuting attorney that the
community wanted strong action to be taken. Sharman Stein, Graffiti Fighters Get
Day in Court, CHI. TRIB. (South Sports Final ed.), Jan. 1, 1991, § 2, at 3. When the
case was called, the residents approached the bench, causing a stir, and participated
in the plea negotiation. Id.

118. See, e.g., Task Force Planned to Halt CTA Graffiti, supra note 117, at 4 (noting
that despite the Chicago transit police’s aggressive efforts and success at making 500
arrests in 1987, the writers have not stopped).

119. Without a witness to the vandalism, no juvenile misdemeanor charge can be
brought before the court. See Pool, supra note 113, at 12 (quoting a spokesperson for
the Los Angeles city attorney’s office as stating that there “would have to be the
element of an eyewitness or the tangible evidence on the person at the time of apprehen-
sion’ for a graffiti artist to face prosecution”).

120. “[C]alling [graffiti] a crime is almost irrelevant because most writers never
get caught.” Parsons, supra note 50, at B1 (quoting Devon Brewer, graffiti researcher);
II, at 9 (quoting city attorney’s office spokesperson Mike Qualls as stating that
“convictions are rare because few people are caught in the act of vandalizing a build-
ing”); Terry Wilson, Gang Graffiti Artist Happy to Get Abrasive Punishment, CHI. TRIB.
stated that although the problem is pervasive, few offenders ever get caught).
graffiti "hit" or "bombing" often lasts only a matter of minutes and writers know how to avoid getting caught. Writers know what the best time to hit is, which police to look out for (even if they are in plainclothes), and how to get in and out of an area fast. Many writers have been dodging the police for years or have learned tricks from their mentors. In one evening, a graffiti crew or even a lone writer could graffiti a number of places and never get caught.

The number of graffiti watchers must increase if the police are to catch more writers. This can happen only through hiring more officers, juggling current human resource allocations, or using volunteers. All too often, agencies already are financially burdened and cannot afford to increase the number of employees on their payroll. Resource switches likewise are difficult for financially-strapped agencies to implement; increasing forces in one area means taking resources from another.

Catching writers requires a fair amount of

121. See Gene D. Palmer, Residents Up a Wall Over Urban Scrawl, NEWSDAY, Mar. 4, 1990, at 1 (quoting a police inspector as stating that "[g]raffiti arrests are hard to make—it only takes a second to spray and disappear, and these are young kids who run like deer"); Claudia Puig, Vandals Strike in 3 RTD Incidents: Gang Unit Probes Attacks on Buses, L.A. TIMES (Home ed.), Aug. 12, 1987, § 2, at 6, 10 (noting that a graffiti "hit" by 12 youths did not last for more than 40 seconds).

122. See CASTLEMAN, supra note 22, at 48–51; COOPER & CHALFANT, supra note 84, at 20; see also Anne Keegan, Handwriting on Wall for Graffiti "Artists," CHI. TRIB. (Sports Final ed.), May 23, 1985, § 1, at 1, 2 (noting that few people witness writers at work because writers do graffiti at two or three o'clock in the morning). Some writers even have keys to the train stations and rail yards. See COOPER & CHALFANT, supra note 84, at 33 (stating that writers in New York have acquired master keys to all of the trains which they duplicate and sell to other writers); Anne Keegan, Gangs Playing Graffiti Tag; the CTA's "It," CHI. TRIB. (Sports Final ed.), June 3, 1985, § 1, at 1, 2 (stating that CTA janitors believe that writers somehow got duplicates of the "six" key that allows them to get into closed stations).

123. Equipment such as video cameras or night goggles might also be used to increase the number of writers caught in the act. See Geoff Boucher, Test Keeps Bus Vandals in Check, L.A. TIMES (Orange County ed.), June 10, 1992, at B3 (noting that a bus equipped with surveillance cameras had remained ungraffitied for six weeks); Joseph P. Fried, Watch Out, Scrawlers, You're on Graffiti Camera, N.Y. TIMES, Apr. 6, 1992, at B3 (discussing the use of videotape by various New York communities to catch and deter vandals); Blaine Halley, Hidden Camera to Record Taggers, L.A. TIMES (Valley ed.), Apr. 26, 1993, at B14 (stating that Palmdale, California is using video cameras equipped with infrared technology to catch vandals at night); N.Y. Subway Cops Try Special Goggles for Arrests in Dark, ATLANTA J. & CONST., Apr. 11, 1992, at A19.

124. One method of increasing the chance of arrests is to encourage reports from citizens by maintaining a graffiti hotline. Under such a system, witnesses to acts of graffiti can provide the police with information which they otherwise might have missed. See, e.g., Roxana Kopetman, Police Go to the Wall: Unique Stakeout Tries to Catch Graffiti Artists While They Sketch, L.A. TIMES (Home ed.), May 31, 1987, pt.
specialized knowledge as well. See supra note 22, at 163. Because of the particular

X, at 1, 2 (stating that a Long Beach, California hotline averages 50 to 75 calls a week); William E. Schmidt, Graffiti and Vandals' Attacks Rub Gloss Off Atlanta Transit, N.Y. TIMES, Nov. 8, 1985, at A20 (noting that the Metropolitan Atlanta Rapid Transit Authority offered rewards for the capture of the more notorious writers and installed telephone lines for reports of offenders).

Informants also may be given a reward, for reporting an incident of vandalism or for information leading to the arrest or conviction of a vandal. See, e.g., LOS ANGELES, CAL., ADMIN. CODE ch. 12, art. 2, §§ 19.129.1-.3 (1992) (informants can receive up to $500 at the City Council's discretion); PITTSBURGH, PA., CODE § 616.04 (1987) (requiring the Director of Public Safety to grant rewards for information leading to the arrest or conviction of any offender); Chandler, supra note 111, at B5 (stating that Palmdale, California may give informants $1000 for reports leading to convictions); Tom McQueeny, Irvine Anti-Graffiti Law Won't Ban Marking Pen Sales, L.A. TIMES (Orange County ed.), Oct. 9, 1991, at B4 (stating that Irvine, California is considering offering a $200 reward for information leading to the arrest and conviction of a writer); H. G. Reza, Weapons Ban Weighed in War on Graffiti, L.A. TIMES (San Diego County ed.), July 13, 1991, at B1, B6 (noting that Imperial Beach, California awards $150 to anyone whose report leads to an arrest and conviction); Terry Spencer, Boy Rewarded for Reporting Vandals, L.A. TIMES (Orange County ed.), Dec. 3, 1991, at B3 (noting that Anaheim, California gives informants $500 if their report leads to an arrest and conviction).

Another option that some cities have adopted to encourage reports of vandalism is to pay the cellular car phone costs of people who report graffiti vandalism. Chula Vista, California has proposed such a measure as part of an anti-graffiti ordinance which the City Council unanimously approved on a preliminary basis. Reza, supra, at B1.

Although these programs are probably good ideas, they still have their share of problems. There are costs to maintaining a program which must deal with pranks or mistaken reports of commissioned graffiti. Volunteers might be used to answer the phones in order to defray costs. A better notification system for commissioned works, such as informing the police or graffiti authorities of commissioned works and when they will be painted, might lower the number of false reports.

Of course, even if the police receive additional reports, graffiti can be done so quickly that, by the time the police arrive at the scene, the writers will have disappeared. Reward programs also may run out of money. See John Schwada, Graffiti Reward Program Nearly Out of Money, L.A. TIMES (Home ed.), Aug. 11, 1992, at B3.

125. See CASTLEMAN, supra note 22, at 159 (stating that transit patrolman Steven Schwartz attributed his success at catching writers to his knowledge of their behavior patterns, which he gained by questioning writers that he caught); id. at 163 (stating that "[m]any graffiti squad officers looked upon time spent getting to know the writers as one of their most important and interesting pursuits"); id. at 164 (quoting graffiti squad officer Kevin Hickey as stating: "We generally shy away from the uniformed policemen . . . because they don't have the expertise to handle this. Graffiti might sound trivial but there is a fair amount of danger involved with these trains, and if you have a person who is not knowledgeable about the track area they could get seriously hurt.").

This specialized knowledge is acquired in a number of ways. It can be "derived from the questioning [of] apprehended writers. . . . [or] provided by informers who dropped dimes on fellow writers for personal reasons," or by informally conversing and socializing with the writers. Id. at 162. Some graffiti squad officers have endorsed the latter method as the most useful and important. Id. Knowing the styles of the writers can be almost as useful as having their fingerprints, because their styles can be compared even when they change their names. Id. at 163.
problems with catching graffiti writers, some cities have created special graffiti squads. Nonetheless, these squads and the

126. New York used such squads. In 1975, a squad consisting of 10 plainclothes officers was formed as a special unit to deal with graffiti in the face of budget cuts and a smaller transit police force. The squad was mainly an intelligence operation which gathered information about how the writers operated and helped other police departments identify writers. The squad also conducted stakeouts and apprehended writers caught in the act or those they could identify and follow home. The squad was not precluded from doing other police work. Id. at 162-65.

New Brunswick, New Jersey also formed a graffiti patrol from its police force. Michael Winerip, Our Towns: A City's Walls Are Defaced with Graffiti, N.Y. TIMES, Apr. 8, 1986, at B2. The members of the patrol drive the streets in an unmarked car six nights a week and spend much of their time trying to gather information about the writers by speaking with teenagers. Before they interrogate a juvenile suspect, however, the police need to obtain a parent's consent. Id.

In Long Beach, California the police have dedicated a number of officers to graffiti stakeouts. Kopetman, supra note 124, at 1. Officers paint over graffiti in the morning, leaving a clean spot for writers to paint, and stake out the site at night. The stakeouts have been criticized as not being the best use of resources and have not been very successful. Id.

The CTA has arranged for a special police unit of plainclothes officers to patrol the CTA system to catch writers. See Gary Washburn, Police Crack Down on Graffiti, CHI. TRIB. (National ed.), June 24, 1986, § 2, at 3. Although the patrol has caught some artists in the act, the unit has not succeeded in stopping the graffiti. See Cheryl Devall, Police Cleaning Up CTA Graffiti Problem, CHI. TRIB. (Sports Final ed.), July 21, 1986, § 2, at 5.

The Los Angeles Police Department has established special surveillance teams and increased the number of officers on patrol in an effort to curb the graffiti. Chavez, supra note 117, at 8.

Graffiti stings also have been staged. Long Beach Police staged a sting by posing as a British film company auditioning taggers for a television video. Martha L. Willman, 7 Tagged Out in Sheriff's Graffiti Sting, L.A. TIMES (Home ed.), Nov. 21, 1991, at B1. Out of the more than 60 "Taggers, Bombers, and Writers" that showed up, seven were arrested and the rest are being investigated. The video produced will be used as a training film for law enforcement agencies. Id. at B4. The SCRTD has set up a Graffiti Habitual Offenders Suppression Team (GHOST), comprised of undercover transit officers, which has staged a number of stings. Graffiti Party Didn't Stand Ghost of a Chance, L.A. TIMES (Home ed.), Nov. 1, 1991, at B2. In one sting, officers sent out a "Trojan horse" bus carrying eight undercover transit cops to videotape and catch vandals in the act. Ronald B. Taylor, Ghost Bus Tries to Snare the Taggers, L.A. TIMES (Home ed.), Mar. 26, 1990, at B1. But such tactics are not always successful; the writers figure them out and sometimes dupe police by faking a graffiti hit. Id. at B8.

Instead of creating a special squad, some cities have increased the number of patrols in certain areas. See, e.g., Bryers, supra note 111, at 8 (stating that Addison, Illinois has stepped up patrols to catch offenders). If the transit authority does not already have a police force, creating such a force may be a way to avoid using the city's limited police resources. See Ronald B. Taylor, Doubts Resurface on Ability of SCRTD Police to Handle Blue Line, L.A. TIMES (Home ed.), Feb. 8, 1990, at B1, B4 (quoting the SCRTD police chief as stating that "our response time is quicker than the LAPD or the sheriff . . . . Our officers are sensitive."). If financial resources are limited, a private security agency may be used on a short-term basis to supplement or replace police protection. See, e.g., Gary Washburn, Writing's on the Wall, and Seats, at CTA: Cuts Hamper Graffiti Clean-up, CHI. TRIB. (Final ed.), Mar. 17, 1985, § 2, at 1 [hereinafter Washburn, Writing's on the Wall, and Seats, at CTA] (noting that the CTA hired private
other police personnel dedicated to graffiti watch still are outnumbered by the writers.\textsuperscript{127} Moreover, increased prosecution often fuels the fire that drives writers to paint.\textsuperscript{128}

security agencies on a short-term basis after it dismantled the transit police).


127. For example, one study of the Los Angeles area documented 800 individuals involved in the graffiti culture and it is estimated that there are at least 3000 taggers in the area served by the SCRTD. Taylor, \textit{Ghost Bus Tries to Snare the Taggers}, \textit{supra} note 126, at B1. This figure does not take into account all of the individuals who are just beginning their involvement with graffiti nor those who are visiting writers. Even the police are pessimistic and recognize their limitations. Palmer, \textit{supra} note 121, at 1 (quoting a police inspector as stating: "In New York City the level of crime is so great that only a minuscule number of [graffiti] offenders get put in jail. We can make arrest after arrest and it doesn't solve the problem."); \textit{id.} (noting that with few officers on patrol and funds for cleanup dwindling, the city is bound to lose the battle against graffiti). According to Sergeant Shari Barberic, head of the SCRTD's anti-graffiti unit, "Trying to fight back with just 15 officers assigned to anti-graffiti duty is 'like spitting into the wind. . . . There is no way to stop this. . . . We can't get enough police. . . . We don't have enough power to wipe it out.'"). Taylor, \textit{Ghost Bus Tries to Snare the Taggers}, \textit{supra} note 126, at B1, B8.

128. Coveper & Chalfant, \textit{supra} note 84, at 99 ("Doubtless, this elaborate cops and robbers game contributes to one important incentive for writing graffiti: to enhance the prestige of the writer in the eyes of his peers."); \textit{id.} at 98--99 (depicting graffiti with such writing as "To the Boys in Blue—catch me if you can," "Caught ya sleepin' . . . Ha! Ha! M.T.A.,” and "Stop real crime"); \textit{see also id.} at 41 (stating that writers often hang out at writers' corners, discussing piece books and pieces on the train and "boasting about the latest brush with the police"); Victor Merina, \textit{Graffiti Comes to End of Line}, \textit{L.A. Times} (Home ed.), Aug. 8, 1990, at B1, B8 (noting that writers seemed intent on challenging the officers who patrolled a trolley route); Gary Washburn, \textit{Vandal Raid Defaces 70 CTA Cars}, \textit{Chi. Trib.} (Sports Final ed.), June 10, 1986, § 2, at 1, 6 (noting that the CTA director of communications acknowledged that the campaign to increase the number of writers caught in the act and discourage vandalism might have backfired and attracted even more vandals because of the amount of attention it attracted to the graffiti).

Writers often are fearful or indifferent to the possibility of getting caught. See, \textit{e.g.}, Keegan, \textit{Gangs Playing Graffiti Tag; the CTA's "It"}, \textit{supra} note 122, at 2 (quoting a writer as stating: "We aren't afraid of the third [electrified] rail. Nothing is going to happen and no one is going to chase us down the tracks if they see us, cause they are scared of being electrocuted but we aren't. We can outrun anyone."); Puig, \textit{supra} note 121, at 6 (describing how 12 youths scrawled graffiti over three buses stopped in broad daylight, while passengers were on board); Gary Washburn, \textit{Vandals Send in Snapshots}, \textit{Chi. Trib.} (Sports Final ed.), July 25, 1986, § 2, at 1 (relating a CTA board member's receipt of an envelope containing 30 photographs of youths smiling, making gestures, posing in front of graffiti, and defacing transit stations); Philip Wattley, \textit{Parents Draw a Rough Line}, \textit{Chi. Trib.} (National ed.), July 18, 1986, § 1, at 7 (describing how writers painted graffiti on the walls and escalator at a transit station during rush hour with hundreds of people present).
The punishments imposed on convicted writers further complicate the use of criminal sanctions to deter graffiti vandalism. In the past, the only available punishments were jail sentences and fines. Many judges, prosecutors, and juries believe that these punishments are too harsh for otherwise good kids. In an effort to encourage the prosecution and conviction of writers, new punishments have been developed, such as mandatory community service and the revocation of the offender's driver's license. Although these punishments better fit the crime, they remain problematic because they still fail to completely address the roots of the graffiti problem.

1. Jail Sentences—In theory, offenders who are prosecuted under either city or state criminal statutes are subject to jail time. In practice, those few offenders who are caught do not serve time even if they are convicted.\(^{129}\) Punishing writers with jail sentences neither fits the crime nor deters graffiti writing. Those with artistic tendencies are punished merely for using their talents in the only way that is available to them.\(^{130}\) In addition, many writers are not deterred because jail time merely alienates them from society; this alienation increases their need to seek fame or break the law through graffiti. Finally, a disproportionate amount of time is spent prosecuting individuals who are not a threat to the community. Such efforts to increase prosecution and jail sentences for writers are a waste of resources.

2. Community Service and Education—Some communities have raised vandals' consciousness as to the seriousness of their crime by sentencing convicted vandals to clean up their own or others' graffiti.\(^{131}\) Such a sentence forces the vandal to bear

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129. See supra notes 113–116 and accompanying text.
130. Although this is probably more true of writers coming from ghetto backgrounds who have neither the funds to pursue an education in art nor the role models to steer them towards more socially acceptable pursuits, writers from wealthier backgrounds whose relationships with their families have deteriorated may not be able to pursue the artistic education they would like to. Writers from wealthier backgrounds also may lack role models to foster their artistic development.
131. Both Illinois and California have adopted community service sentences in an effort to encourage prosecution and sentencing and to cut graffiti cleanup labor costs. In May 1983, the Illinois juvenile code was changed to allow graffiti offenders the option of either going to Juvenile Court on charges of damage to property or performing community service by cleaning graffiti in the neighborhood where they were arrested. See An Eraser for Graffiti, CHI. TRIB. (Final ed.), May 31, 1985, § 1, at 22 (editorial); Keegan, Handwriting on the Wall for Graffiti “Artists,” supra note 122, at 1–2; Youths to Wipe Out CTA Bus Graffiti, CHI. TRIB. (City ed.), Aug. 4, 1985, § 2, at 7. The CTA offers writers the chance to perform community service cleanup before criminally charging them; parental consent is required for the writers to be able to exercise this
the labor costs of the crime\textsuperscript{132} and has the added benefit of increasing prosecution and conviction rates, because judges are


In California, community service sentences got a slow start. \textit{See Chavez, \textsuperscript{supra} note 117, at 11 (noting that under a coordinated anti-graffiti program, municipal and juvenile judges have agreed to give sentences of up to 300 community service hours); Connelly, \textsuperscript{supra} note 108, at 3 (interviewing the presiding juvenile judge, who stated that although some judges have ordered community service in the past, the new coordinated effort will make such sentences a matter of policy). In 1989, the California Senate passed a bill that would, as a matter of state law, allow the courts to order convicted graffiti vandals to clean up the damaged property. Jerry Gillam, \textit{Sacramento File}, L.A. TIMES (Home ed.), June 10, 1989, pt. I, at 29. State law previously had permitted judges to order the convicted offender to either pay restitution or go to jail, but did not permit an order of community service. Bill Billiter, \textit{Mays Writing Bill Targeting Graffiti}, L.A. TIMES (Orange County ed.), Apr. 3, 1991, at B2. In 1991, a bill was introduced in the California Assembly that would require convicted offenders to perform up to 48 hours of community service for their first offense and up to 96 hours for each subsequent offense. \textit{Id}. A bill doubling the number of community service hours that must be performed by convicted offenders to 100 hours was later signed into law by the Governor. \textit{Law Doubles Penalty for Graffiti Vandals}, L.A. TIMES (Valley ed.), Oct. 31, 1991, at B4. The law requires offenders to erase their own graffiti. \textit{Id}. Chula Vista, California, a city near Los Angeles, considered requiring convicted offenders to do up to 80 hours of community service removing graffiti as part of a proposed anti-graffiti ordinance. Reza, \textit{supra} note 124, at B1.

\textsuperscript{132} As a result of his community service sentence, one writer decided his graffiti-writing days were over, saying that “[i]t has gotten me off the walls . . . .” Connelly, \textit{supra} note 108, at 3 (quoting an anonymous 20-year-old writer who was sentenced to 100 hours of community service that would take him about three weeks to work off). Another writer stopped writing his tag as soon as he realized how much effort it took to remove it. He said that after he drove by a shop and saw an old man struggling to paint over one of his tags, he never painted his tag again. Pool, \textit{supra} note 113, at 12 (paraphrasing the tagger “Ozone”). One writer who was sentenced to 100 hours of community service noted: “You ‘strike up’ a wall without really thinking about it. You do it because there is nothing better to do . . . . When you’ve got to clean it off, then you know it takes a lot of work and it costs a lot of money. It makes you think.” Connelly, \textit{supra} note 108, at 3 (quoting an anonymous gang member).

If used, community service paint-overs should be supervised to prevent writers from writing more graffiti instead of painting over existing graffiti. \textit{See, e.g., Graffiti Vandal Gets Into Another Brush with the Law}, L.A. TIMES (Valley ed.), Jan. 31, 1990, at B3 (noting that one writer used his community service sentence as an opportunity to perpetrate even more illegal graffiti). Volunteers can be used to supervise the writers. Parents also could be required to help supervise cleanup. Orange County, California has considered enacting such a law. \textit{See Eric Bailey & Kevin Johnson, Proposed Law Would Tag Taggers, Parents}, L.A. TIMES (Orange County ed.), Feb. 3, 1993, at B2.
more likely to impose community service as a sentence upon conviction. Finally, imposing cleanup costs on those responsible for the graffiti allows community volunteers and government employees to direct their energies to other problems.

Other communities sentence youth offenders to attend educational programs instead of or in addition to community service sentences. Youths may be required to attend graffiti classes to learn the difference between vandalism and art or to attend dancing and acting classes.

133. In the words of one coordinator of programs for juvenile offenders, "[i]t gives me another place to put kids where the punishment is more appropriate." Connelly, supra note 108, at 3 (quoting Gene Anderson of the Northeast Juvenile Justice Center in Los Angeles, California). In the words of an Orange County Municipal Judge:

The bench desires to sentence convicted offenders to jail; however, jail overcrowding militates against incarceration, and alternatives are now being examined . . . . One such alternative is graffiti abatement as a source of punishment. . . . It appears to be not only feasible but highly beneficial to the community. It could also offer a viable alternative to traditional sentencing and add to a few options the judges can now exercise in balancing punishment with public interest and safety . . . . We would appreciate being included in further efforts to implement such a program.

George Frank, Graffiti Cleanup Is Possible Punishment, L.A. TIMES (Orange County ed.), Apr. 12, 1990, at B2 (quoting Richard W. Stanford, Jr., presiding judge in the Central Judicial District). The police, city attorney's office, and judges agreed to get tough on writers only when community service sentences were the objective. See supra note 117.

Mayor Harold Washington of Chicago argued for community service over jail sentences:

Part of the answer is swift and certain punishment of some kind—community service. I believe in deterrents, but I don't believe in passing laws that give the impression you are doing something when you know damn well you are not. . . . Certainly we need to enforce the law and come down relatively hard on those who violate it. . . . [But] I don't think we should just pass punitive laws without considering the[ir] ability to be enforced. . . . [Judges] are not going to throw kids in jail for [graffiti], so why even waste time.

Mayor Backs Graffiti War But Not Jailings, supra note 111, at 7.

134. See Frank, supra note 133, at B2 (quoting an Orange County, California supervisor as stating that "[u]sing sentenced criminals could virtually eliminate all labor costs").

Sentencing the offenders to clean up their own work without pay avoids the problem that New York City faced when it paid inmates a small salary to remove graffiti from areas around the city: the local painters union protested the use of paid, nonunion labor. Palmer, supra note 121, at 1.

135. Los Angeles has such programs available as an alternative sentence for judges to give to graffiti offenders. See Bob Pool, New Program Puts Juvenile Offenders Behind Barres, L.A. TIMES (Home ed.), July 22, 1993, at B3; Bob Pool, Youths Wielding Spray-Paint Cans Learn Difference Between Vandalism and Art, L.A. TIMES (Home ed.), Aug. 13, 1992, at B1. English classes or responsible citizen classes also might be offered. Another alternative might be to sentence youths to help in youth centers.
3. Fines and Publication—A number of cities and states have made or once considered making fines a part of the punishment for convicted vandals. Fines are rarely imposed on convicted vandals because fines possess many of the drawbacks of jail sentences. Fines are not a good deterrent because even when given, they are usually light. Moreover, many vandals come from disadvantaged backgrounds and are unable to pay the fines. When payment cannot be enforced, fines cannot operate as an effective deterrent. Even for kids from affluent backgrounds, fines are not an adequate deterrent when their parents pay them. Although forcing parents to pay fines may cause them to better monitor their children, most graffiti writers seek to rebel against their parents, and such punishment may only further encourage them to do graffiti.

Some communities are considering publishing the names of juvenile graffiti offenders. Proponents of such measures argue that serious juvenile offenders should not be protected and should be made to feel ashamed of their actions. This response, however, ignores the fact that graffiti vandals desire publicity and do graffiti purposely to achieve notoriety. Graffiti could actually increase if offenders’ names were published.

4. Revoking or Delaying Driver's Licenses—Some communities revoke or delay a convicted vandal’s driver’s license.

136. See, e.g., Billiter, supra note 131, at 2 (stating that a bill before the California State Assembly would allow judges to impose fines of up to $250, and noting that current state law has no provision for fines, but only allows for restitution or jail sentence); Davis, supra note 131, at 1 (noting that an amendment to a Los Angeles ordinance would enable judges to fine an offender up to $500, impose a jail sentence of up to 30 days, or require the offender to perform up to 1000 hours of community service work); Eng, supra note 108, at 1 (stating that illegal graffiti writing is a misdemeanor in the city of Los Angeles that is punishable by a fine or a maximum one-year jail term); Law Doubles Penalty for Graffiti Vandals, supra note 131, at 4 (noting that a California law makes parents or legal guardians liable for fines imposed on youthful offenders).

137. See, e.g., Taylor, Ghost Bus Tries to Snare the Taggers, supra note 126, at 1 (paraphrasing an SCRTD graffiti expert as saying that “[t]here is little to deter the taggers because vandalism, a misdemeanor, carries light fines that range from $40 up to $250 for repeat offenders”).


140. In California, judges can suspend or delay the driving privileges of persons age 13 or older for one year if they are convicted of scrawling graffiti in a public place. Greg Lucas, Check Identification, Graffiti Bills Signed, S.F. CHRON., Sept. 13, 1990, at A13. The American Civil Liberties Union and California Attorneys for Criminal
Whether the license is revoked or delayed depends on the age at which the vandal is convicted. If the vandal is convicted between the ages of thirteen and sixteen, her driver's license is delayed. If the vandal is convicted when sixteen or older, his driver's license will be suspended or delayed. This measure may be limited to certain age groups or may apply to all individuals above a certain age. Additionally, this measure could be mandatory upon conviction, or discretionary, enabling judges to tailor punishments. How long the vandal's license will be delayed or suspended may vary. Supporters of this measure reason that because few things matter more to teenagers than driving, revocation of a driver's license is a strong punishment.\textsuperscript{141}

Although this solution may have some merit, its drawbacks outweigh its benefits. First, the measure ignores the fact that many convicted vandals come from ghetto backgrounds and often cannot afford a car.\textsuperscript{142} Second, many writers live in the inner cities where cars are not a practical means of transportation.\textsuperscript{143} Finally, heavy-handed application of this law may backfire and lead youths to become more rebellious against society and to write more graffiti as a result.\textsuperscript{144}

B. Civil Causes of Action Against Writers

1. Civil Trespassing—An action in trespass gives a property owner a civil claim against a writer to recover the costs of the

\textsuperscript{141} Senator Quentin Kopp, the author of the bill allowing judges to suspend driver's licenses, has explained that "there are few things as important to teenagers as their driving privilege and that threatening to revoke it for one year will serve as a powerful deterrent." \textit{Id.}; see also \textit{Anti-Graffiti Bill Would Take Licenses from Young Drivers}, S.F. CHRON., Feb. 15, 1990, at B9 (quoting Kopp as saying that "[t]eenagers prize a driver's license above all else ... The punishment fits the crime and the criminal").

\textsuperscript{142} Stern & Stock, supra note 30, at 44.

\textsuperscript{143} A similar measure is the revocation of bus passes of passengers caught defacing the buses. \textit{See}, e.g., \textit{RTD Issues Warning on Defacing Buses}, L.A. TIMES (Home ed.), Apr. 8, 1989, pt. II, at 2. Because most inner-city kids use public transportation to get to school, revoking bus passes may prevent kids from obtaining the education needed to break the illegal graffiti cycle.

\textsuperscript{144} \textit{See} Carl Ingram, \textit{Driver License Suspension Passed as Graffiti Penalty}, L.A. TIMES (Home ed.), May 26, 1989, pt. I, at 36 (stating that California Senate Democratic floor leader Barry Keene argued that revoking licenses "discriminates against young people because they lack the power to vote" and will, as a result, lead to cynicism among youth, making them "conclude that the rules of society are made by the powerful and are inflicted on the powerless").
damage done, yet this method may be ineffective. First, the owner must be able to prove that the writer was on her property, which is difficult because few writers are caught in the act. Second, and more importantly, the trespass claim is one for damages. For the claim to be successful, the owner must prove substantial harm to his property. Although damages may not be difficult to prove, they may be difficult to collect, because most vandals are from poor backgrounds. In addition to the difficulty in securing a monetary recovery, this claim is used infrequently because criminal sanctions are thought to be more effective at stemming the tide of vandalism and provide a better outlet for property owners' anger and their desires for retribution.

An alternative to awarding damages is to equate a vandal's time with a certain wage value and then allow him to work off the damage judgment by cleaning up graffiti. Such a judgment, however, would be more difficult to enforce under the civil system than under the criminal system. Unlike the criminal justice system, the civil system cannot use the threat of further criminal penalties other than criminal sanctions for contempt of court to enforce a judgment.

2. Nuisance—Writers also have been forced to remove graffiti through the application of nuisance laws. In California, for example, a “Superior Court judge issued a restraining order forcing about eighty members of three street gangs to remove graffiti from walls and storefronts.” The judge found that, under California’s nuisance abatement law, graffiti was a public nuisance and gangs could be considered unincorporated associations—legal entities whose members were responsible for the gangs’ actions. Under the court’s order, gang members who refused to remove the graffiti would be subject to contempt proceedings and a possible jail sentence. The judge used this approach because the criminal law, which required catching writers in the act, was considered inadequate. One problem with utilizing nuisance law is that it requires a finding that a

145. Because they possess problems in common with other criminal actions, the effectiveness of criminal trespass actions was addressed supra Part IV.A.
146. See supra notes 109–116 and accompanying text.
147. See supra notes 52–53 and accompanying text.
149. "The abatement law makes certain signs and advertising a public nuisance." Id.
150. Id.
gang, or other group, is sufficiently structured to qualify as an unincorporated association. A nuisance law could be structured to avoid such a requirement, but even so, writers can discover new loopholes and restructure their crews to avoid falling within the law. Moreover, this approach ignores the fact that most tagging graffiti is not written by gangs, but by individuals. If private nuisance law is used, claimants must establish who was interfering with the use and enjoyment of their property, a difficult task considering that vandals often are not caught. Injunctions are impractical for the same reasons.

3. Other Civil Damage Actions—Some cities and states have created civil actions against gangs or taggers to recover actual damages suffered or the cost of cleanup. These laws generally give the city a cause of action against anyone performing the graffiti and against anyone affiliated with the writer or the organization responsible. The amount of damages awarded may have a ceiling, may be determined solely by a jury, and may include punitive damages.

C. Measures Against the Writer's Parents

A number of measures may bring a writer's parents into the picture. A civil cause of action against a convicted writer's parents or legal guardian for the cost of the damages to property may be available. Some cities and states assess fines against

151. Id. (stating that the three gangs were singled out because they were more structured than other gangs, thereby making it easier for them to qualify as legal entities).

152. See, e.g., 740 ILL. COMP. STAT. act 147, § 15 (1992); John Schwada, New Law Allows City to Sue Taggers, L.A. TIMES (Valley ed.), June 30, 1993, at B3 (stating that Los Angeles approved an ordinance that allows the city to sue the taggers).

the writer's parents.\textsuperscript{154} Another tactic has been to involve graffiti vandals and their parents in education, counseling, and cleanup.\textsuperscript{155} These measures assume that the kids would not write graffiti if they were under proper parental control.\textsuperscript{156} 

The problem with such measures is that the amount of time and resources spent prosecuting parents yields only a questionable deterrent effect. Such measures probably do not deter writers, because prosecution of their parents carries no direct punishment for them. Although writers' parents may become angry or try to punish their children,\textsuperscript{157} incurring parents' wrath

\textsuperscript{154} Norwalk, California has adopted an ordinance that allows the city to file civil suits against the parents or guardians of children who break the law, including curfew violations, for fines of up to $2500. Lee Harris, \textit{Norwalk Votes to Fine Parents of Lawbreakers}, \textsc{L.A. Times} (Home ed.), Feb. 11, 1990, at J1. The city says that parents will be informed of their children's crimes, and if they fail to make an attempt to correct their children's actions, the parents will be taken to court. \textit{Id.} 

California's 1988 Street Terrorism Enforcement and Prevention Act, \textsc{Cal. Penal Code} §§ 186.20-28 (Deering Supp. 1993), together with \textsc{Cal. Penal Code} § 272 (Deering Supp. 1993), provide for the criminal prosecution of parents who fail to control or supervise their children who become involved in a crime. Under § 272, parents may be punished by a jail sentence of not more than one year or a fine of up to $2500. A South Central Los Angeles woman was arrested under this law and accused of allowing her fifteen-year-old son to participate in a street gang. Harris, \textit{supra}, at J1. Charges were dropped once it was discovered that she had completed a parenting skills class. \textit{Id.} The American Civil Liberties Union of Southern California challenged the imposition of a duty on parents or guardians to "exercise reasonable care, supervision, protection, and control over their minor child" as unconstitutionally vague and overbroad. The Supreme Court of California rejected this challenge to the amendment to § 272. \textit{See} Williams v. Garcetti, 853 P.2d 507 (Cal. 1993).

The City of Aurora, Illinois has considered leveling fines against the parents of offenders as well as requiring parents to attend court hearings with juvenile offenders. Dardick, \textit{supra} note 111, at 3.

\textsuperscript{155} This has been done in San Francisco, California with the help of a $75,000 grant given to the city by the Pacific Telesis Foundation. Leary, \textit{supra} note 153, at A4. Parents are required to pay for and supervise their children's cleanup of damaged property. \textit{Id.} 

\textsuperscript{156} \textit{Parental Pressure}, \textsc{S.F. Chron.}, Sept. 17, 1990, at A16 (editorial) ("Parents are a part—a prime part—of the [graffiti] problem. These youngsters would not be defacing city property ... if under proper parental control. So mom and dad ought to contribute to the solution.").

\textsuperscript{157} Sergeant Robert Angone of the Chicago police public transportation unit describes cases where the parents hit their children: "This was a case where the parents really care about what their kids do ... One father punched his son and told him, 'I believe what the police say,' and another mother gave her kid a good crack before we could separate them." Philip Wattley, \textit{6 Arrested Over CTA Graffiti}, \textsc{Chi. Trib.} (National ed.), July 18, 1986, § 2, at 3. One has to wonder if this is the type of response
may be precisely what the writers were seeking to do through graffiti.\textsuperscript{158} Some parents may not have strong enough emotional ties with their child to influence her behavior. Additionally, such prosecutions may be ineffective because the parents are unable to pay the judgments.\textsuperscript{159}

Although it may seem desirable to hold parents accountable, prosecuting parents ultimately leaves any actual enforcement and lesson-teaching to the parents, with no guarantee of results. Some parents may not care, some may ignore the situation, some may just talk about it, and some may do nothing. Moreover, these measures have no effect on writers who are not minors or who are not subject to parental control. Not only are a significant amount of writers adults, emancipation statutes may liberate a number of youths from parental control.\textsuperscript{160} Thus, education, counseling, and cleanup may be more appropriate corrective measures.

D. Prophylactic Measures

1. Controls on Sales of and Access to Graffiti Instruments—Many states and communities have sought to limit access to materials used to create graffiti by making it a misdemeanor to sell spray paint, felt tip markers larger than a certain size, or other graffiti instruments.\textsuperscript{161} Some

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\textsuperscript{158} This may be especially true for those writers from middle- and upper-class backgrounds, because they often do graffiti to get the attention of their parents. Psychiatrists who have had white, upper- and middle-class writers as their patients have noted that virtually all such writers have “less-than-close” relationships with their fathers. The psychiatrists note that their graffiti-writing probably stems from two sources: a desire to rebel against authority and a desire to deal with fears by seeking out experiences that involve facing those fears. Other psychologists note that for many, graffiti writing is a way of saying, “I exist.” Stern & Stock, \textit{supra} note 30, at 50.

\textsuperscript{159} As a police official stated: “You catch a kid and bring him to his parents and you ask them to make restitution for his damage, and in a lot of cases the parents can’t afford it . . . . Who gets stuck with the bill? Who else—the county.” Albert J. Parisi, \textit{Municipalities Battling Graffiti}, \textit{N.Y. Times}, Aug. 29, 1982, § 11, at 1, 8–9 (quoting a Passaic County police official).

\textsuperscript{160} \textit{See}, \textit{e.g.}, California Emancipation of Minors Act, \textit{Cal. Civ. Code} §§ 60–70 (Deering 1990 & Supp. 1993) (providing for procedures by which children over the age of 14 may become legally independent from their parents).

\textsuperscript{161} Bans on the sale of instruments used by graffiti writers have been adopted by the states of California, Hawaii, and Arizona. Haya El Nasser, \textit{Graffiti: L.A. Hopes to Draw the Line}, \textit{USA Today}, June 4, 1991, at 1A.

Major cities such as New York, Philadelphia, and Chicago also have adopted bans
on the sale of spray paint to minors. Casuso, supra note 51, at 4 (noting that Chicago has had a law banning the sale of spray paint to minors since 1980); Daniel Lewis, *Vandals and Art in Philadelphia*, N.Y. TIMES, Oct. 13, 1985, § 1, at 58 (stating that a Philadelphia ordinance prohibits the sale of spray paint to minors); Bob Liff, *Law Bans Sale of Spray Paint to Minors*, NEWSDAY, May 12, 1992, at 23 (discussing the recent passage of New York City’s law banning sales of spray paint to minors); James Strong, *Council Panel Sees Red on Graffiti, Urges Curb on Spray Paint*, CHI. TRIB. (Sports Final ed.), Feb. 11, 1987, § 2, at 4 (noting the then current Chicago ordinance banned the selling of spray paint to those under 18).

After much debate, Chicago extended the sales ban to anyone in Chicago, regardless of age. See CHICAGO, ILL., MUN. CODE §4-132-150 (1992) (banning the sale of spray paint and non-water-soluble markers); Robert Davis, *City Asked to Ban Sale of Spray Paint Cans*, CHI. TRIB. (North Sports Final ed.), May 10, 1990, § 2, at 4 [hereinafter Davis, *City Asked to Ban Sale*] (stating that Mayor Richard Daley conditionally supported, and the National Paint and Coating Association opposed, a city-wide ban on spray cans and on ink markers with a width of more than three-eighths of an inch); Robert Davis, *Spray-Paint Can Ban Advances in Council*, CHI. TRIB. (North Sports Final ed.), Aug. 17, 1990, § 2, at 6 [hereinafter Davis, *Ban Advances in Council*] (stating that a City Council Committee had approved the measure but, that final approval might be avoided if the paint industry presented an effective plan to control the problem); Bill Granger, *Graffiti: Urban Scrawl That Drips with Contempt*, CHI. TRIB. (Final ed.), Aug. 12, 1990, § 10 (Magazine), at 9 (noting that one city alderperson argued that “the city had the right to ban spray-paint cans from city stores as it had once banned phosphates in soap in order to protect the fragile environment”). Federal Judge Marvin Aspen of the Northern District of Illinois struck down the ban, however, as violative of the Commerce Clause and substantive due process guarantees of the United States Constitution. National Paint & Coatings Ass’n v. City of Chicago, No. 92-C-4023, 1993 U.S. Dist. LEXIS 13,813, at *38-*43 (N.D. Ill. Sept. 29, 1993). The Court also held that such a regulation was not a legitimate use of the city’s police power. Id. at *43-*45.

San Diego has made it unlawful for anyone to sell, exchange, provide, or even loan aerosol paint to any person under 18 unless the provider supervises the minor’s use. SAN DIEGO, CAL., MUN. CODE § 58.07.1(a) (1992). Boston also prohibits the sale of spray paint and broad indelible markers to anyone under 18. BOSTON, MASS., CODE § 16-8A (1991). In Pittsburgh, it is a misdemeanor to transfer spray paint or indelible markers to any person for the purpose of damaging or defacing property. PITTSBURGH, PA., CODE § 616.03 (1990). Philadelphia makes it a misdemeanor to sell or otherwise transfer spray paint or indelible markers to any minor under 18, unless the minor is accompanied by a parent or legal guardian at the time of the sale or transfer. PHILADELPHIA, PA., CODE § 9-617 (1983).

The bans have not been limited to major cities. Meriden, Connecticut prohibits the sale to and purchase by minors of indelible markers or spray paints. Sharon L. Bass, *For Graffiti Artists, Tough Critics and a Counteroffensive*, N.Y. TIMES, Aug. 24, 1986, § 11, at 2. Bridgeport, Connecticut has passed a similar ordinance. Id. A number of smaller California communities also have considered or passed such laws. Simi Valley has an ordinance that prohibits the sale of spray paint to minors. *Simi Valley Approves Graffiti Removal Law*, L.A. TIMES (Valley ed.), Jan. 9, 1990, at B4. Glendale considered an ordinance that would make it illegal to sell spray paint or markers with tips one-quarter inch or longer to minors. Sneiderman, supra note 153, at J1. San Fernando City considered an ordinance banning the sale of spray paint to minors. Mayerene Barker, *San Fernando Council Acts Against Graffiti*, L.A. TIMES (Valley ed.), Mar. 7, 1990, at B4.

Des Plaines, Illinois rejected a proposal for a one-year ban on the sale of spray paint to minors because of the estimated loss to businesses and a desire to trust the children
communities have gone so far as to consider banning the manufacture of paint and markers. Alternatively, a law may require shopowners and private owners to keep spray paint and markers under lock and key, or it may criminalize the open display of such materials. Shopowners may be required to be licensed and to post signs stating that they cannot sell these materials to anyone under eighteen. Buyers over eighteen of the city. Council Votes Down Spray-Paint Curb, CHI. TRIB. (North Sports Final ed.), Nov. 8, 1989, § 2, at 3. Irvine, California recently considered supplementing the state ban on the sale of spray paint to minors with a local ban on the sale of marking pens with tips wider than four millimeters to anyone under 18, but rejected the ban as ineffective, unenforceable, and too limiting of legitimate purposes. McQueeney, supra note 124, at B4.

A number of misdemeanor arrests of paint suppliers have been made under these laws. See, e.g., Gary Washburn, Police Paint Suspect as Supplier of Vandals, CHI. TRIB. (Sports Final ed.), July 31, 1987, § 2, at 3 (stating that police arrested and charged a 62-year-old man with two misdemeanors for selling spray paint to juveniles); Wattley, supra note 128, at 7 (stating that the manager of a West Side Chicago auto supply store was arrested for selling spray paint to a person under the age of 18); Henry Wood & Valerie J. Phillips, 6 Arrested in Graffiti Crackdown, CHI. TRIB. (Sports Final ed.), July 10, 1986, § 2, at 11 (stating that the manager of a store out of which three graffiti artists were seen exiting was charged with a misdemeanor for selling paints to minors).


163. Larger cities have adopted such laws. See, e.g., LOS ANGELES, CAL., MUN. CODE ch. IV, art. 7, § 47.11 (1990) (requiring retail establishments to store spray paint and non-water-soluble markers with tips greater than four millimeters in width in containers viewable by, but not accessible to, the public); PHILADELPHIA, PA., CODE § 9-617 (1983) (making it illegal to sell spray paint or indelible markers unless held in an enclosed device that prevents access by unauthorized persons); see also El Nasser, supra note 161, at 1A (stating that retailers in Los Angeles, Philadelphia, and New York are required to keep spray-paint cans in locked display cases); N.Y. Graffiti Plan: Lock Up Spray Cans, CHI. TRIB. (Final Markets ed.), June 7, 1985, § 1, at 3 (stating that Mayor Edward Koch of New York planned to introduce a bill to the city council that would require hardware stores to keep spray paint "under lock and key"). In Los Angeles, paint manufacturers challenged an ordinance prohibiting the display of aerosol paint products as preempted by state legislation and violative of due process, but were ultimately unsuccessful. See Sherwin-Williams Co. v. City of Los Angeles, 844 P.2d 534 (Cal. 1993).

Smaller communities have considered similar ordinances. See Barker, supra note 161, at B4 (noting that the San Fernando, California City Council tentatively approved an ordinance requiring store owners to keep spray paints in locked cabinets); El Nasser, supra note 161, at 1A; Reza, supra note 124, at B1 (stating that Chula Vista, California is considering an ordinance that would authorize the prosecution of local residents and business owners for not securing markers and spray paint, punishable by a fine of $1500 or up to a year in jail); Sneiderman, supra note 153, at J1 (stating that the Glendale, California City Council tentatively approved an ordinance that would require merchants to keep all spray paint in locked cabinets or other storage areas and place markers in full view or control of salespeople).

may be required to furnish their names and addresses.\textsuperscript{165} Spray paint and markers also may be subjected to additional taxation.\textsuperscript{166} Finally, possessing spray paint, markers, or any instrument capable of making graffiti may be a misdemeanor in certain circumstances.\textsuperscript{167}

Overall, these laws have been ineffective for a number of reasons. Most vandals steal their paint anyway, so prohibiting its sale is only marginally effective in reducing graffiti.\textsuperscript{168} Requiring owners to secure painting materials may make the

\textsuperscript{165} Instead of banning sales to everyone regardless of age, Jersey City, New Jersey requires buyers over eighteen to provide their name and address. Robert Hanley, Jersey City Escalates Graffiti War, \textsc{N.Y. Times}, June 11, 1992, at B1.

\textsuperscript{166} \textit{See} Davis, City Asked to Ban Sale, supra note 161, at 4 (quoting Mayor Richard Daley of Chicago as saying that "I'd just as soon also see a tax on the sale of spray cans"); El Nasser, supra note 161, at 1A (describing a Los Angeles ballot proposal, the Graffiti Prevention Tax, which would add ten cents to the price of aerosol paint cans and five cents to the price of broad-tipped indelible markers).

\textsuperscript{167} Taxing spray paint and markers creates funds to fight and cleanup graffiti. Los Angeles estimated that the Graffiti Prevention Tax would generate about $550,000 a year. El Nasser, supra note 161, at 1A (quoting Paul Smith, of the city's Chief Legislative Analyst Office, as saying that "[t]he dollars would be used . . . to get kids who are at risk and educate them about the problem they created" and to fund "the never-ending cleanup" of graffiti). This measure has been challenged as unfair to consumers. \textit{Id.} (quoting political consultant Allan Hoffenblum as asking "[w]hy should a law-abiding citizen who's buying a spray can to paint his garage pay a tax to subsidize policing of . . . hoodlums?"). The ballot proposal was rejected. Reza, supra note 124, at B6.

\textsuperscript{168} \textit{See} supra note 61 and accompanying text.
materials more difficult to steal, but writers will find other ways to get their materials, or use legal substitutes such as shoe polish.\textsuperscript{169} Moreover, these measures are nearly impossible to enforce due to their intrusiveness and the difficulty of determining where the materials were bought.\textsuperscript{170} Additionally, such laws, by outlawing only the sale of spray paint or markers to individuals under the age of eighteen, fail to reach adult writers. Likewise, at least one member of a given painting crew probably will be old enough to buy materials legally and can provide materials to underaged crew members. Finally, if only one community outlaws such sales while the surrounding ones do not, writers may obtain materials in other towns and thereby destroy the law's effectiveness.\textsuperscript{171}

\begin{itemize}
\item[169.] Rick Birle, arguing for the National Paint and Coatings Association, stated that “experience has taught us that lockup measures have not been effective in reducing vandalism in other cities.” Sneiderman, supra note 153, at J1. New York vandals buy their spray paint elsewhere or use substitute marking materials such as shoe polish. \textit{Id.} In fact, the newest explosions in graffiti writing have been shoe polish use and glass etching. \textit{See supra} notes 148–149 and accompanying text.
\item[170.] \textit{See Strong, supra} note 161, at 4 (quoting Alan Saks, president of the Saxon Paint Company, as stating that: “[i]t's unenforceable. The law [banning sale to those under 18] has been on the books for six years, and by the police department’s own testimony the problem has increased a hundred-fold.”); Davis, \textit{City Asked to Ban Sale, supra} note 161, at 4 (noting that Chicago Alderperson Richard Mell acknowledged that the existing ordinance banning the sale of spray paint to those under 18 has been a failure); McQueeney, \textit{Irvine Anti-Graffiti Law, supra} note 124, at B4 (noting that a councilperson argued against making the sale of markers illegal to those under 18 because the law would be difficult to enforce and probably would not make much of a dent in the graffiti problem); Jessica Seigel, \textit{Des Plaines Studies Spray Paint Ban, CH. TRIB.} (North Sports Final ed.), Oct. 6, 1989, § 2, at 1, 7 (noting that the “Des Plaines police and some shopkeepers say enforcing a spray paint ban would be difficult”); Ralph Vartabedian, \textit{Anarchy in a Can, L.A. TIMES} (Home ed.), Mar. 13, 1989, pt. IV, at 5 (stating that “retailers say they are hard-pressed to enforce the law” and noting that the California statewide ban on sale to minors is poorly enforced).
\item[171.] Chula Vista City Attorney Bruce Boogaard stated that enforcement of the ordinance would be a low priority for police and noted: “In order to ameliorate what is viewed as a possible invasion of privacy, we have also established an enforcement policy. We're not really going to enforce it except in events that lead to graffiti vandalism.” Reza, \textit{supra} note 124, at B6.
\end{itemize}

It will never work unless the same law is applied throughout the county . . . . These materials are so readily available in hundreds of retail stores. What's to stop someone from driving to El Cajon or Spring Valley to buy or shoplift spray paint or markers? You can't believe that we're going to have officers at the city limits checking suspicious cars.

Reza, \textit{supra} note 124, at B6 (quoting Jim Biddle, president of the Chula Vista Chamber of Commerce); \textit{see also} Seigel, \textit{supra} note 170, at 1 (noting that Des Plaines, Illinois rejected a proposed local ban on the selling of spray paint to minors because the ban would not prevent minors from purchasing paint in nearby towns).
These measures are not only ineffective, they are undesirable for policy reasons. If authorities are to enforce laws that require private owners to lock up these materials, officials must enter and inspect citizens' homes. The measure’s intrusiveness affects its effectiveness: because of the law’s intrusiveness, authorities do not enforce it, and because the authorities do not enforce the law, private owners have no incentive to secure the materials. An even greater problem is that the measure prevents individuals who have a legitimate use for items such as felt-tip pens and spray paint from obtaining them.

One alternative is to adopt a regional or statewide ban. Des Plaines, Illinois suggested such a ban to the Northwest Municipal Conference with its 34 member towns; the Conference is considering drafting an ordinance that would be introduced in all the towns. Seigel, supra note 170, at 1. California, recognizing this problem, has passed a statewide ban on the sale of spray paint to minors. See CAL. PENAL CODE § 594.1 (Deering 1983 & Supp. 1993). This solution, however, would not prevent purchase in another state. The ban also could cause a black market to develop.

Arguably, requiring citizens to lock up such materials also would be violative of the trust that is conducive to an excellent parent-child relationship.

But see Vartabedian, supra note 170, at 5 (noting that major spray paint manufacturer, "To do away with graffiti would do nothing but good for the industry . . . . If graffiti stopped nationally tomorrow, I don’t think I would notice any change in my sales.") Id. A number of spray paint manufacturers donate cans to graffiti cleanup projects as well. See id. (noting that major spray paint producer Zynolyte’s vice president of sales, Craig Giola, and president, Rick Birle, are both active in community organizations opposed to gangs and that Zynolyte contributes paint to groups that clean up graffiti); see also Davis, City Asked to Ban Sale, supra note 161, at 4 (pointing out that Sherman-Williams Paint Company donates hundreds of cans...
problem may be mitigated to some extent because minors' parents may be able to purchase the materials for them. In areas where these materials are outlawed regardless of age, however, no one will be able to purchase them, even for legitimate use.\textsuperscript{174} Furthermore, transferring the cost of graffiti prevention to shopowners is unjustified.\textsuperscript{175} Moreover, requiring the lockup of these materials and limiting sales to minors may affect local businesses adversely.\textsuperscript{176} The effect on local businesses will be immense if spray paint and marker sales are outlawed altogether.\textsuperscript{177}

2. Curfew Restrictions and Enforcement—Some communities

at 4 (pointing out that Sherman-Williams Paint Company donates hundreds of cans of spray paint each year to organizations that conduct cleanup programs).

174. Statutes can account for legitimate needs. For example, a La Palma, California law provides arrest for possession, but possession of painting materials is allowed where the minor needs the materials for art class and is taking them to and from class or where the property owner gives permission. Tom McQueeny, \textit{City Toughens Law Against Graffiti}, \textsc{L.A. Times} (Orange County ed.), Mar. 19, 1993, at B2.

175. See Sneiderman, \textit{supra} note 153, at J1 (quoting a Glendale apartment owner who criticized the measure as stating “[l]et’s do all of these things before we think about threatening honest store owners with a fine or jail term, just because they can’t afford expensive lock up cabinets for spray paint”). Costs may go beyond the purchase of cabinets, such as having to rearrange stores.

176. See \textit{Law Aims to Limit Thefts of Spray Paint by Vandals}, \textsc{L.A. Times} (Home ed.), Nov. 7, 1990, at B2 (noting that paint industry representatives have argued that a Los Angeles ordinance requiring the lockup of spray paint cans will disrupt sales and unduly burden store owners); Sneiderman, \textit{supra} note 153, at J1 (claiming that the New York lockup law has cut legitimate retail spray-paint sales by more than 40%). A spokesperson for a maker of markers “expressed concern that regulating the storage of markers could hurt retail sales” and stated: “We are supportive of any effort to control, remove and eliminate graffiti and its sources . . . . But we also want our product to be sold . . . . We are in business to make these pens available to our customers. The legitimate use of these markers makes them very popular items . . . .” Reza, \textit{supra} note 124, at B6 (quoting Diane Dixon of the Avery-Dennison Corporation). As one businessperson noted, the lockup ordinance may have a greater effect on large retailers: “The smaller businesses will probably conform to this ordinance without too much trouble . . . . But the larger businesses, where it’s mainly self-serve, will have a difficult time merchandising the products to conform to this. We’re sort of in the middle. It will cause some problems, though.” \textit{Id.} (quoting Chuck Peter, owner of Cornell’s Office Products in Chula Vista, California). This measure could be financially burdensome on small businesses, however, if they cannot afford expensive lockup cabinets for the materials. Businesses also may have to pay additional labor costs to control and distribute the locked-up materials.

177. In Chicago alone, 11,000 cans of spray paint are sold every day, with total annual sales of around eight million and yearly revenues of about $640,000. Most sales are to “responsible citizens who have legitimate uses for spray paint cans.” Davis, \textit{Ban Advances in Council}, \textit{supra} note 161, at 6 (paraphrasing Patricia Kelly, representative of the Illinois Retail Merchants Association). Spray-paint sales in the United States total more than a half a billion dollars annually. Vartabedian, \textit{supra} note 170, at 5. Nonetheless, many writers steal, rather than buy, most of their materials.
have sought to impose curfew restrictions on those under the age of eighteen. Typically, these laws prohibit those under the age of eighteen from being on the street from ten or eleven o'clock in the evening until sunrise. Because these ordinances often are challenged as overbroad, they sometimes require amending or redrafting in order to pass constitutional muster. Amendments may allow juveniles to be out after curfew hours if they are going to and from work, are going to a public meeting or recreational activity, or are on an emergency errand for a parent or guardian. Juveniles may be allowed on the streets when accompanied by an adult. Some laws prohibit a parent or guardian of a minor from allowing that minor to violate curfew. These laws are enforced generally only when police receive complaints. Rather than enforce curfew statutes,

178. Los Angeles and a number of other Southern California cities, such as Carson, Compton, Long Beach, Modesto, and Newport Beach, have enacted curfew ordinances. Gary Libman, Curfew Laws and Their Enforcement Vary, L.A. TIMES (Home ed.), Dec. 6, 1990, at E14. Norwalk, California has a curfew law that requires those under 18 to be off the streets after 10 p.m. or to be accompanied by an adult. Harris, supra note 154, at J1. Huntington Park, California also has a curfew ordinance which prohibits those 18 and under from being on the streets after 10 p.m. Virginia Escalante, Huntington Park Enforcing Curfew to Curb Graffiti, L.A. TIMES (Home ed.), Mar. 7, 1985, pt. IX, at 1.

179. Libman, supra note 178, at E14. Carson's curfew is from 10 p.m. until sunrise; Compton’s is from 10 p.m. until 5 a.m.; Long Beach’s is from 10 p.m. until sunrise; Los Angeles's is from 10 p.m. until sunrise; and Newport Beach’s is from 10 p.m. until 6 a.m. Id.

180. See, e.g., In re Frank O., 247 Cal. Rptr. 655, 656 (Ct. App. 1988) (declaring Long Beach's curfew ordinance overbroad and therefore unconstitutional because it failed to give adequate notice of what conduct is prohibited); Alves v. Justice Court of Chico, 306 P.2d 601 (Cal. Ct. App. 1957) (holding that the city of Chico's curfew ordinance was unconstitutional because it infringed upon too many individual liberties and hence was an invasion of privacy). But see People v. Walton, 161 P.2d 498 (Cal. App. Dep't Super. Ct. 1945) (rejecting a constitutional challenge to a Los Angeles County curfew ordinance because the statute at issue was not overly broad).

181. Libman, supra note 178, at E14; see, e.g., LOS ANGELES, CAL., MUN. CODE § 45.03 (1990) (providing curfew exceptions for minors when accompanying an authorized adult or guardian, performing errands directed by a parent or other authorized adult, returning home from a public meeting or place of public entertainment, and being present in connection with their business, trade, profession, or occupation); SAN DIEGO, CAL., MUN. CODE § 58.01 (1989) (providing curfew exceptions for minors when accompanied by an adult or guardian, on emergency errands, returning directly home from a school-sponsored activity, or being present in connection with a legitimate trade, business, profession, or occupation).

182. See Harris, supra note 154, at J1.

183. See, e.g., SAN DIEGO, CAL., MUN. CODE § 58.01.1 (1989).

184. Libman, supra note 178, at E14. In 1989 the Los Angeles Police Department arrested only 110 juveniles for curfew violations; Long Beach and Compton officers were only slightly more active. Id. The Long Beach Police Department started periodic roundups of curfew violators in response to complaints about loud parties and liquor
police often turn to anti-loitering laws when arresting curfew violators because such laws are more precisely drawn than curfew regulations. Police officers may arrest or detain violators until their parents come to the station or officers may stop youngsters and send them home.

The logic behind these laws is that keeping minors off the streets will prevent them from writing graffiti. The laws also seek to promote better parental supervision over children, which, in turn, is believed to reduce graffiti. Although such reasoning may be sound to the extent that most graffiti vandalism occurs late at night, it ignores several elements that may hinder the effectiveness of curfew laws. First, a fair amount of vandalism takes place during the day when curfew restrictions are not applicable. During winter, darkness falls well before the curfew restrictions take effect. Second, this measure incorrectly assumes that curfews will keep kids off the streets. Much graffiti is done when youths sneak out of their houses because their parents either cannot or do not enforce the curfew. The measure incorrectly assumes that those apprehended for violating curfew are graffiti vandals. Although a curfew may be easier to enforce because any youth on the street after hours is in violation of the law, writers have been

sales to minors. Id. Huntington Park’s drive to enforce its curfew in 1985 was spurred by graffiti complaints. Escalante, supra note 178, at 1.

185. Escalante, supra note 178, at 1. Huntington Park has made loitering a misdemeanor punishable by a maximum $1000 fine and a six-month jail sentence. Id. Los Angeles also has an ordinance prohibiting loitering. See Los Angeles, Cal., Mun. Code § 41.18 (1990).

186. See Escalante, supra note 178, at 1.

187. See id. (quoting Mayor William Cunningham of Huntington Park as stating that “[w]hen kids under 16 are out on the streets, they’re up to no good”); id. (stating that according to Huntington Park Councilman Tom Jackson, graffiti is committed during the night by juveniles and that “we’ve got to put them away”).

188. See id. (quoting Teresa Solorzano, mother of five, as saying that the curfew sweeps were “also a lesson for the parents” and that she thinks “the law will help us have better control over our children”).

189. See supra note 128.

190. See Escalante, supra note 178, at 1 (stating that more than two dozen students predicted that Huntington Park’s curfew would not be a solution to the problem, would not keep young people off the streets, and infringed on young people’s civil rights); id. (quoting one teenager as saying that “They can’t stop us from going out. . . . And it won’t stop others from writing on the walls.”); Gerald Faris, Surveillance Teams Use Curfew Law to Curtail Taggers, L.A. Times (Home ed.), Jan. 3, 1993, at J1 (quoting Norwalk, California Public Safety Director Kevin Gano as stating that “[i]n 90% of these cases, these are parents who have no control over the minors and we find there are problems in the home . . . .”).
dodging the police for years and know how to avoid them. Third, the exceptions that allow a minor to be on the street also can be used to refute an officer's allegations, and the officer may have difficulty determining whether a minor is lying. Even if the officer takes the minor home to verify his story, his parents may not be available or know whether the child was out in public legitimately. Fourth, curfew regulations usually apply only to those under eighteen and are inapplicable to writers who are older. These older writers also may act as escorts who legitimate younger writers' presence on the streets by providing adult companionship. Finally, the effectiveness of this measure is questionable because it reinforces the alienation that motivates vandals. Instead of solving the graffiti problem, enforced curfews may make it worse. By imposing a curfew, authorities demonstrate how little society trusts and respects youths. Moreover, for those writers who enjoy the illegality of graffiti and the thrill of the chase, curfew enforcement only gives them more satisfaction.

Beyond questions regarding the effectiveness of curfew laws, enforcement is often selective and therefore constitutionally suspect. Moreover, enforcement prevents officers and police departments from pursuing criminals who may pose a greater danger to society. Finally, enforcement may jeopardize the

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191. See supra notes 121–122 and accompanying text.
192. See Harris, supra note 154, at J1.
193. See Escalante, supra note 178, at 1 (quoting one teenager as saying: "It's not cool for them to take our freedom away. What if you're visiting someone, coming out of the movies or going to the store? . . . They're taking rights away from people."); id. (quoting another teenager as asking, "What if your parents let you go out? I'm 15 and my curfew is 2 a.m. because my dad knows I'm not doing anything wrong. If your parents let you go out, the [police] shouldn't interfere with your social life.").
194. See Escalante, supra note 178, at 1 (quoting teenagers responding to the curfew law as stating that "[i]f they do that, it's just going to get worse," and that "[i]t won't solve any problems. It's not going to stop them. It'll just make them do it more").
195. See id. As Joan Howarth, a law professor at Golden Gate Law School in San Francisco who has studied curfew ordinances stated:

One of the problems is that they are a set-up for selective enforcement. . . . In the 1950s they were used aggressively against so-called juvenile delinquents. In the early 1960s there was an aggressive enforcement of curfew laws against hippies in Hollywood. And in recent years we saw aggressive enforcement of curfew in Westwood at the same time that they were many more black and Chicano people coming there.

Id.

196. In the words of Larry Olson, director of public safety for the City of Carson, California, "I don't think [the curfew law] is used a lot. . . . One reason is [that] it takes
proper education and growth of youngsters because curfews deprive them of the increased responsibility and freedom that would result from the ability to socialize with friends or get a job at night. 197

3. Protecting Surfaces with Anti-Graffiti Materials—Many property owners have sought to protect their property against graffiti by using anti-graffiti materials, which either make surfaces resistant to spray paint or able to be cleaned more easily. 198 Surfaces also may be designed and built so as to discourage graffiti. 199 Although the business of creating and

officers off the streets and out of service for so long while they in essence baby-sit a youngster until his parents can be found and come down and pick him up.” Id.

197. ‘See id. (quoting Professor Howarth as saying: “When we conducted our study, we found parents who said . . . part of educating and raising children is to allow them increased responsibility when they earn it, and the automatic, age-based curfew by the government does not take that into account.”)."

198. The coatings vary in effectiveness. The New York transit authority once Teflon-coated their cars but the Teflon was expensive and washed off with the application of detergent; they since have switched to waxing the cars by hand every two months. Bernstein, supra note 92, at 8. Another approach, perfected in Sweden and used by the company Graffiti Prevention Systems in San Fernando Valley, California, is to spray a thin layer of silicon and wax on buildings; after vandals have struck, pressurized water steams off the coating and the graffiti comes with it. Alice Crane, Long Beach May Try to “Melt Off” the City’s Graffiti, L.A. Time (Bulldog ed.), June 26, 1988, pt. II, at 8. Costs for this service range from about $25 a month for a bank building to $700 a month for a shopping center complex. Id. A polyurethane covering can be used which allows future graffiti to be removed with soap, water and a brush. Parisi, supra note 159, at 8. Another anti-graffiti material that has been used is a paint-like substance that allows graffiti to be wiped off with household solvents and costs 75 cents a square foot to apply. Id. Dow Chemical Company recently has developed a Teflon-like coating which is transparent, colorless, and “unwettable.” See Malcolm W. Browne, Teflon-Like Material Could Prevent Graffiti, N.Y. Times, Apr. 7, 1992, at C2; Thomas H. Maugh II, Dow Develops Non-Stick, Non-Polluting Coatings, L.A. Times (Home ed.), Apr. 7, 1992, at D6.

Graffiti removers and protective coatings are “becoming a big business.” Sending Message to Graffiti Gangs, Chi. Trib. (North Sports Final ed.), May 24, 1991, § 2, at 1 (quoting paint store manager, Harold Goldmeier). It is estimated that about 75 paint manufacturers around the country make anti-graffiti coatings. Vartabedian, supra note 170, at 5.

199. An ordinance proposed in Chula Vista, California requires that surfaces which are potential graffiti targets be landscaped so as to prevent the painting of graffiti and that all utility boxes in the city be painted with special surface materials that facilitate graffiti removal. Reza, supra note 124, at B1. Long Beach, California has considered using tile in its bathrooms on which it is harder to write graffiti. Crane, supra note 198, at 1. Recycled plastic walls that are easy to wipe clean have been developed. Hugh Dellios, Easy-Wipe Walls in L.A. May foil Gang Graffiti, Chi. Trib. (North Sports Final ed.), May 3, 1993, § 1, at 1. Vines or bushes also may be used to cover or block walls frequently attacked by vandals. See, e.g., Shrubs Used in Budding Anti-Graffiti Effort, San Diego Union-Trib., Feb. 18, 1993, at B2.

Some buildings have been equipped with motion detectors that set off sprinklers to wash away paint and drench taggers. See Terry Spencer, Inventors Plan to Wash Away Graffiti Vandal, L.A. Times (Orange County ed.), Apr. 28, 1993, at B1.
selling anti-graffiti materials is booming, and a great number of products exist on the market, their effectiveness is doubtful. Treatments may allow "ghosts" of the original graffiti image to reappear months later. Moreover, the protective coating sometimes comes off when the graffiti is removed and must be reapplied at an additional expense. The cost of coating all threatened surfaces with such materials may be prohibitive for affected property owners. Moreover, the graffiti will continue to exist as vandals find ways to circumvent these preventive techniques and develop new ways to make their mark. Anti-graffiti materials, while useful, are not a complete solution.

4. Cleaning Up Graffiti—Many property owners and community groups have taken the position that immediate cleanup discourages vandals because it deprives vandals of the notoriety they seek. Materials used to clean graffiti run the gamut from soap and water, to sandblasting, to chemical solvents, to lasers. While cleanup programs have been somewhat effective in addressing the short-term effects of graffiti, removing graffiti without addressing writers'
motivations to paint ultimately will prove ineffective. If writers desire to make their mark, they will develop painting methods that hinder cleanup, or they will gain notoriety by showing photographs of their graffiti taken immediately after its completion. Moreover, because many of the agencies responsible for implementing graffiti removal policies do not have the resources to remove the graffiti quickly, the writers still get at least a moment of notoriety. Finally, repainting often provides the next writer with a clean canvas. In short, if a writer's underlying desire to paint is not satisfied, he will

supposedly rolled off the line in 1989. Hays, supra note 41, at A1; Philip Lentz, Graffiti Cleanup a Shiny Symbol of Subway System's Turnaround, CHI. TRIB. (North Sports Final ed.), May 18, 1989, § 1, at 6. The success of the program was temporary, however; in 1990 the number of hits on trains doubled. A number of reasons accounted for the resurgence of graffiti, including limited budgets and a new crop of more motivated writers. Strom, supra note 110, at B1. For a more detailed discussion of the NYMTA's war on graffiti, see CASTLEMAN, supra note 22, at 148-75.

The Washington, D.C. Metro also has experienced success with its cleanup program, which includes an immediate cleanup component. The subway stations and trains are usually clean, due primarily to the stations' high vaulted walls that were designed to thwart writers and the Metro's practice of taking cars marked by graffiti out of service. William E. Farrell & Warren Weaver, Jr., Grappling with Graffiti, N.Y. TIMES, Dec. 11, 1984, at B12; Lancaster, supra note 108, at D7. In addition, officials visit area schools to educate children and urge them not to do graffiti. Lancaster, supra note 108, at D1. The Metro tries to discourage news reports of graffiti as well. Id. at D7. The Metro is having less success with graffiti on its buses because they are more difficult to police. Id. at D1.

206. In New York, for instance, writers learned to thwart the transit authority's efforts to clean graffiti with the use of a powerful chemical solvent. The artists first "spray an area with a fast-drying clear base epoxy, then write their graffiti and top it with clear shellac." Harris, supra note 22, at 14. This makes the graffiti much harder to remove. As one police officer succinctly put it, "[y]ou'd need a hammer and a chisel to get the paint off." Id.; see also Bethany Kandel, New York Writes Off Graffiti: Subway Trains All Cleaned Up, USA TODAY, May 12, 1989, at 3A (quoting Martin Wong, founder of the Museum of American Graffiti, as stating that "[t]he kids are always one jump ahead of the transit authority . . . ."). Another method writers have developed is cutting graffiti into transit vehicle windows. See supra note 203.

207. Writers commonly show off their piece books, containing photographs or drawings of the work that they have done. Therefore, a writer may not receive less notoriety or respect for an eradicated work. As one writer put it: "It used to frustrate me because we were used to it being around for a week, two weeks, a month, seeing it at different stops and your friends telling you they had seen your tag . . . . [Now] I just make sure to get pictures." Strom, supra note 110, at B2.

208. Many writers can get photographs of their work before the transit authorities have time to remove it. See Stern & Stock, supra note 30, at 60.

209. According to Brewer, painting over graffiti is doomed to fail as an effective method. "It's a way of restoring the property, but it's not an effective method of reducing the graffiti. It just kindles the writer's desire to write more. It also gives them a fresh canvas." Parsons, supra note 50, at B1.

In fact, police in Long Beach, California use cleanup efforts to catch writers by painting over graffiti-marred walls in the morning and then staking out the site at night. Kopetman, supra note 124, at 1.
keep painting no matter how much cleanup is done. Cities, community groups, writers, and property owners all can bear cleanup costs. Most commonly, however, it is the city which bears the costs of cleanup. This can be extremely expensive, straining public budgets and limiting the amount of other services that the city can provide. Removing graffiti may be prohibitively expensive for a city. The cost to the city may be reduced to some degree if the writers themselves are required to cleanup, although the costs of painting and removal supplies still remain. Another method of defraying costs is to develop programs such as the California Department of Transportation’s Adopt-A-Wall Program. Under this program,

210. Beyond the actual property cleanup costs, personal costs may exist for the workers who use or are around the chemicals used to clean the trains. See Jim Dwyer, Graffiti-Free Era Comes at a Cost, NEWSDAY, May 11, 1989, at 6 (noting that a former transit worker died of lung disease, probably caused by overexposure to chemicals used to remove graffiti).

This section mainly addresses the costs of cleanup born by cities and property owners. For a discussion of costs born by writers, see supra Part IV.A–C. For a discussion of costs born by community groups, see infra Part IV.E.6.

211. See, e.g., Jim Carlton, Mission Viejo Takes Emergency Action to Head Off Graffiti, L.A. TIMES (Orange County ed.), Feb. 14, 1989, pt. II, at 3 (discussing an ordinance that would provide lists of contractors and volunteers that could be used if city crews were unavailable for cleanup and that would coordinate removal efforts through the city instead of through the “fragmented efforts” of homeowner associations, utility companies, and public agencies); Eng, supra note 108, at B1 (stating that Santa Ana, California expected to pay about $600,000 in 1989 to its employees and private contractors to clean graffiti); Hugo Martin, Council to Consider Anti-Graffiti Plan, L.A. TIMES (Ventura County ed.), Jan. 21, 1991, at B3; McQueeney, supra note 124, at B4 (summarizing a proposed Irvine, California ordinance that would require property owners to remove graffiti or to allow the city to remove the graffiti at the city’s expense, with no guarantee of matched paint color or complete eradication of graffiti); John Schwada, Plan Seeks to Relieve City of Graffiti Removal Costs, L.A. TIMES (Valley ed.), Jan. 23, 1991, at B3 (stating that under existing anti-graffiti law, the city of Los Angeles is authorized to remove at its own expense graffiti from private properties without the owner’s permission if the owner does not voluntarily do so within 15 days after the issuance of a citation by the Building and Safety Department); James Tortolano, Garden Grove: City Adopts Broader Anti-Graffiti Effort, L.A. TIMES (Orange County ed.), Mar. 21, 1990, at B2 (noting that a new graffiti-removal program of Garden Grove, California allows the city to remove graffiti with the permission of the owner); see also HUNTINGTON BEACH, CAL., ORDINANCE 3003 (July 5, 1989) (allowing the city to enter private property and clean graffiti at its own expense upon the owner’s authorization of the entry).

212. Schwada, supra note 211, at B3 (noting that under a Los Angeles ordinance authorizing the city to remove graffiti if the owners choose not to, the city often does not remove the graffiti “because of the expense”).

213. This can be done through community service sentencing. See discussion supra Part IV.A.2.

214. One way of reducing the cost of paint removal supplies is to have a local paint dealer or manufacturer donate them. See generally supra note 173.
the Department encourages individuals to pay to clean up walls along transportation routes such as highways. Some cities and towns have sought to collect cleanup money either through imposing taxes on the sale of spray paint and markers or through tax donations.

Some communities have sought to defray the costs of cleanup by imposing those costs on property owners. Although most of these programs initially were voluntary, over time they have evolved to include two mandatory components. The first component mandates cleanup and requires the property owner to pay for it, either through performing the cleanup herself or reimbursing the city for its removal costs. The second component is a more stringent enforcement mechanism. If the

215. Berkley Hudson, To the Wall: Priest Named First Participant in Program to Eradicate Freeway Graffiti, L.A. TIMES (Home ed.), Feb. 27, 1991, at B3. As of 1991, it is estimated that about 1000 adoptable walls lined 600 miles of freeway in Los Angeles and Ventura counties. If the program succeeds in these areas, its extension across the state will be considered. Id.

216. See supra note 166 and accompanying text.

217. In San Francisco, one graffiti cleanup measure allows businesses to contribute one percent of their taxes to a cleanup fund which is not to exceed one million dollars a year. Minton, supra note 138, at B5.

218. For example, Hanover Park, Illinois passed an ordinance that requires property owners to remove graffiti from their buildings within 21 days after they are marked. Owners who fail to remove the graffiti within that time are forced to pay the city to remove it. Anti-Graffiti Law Gets Final Approval, CHI. TRIB. (Du Page Sports Final ed.), Dec. 24, 1991, § 2, at 3. This law was proposed to force the quick removal of graffiti; the city previously had a voluntary compliance law which owners were slow to obey. Matthew Nickerson, Hanover Park Considers Graffiti Law, CHI. TRIB. (Du Page Sports Final ed.), Dec. 10, 1991, § 2, at 4.

Los Angeles policy also has evolved from an earlier, more voluntary program. Discussing a new proposal that would require property owners to pay the full cost of removal, Los Angeles councilperson Zev Yaro-Slavsky stated that "[e]verything has been voluntary so far . . . . But this is mandatory . . . . We're going to hold people responsible for keeping their property free of graffiti." Schwada, supra note 211, at B3. Previous anti-graffiti laws allowed the city to cite property owners and give owners 15 days to remove the graffiti. If owners did not do so within that time, the city could enter the property and clean up the graffiti. The city could not bill the owner for the cost, however, and as a result the city often took no action. Id.

219. Some cities continue to have primarily voluntary programs. Addison, Illinois offers to clean graffiti at the city's expense the first time, but any cleanup thereafter is at the property owner's expense. Crews Get Ready for War on Graffiti, CHI. TRIB. (Du Page Sports Final ed.), July 8, 1988, § 2, at 2. Other programs contain mandatory components. Simi Valley, California adopted an ordinance that requires private property owners to promptly remove graffiti or to allow the city to do so and to bill the owner for the cost. Simi Valley Approves Graffiti Removal Law, supra note 161, at B4. A proposed Chula Vista, California ordinance simply requires that property owners remove graffiti within seven days. Reza, supra note 124, at B1. Minneapolis requires owners to restore and maintain any defaced surfaces on their property. MINNEAPOLIS, MN., CODE § 244.495 (1982).
owner does not remove the graffiti or does not give the city permission to do so, then the city removes the graffiti on its own initiative. It then bills the owner or makes the owner pay fines to cover the cleanup costs. 220 Regardless, a property owner is

220. A number of cities in the Chicago area have adopted such measures. Prospect Heights, Illinois adopted a code in November, 1990 that requires property owners to remove graffiti within 30 days or face fines of $25 to $500 a day. Fountain, supra note 66, at 2. The Aurora, Illinois City Council adopted an ordinance requiring the removal of graffiti from vacant property. Council Committee OKs Anti-Graffiti Bill, CHI. TRIB. (Fox Valley ed.), May 15, 1991, § 2, at 1. Under the ordinance, property owners have two to five days from the time of notification from the Aurora Division of Inspections and Permits to remove graffiti. Id. If the graffiti is not removed within this time, the city will remove the graffiti and bill the owner for the work. Id. Elmhurst, Illinois considered an ordinance that would require owners to remove markings within 14 days or pay a fine from $25 to $500. Neil H. Mehler, Elmhurst Prepares Graffiti Law, CHI. TRIB. (Du Page Sports Final ed.), Nov. 28, 1988, § 2, at 3. Under the proposal, owners who did not remove the markings within 14 days would be notified by enforcement officials that a failure to do so within an additional 30 days would subject them to legal action. Property owners are entitled to reimbursement for removal costs if the person making the marks is found and convicted. The city also considered mandating that the suburban bus agency keep its vehicles and its buildings free of graffiti. Id. Chicago itself has considered an ordinance that would require property owners to remove graffiti at their own expense within 10 days of notification by the city that no one had been apprehended for the graffiti. If property owners fail to undertake cleanup within that time, they could be fined $100 to $500 a day. Robert Davis, Victims of Graffiti Could Pay Again, CHI. TRIB. (North Sports Final ed.), May 23, 1991, § 2, at 1.

Under Cleveland ordinances, graffiti is a public nuisance and if the owner fails to remove it, the city can bill the owner for the cleanup. If the owner does not pay, the owner may be fined or taxed for that amount. See CLEVELAND, OHIO, COD. ORDINANCES § 3101.11 (1990); CLEVELAND, OHIO, COD. ORDINANCES § 3103.99 (1992); Cleveland, Ohio, Resolution 1390-92 (June 17, 1992).

Miami requires those in possession or control of defaced property to remove or obscure the graffiti within 30 days of a notice to remove or within the time period given in the notice, whichever is longer. If property owners do not comply with the notice, the city can fine them. No fine can be imposed against persons who have removed graffiti in compliance with notices received two or more times during the calendar year. MIAMI, FLA., ORDINANCE § 37-36.1 (1992). Pittsburgh's provisions similarly provide that the financial hardship of the owner can be considered when assessing a fine. PITTSBURGH, PA., CODE § 616.02 (1987).

In San Diego, the city can enter property to remove graffiti if the owner does not remove it within 10 days of receiving a notice. Owners are given a right to appeal the notice of public nuisance, however. Cleanup costs can be collected from owners who allow graffiti to be placed on their property, but not from those who were not responsible and did not cause the graffiti. SAN DIEGO, CAL., MUN. CODE § 95.0127 (1992).

Several cities in the Los Angeles area, including Los Angeles, have considered or adopted similar ordinances. Stanton, California pays the full cost of removing graffiti that can be seen by the public; if the graffiti cannot be viewed publicly, the city will pay for labor but not for paint. If an owner does not cooperate, the city can declare the property a public nuisance and remove the graffiti at the owner's expense. The ordinance also makes parents financially responsible for the damage caused by their children. Jon Nalick, City Now Poised to Wipe Out Graffiti, L.A. TIMES (Orange County ed.), Apr. 11, 1991, at B3. The San Fernando City Council considered and tentatively approved an ordinance that permits the city to remove graffiti from private property
indirectly forced to carry the cost of graffiti cleanup because even if the graffiti is removed at the city's expense the expense will be paid from community taxes. Although imposing cleanup costs on property owners accomplishes the necessary cleanup, checks the spread of vandalism to some degree, and helps public agencies deal with the expense, it avoids confronting the true problem—the writers' desire to make their mark. Because writers bear none of the costs of graffiti cleanup, no incentive exists for them to stop other than the possible deprivation of notoriety caused by cleanup. Moreover, it is questionable whether painting over a work deprives writers of the recognition they seek.\(^{221}\)

Under existing programs, property owners are forced to bear disproportionately the costs of a societal problem. Because cleanup is a means of prevention, property owners are forced to bear both cleanup and prevention costs. These costs are not

and to bill the owner for the cleaning expense. Barker, supra note 161, at B4. Simi Valley's ordinance requires property owners to remove graffiti within 10 days of notification by the city; if an owner does not comply, the city is authorized to remove the graffiti and bill the property owner. Simi Valley Approves Graffiti Removal Law, supra note 161, at B4.

Los Angeles has battled over whether to bill property owners for cleanup charges. In 1989, the city tentatively approved an ordinance that would empower the Department of Building and Safety to issue removal orders forcing owners to either remove the marks themselves within 15 days or to allow city workers to do so at no charge. Any refusal to cooperate, however, "would make an owner subject to a misdemeanor citation, punishable by up to six months in jail, a fine of up to $1,000 or both." Frederick M. Muir, Council Favors Tough Anti-Graffiti Law: Property Owners Could Be Penalized for Not Helping Removal, L.A. TIMES (Home ed.), Aug. 9, 1989, pt. II, at 1. An ordinance later was proposed that would empower the city both to enter the property and to bill the owner for the cost of cleanup. Schwada, supra note 211, at B3. Owners could avoid the charge by cleaning up the graffiti themselves. Sam Enriquez, Property Owners Doubt Graffiti Plan Will Work, L.A. TIMES (Home ed.), Jan. 24, 1991, at B3; see also LOS ANGELES, CAL., MUN. CODE §§ 91.8904–8904.1 (1991).

Property owners were skeptical about the plan, likening it to weed abatement laws, complaining that "[y]ou are responsible for removing the weeds, even though you didn't plant them . . . ." Enriquez, supra, at B3 (quoting Carmel Somers of Valley Organized in Community Efforts). The council approved a measure mandating cleanup on bus benches by bench owners, but it remained divided on the more far-reaching proposal that noncompliant property owners should pay for cleanup on buildings. The council put off deciding on the proposal "in the hope that a more 'equitable' solution can be devised." Council Delays Vote on Graffiti Removal, L.A. TIMES (Home ed.), Feb. 28, 1991, at B2. The council continued to postpone voting on the measure for reasons of fairness. Louis Sahagun, Graffiti Tally Finds 6,900 Walls in L.A. Are Marred, L.A. TIMES (Home ed.), Oct. 29, 1991, at B1, B4.

\(^{221}\) Cleanup crews often are outpaced and outnumbered by writers. See Eng, supra note 108, at B1 (noting that as fast as the city works, the graffiti reappears; also quoting Santa Ana, California Public Works Department supervisor Gilbert Speda as stating that "[t]here are more graffiti Rembrandts than there are graffiti removers."). Graffiti may remain on property for up to thirty days under some statutes.
distributed among the public, the ultimate beneficiary of the cleanup. Further, such measures “victimize the victim,” and often ignore the fact that property owners may not be able to afford such removal costs. One way to mitigate some of these problems is to have convicted writers clean up the graffiti through community service sentences, thus giving writers direct contact with the burden imposed by their works and a greater incentive to not write illegally again.

Cleanup programs also are problematic because they may mandate the cleanup of graffiti that was commissioned by the property owner if the city decides that such work interferes with its graffiti eradication goals. Giving the city such a blanket authorization to clean up private property may be an undesirable and possibly unconstitutional imposition on property owners’ rights of possession and freedom of expression, especially if the city does not need the property owners’ permission before repainting. Destroying commissioned work may decrease opportunities to paint legally and consequently may increase illegal graffiti.

5. Increasing Security—Another frequent tactic for discouraging graffiti is to increase security, including the use of

222. In Rolling Meadows, Illinois, the city council rejected an ordinance that would have forced property owners to remove graffiti from their buildings for these reasons. Graffiti Removal Ordinance Defeated, CHI. TRIB. (North Sports Final ed.), Dec. 15, 1989, § 2, at 3.

Chicago Mayor Richard M. Daley’s response to the unfairness of such measures was: “Everybody has to take care of his property. . . . What are we going to do? Somebody has to take it off.” Davis, supra note 220, at 1.

223. A proposed Los Angeles property owner cleanup ordinance innovatively addressed this concern by allowing low-income landowners to be exempt from city cleanup charges. Individuals qualified for the exemption are defined as those who meet the qualifications for the Department of Water and Power’s low-cost lifeline service. Schwada, supra note 211, at B3. Using a slightly different approach, Miami, Florida allows individuals who cannot otherwise afford to restore their premises to use donated paint or receive assistance from the “Graffiti Hotline.” MIAMI, FLA., ORDINANCE § 37-36.1(g) (1992).

224. See discussion supra Part IV.A.2.

225. Stanton, California, a suburb of Los Angeles, can remove all graffiti on private property without the property owner’s permission at the city’s expense. The city can declare the site a public nuisance if the property owner does not cooperate to remove the graffiti. Nalick, supra note 220, at B3. Huntington Beach, California has a similar ordinance. The property owner must return an authorization form before the city can enter the property; not returning the form may subject the owner to prosecution. HUNTINGTON BEACH, CAL., ORDINANCE 3003 (July 5, 1989).

226. Property owners are likely to be discouraged from offering space for commissioned artwork if it will be removed or if they will have to remove it at their expense in the future. Writers will have even less legal space for their work and may resort to illegal writing to satisfy their creative desires.
measures such as guard dogs, razor wire, barbed wire, security guards, private security agencies, and special police forces. Increasing security entails significant costs, however, which include paying security guards, feeding and housing guard dogs, buying materials such as wire or fencing, and diverting or hiring and training police forces. Further, some methods of increased security cannot be employed to protect certain surfaces. For example, the walls of a building are not easily protected by barbed wire. Increased security may


228. Many transit authorities have created anti-graffiti squads. See supra note 126. The San Francisco Transit Authority claimed that a 10-foot-tall metal fence around a yard cut down on the vandalism of vehicles by 90%. Leary, supra note 153, at A4. The NYMTA claimed a "sharp, sudden drop" in graffiti within a month of constructing two 10-foot-high fences around a major yard and unleashing patrol dogs. Haitch, supra note 227, at 41.

229. Such costs compelled the NYMTA to cut the number of guard dogs it used even though the program was effective. Goldman, supra note 227, at B1. An experimental six-month measure cost the CTA $150,000 for leashed dogs and professional handlers to patrol the perimeters of three rail yards. Gary Washburn, CTA Putting Guard Dogs in Its Rail Yards, CHI. TRIB. (Sports Final ed.), May 5, 1988, § 2, at 3. The program was deemed a "rousing success" because of increased arrests and a complete halt to vandalism. Gary Washburn, CTA Puts the Bite on Vandalism, CHI. TRIB. (Sports Final ed.), June 16, 1988, § 2, at 16.

230. For example, the SCRTD buses are patrolled by the 15 officers of the Graffiti Habitual Offender Suppression Team at a cost of $570,000 a year. Their effectiveness has been described as "like spitting in the wind" because of their small numbers. Taylor, Ghost Bus Tries to Snare the Taggers, supra note 126, at B1. The Los Angeles Parks and Recreation Department spent $1000 to build "an eight-foot, screen-like barrier" to prevent graffiti on the landmark Hollywood sign. Jeff Burbank, The Sign Vandals Love to Touch Up: Hollywood Landmark Will Get Protection From Graffiti Artists, L.A. TIMES (Home ed.), Aug. 20, 1986, pt. II, at 1. The CTA considered spending as much as four million dollars to install surveillance cameras, put up new fences, and take other security measures in the yards where the trains sit when not in use. 10 Arrested in CTA Train Vandalism, CHI. TRIB. (National ed.), June 17, 1986, § 1, at 7. For just one train yard, the NYMTA paid $1.5 million for fencing and $18,000 annually for the rental and upkeep of six guard dogs. Ari L. Goldman, Dogs to Patrol Subway Yards, N.Y. TIMES, Sept. 15, 1981, at A1. It planned to spend another $14 million to fence eight of its other yards. Haitch, supra note 227, at 41.

One problem with the use of city police forces by transit authorities is that the city will divert police away from patrolling against graffiti when it needs them for other duties. The CTA considered reestablishing its own in-house security unit to replace its Chicago police contingent because the police often were removed to provide security for special events in the city. Washburn, CTA Puts the Bite on Vandalism, supra note 229, at 16.
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not be effective against interior subway or bus graffiti because cars inevitably need to be accessible to the public. Regardless of the method employed, writers are not likely to be discouraged. Although graffiti may diminish temporarily, it will resume unabated as soon as the writers learn new ways around the security.

6. Anti-Graffiti Campaigns & Community Pride/Beautification Programs—A number of organizations, cities, and towns have tried to combat graffiti by education, community watches, beautification programs, and “paint-outs.” Without youth involvement, these efforts have been successful to the same limited degree that cleanup programs have been successful. Efforts at discouraging graffiti vandalism and encouraging community pride and involvement have had greater success when they either involve the youths who are writers or employ graffiti in sending an anti-graffiti message. Cleanup days that involve kids are one tactic used

231. See Goldman, supra note 227, at B1 (noting that barbed wire fences surrounding the New York train yards cannot completely eliminate graffiti because most interior graffiti is executed while the trains are running and not all trains are stored in the protected yards).

232. Writers’ knowledge of the train system rivals that of transit workers; “[t]hey know the location of all the yards and lay-ups where trains are parked and all the means of access [and escape], be they holes in the fence or out-of-the-way manhole covers . . . .” Cooper & Chalfant, supra note 84, at 20. Many writers have master keys to the trains and sell duplicates to other writers. Id. at 33.

233. See, e.g., Haldane, supra note 51, at B3 (noting that residents of several areas are fighting graffiti by organizing informal patrols to ward off or capture writers); Carlos V. Lozano, Nyeland Acres Gives Graffiti the Brush Off, L.A. Times (Ventura County ed.), Mar. 12, 1990, at B3 (stating that Nyeland Acres, California residents have organized a Neighborhood Watch group that has helped authorities identify at least 30 offenders).

234. “Paint-out” is an organized gathering to paint over graffiti. See, e.g., Keegan, Handwriting on the Wall for Graffiti “Artists,” supra note 122, at 2 (noting that in the Chicago area, most block clubs and neighborhood organizations have held or plan to hold a graffiti paint-out); Lozano, supra note 233, at B3 (stating that over 100 Nyeland Acres, California residents are engaged in paint-outs every three months; local merchants and restaurant owners donate paint, supplies, and food to the volunteers).

235. See, e.g., Keegan, Handwriting on the Wall for Graffiti “Artists,” supra note 122, at 2 (discussing the frustration of a number of groups who have organized a paint-out only to find graffiti back in a few days); see also supra Part IV.E.5 (discussing the effectiveness of cleanup programs).

236. A group called the Neighborhood Beautification Program is one example of such an approach. The program unites several Los Angeles area homeowner associations, chambers of commerce, and community organizations from the neighborhoods of Tarzana, Woodland Hills, and West Hills. Every weekend, the group supervises workers’ performance of court-ordered community service of removing and painting over graffiti. The organization survives on donations from about 200 members. When the program began, the organizers asked for 20 workers every weekend; they
by community groups. Famous persons have participated in advertising campaigns that seek to show kids that it is not "cool" to paint without permission. Educating youths is important because they often do not fully understand the extent and consequences of the property damage that graffiti causes. School-based programs show youths the monetary and social costs of graffiti. When approached, educated, or respected

currently ask for about 15 workers every weekend "because it's harder for them to find places to clean now." Steve Padilla, Eraser Man, L.A. TIMES (Valley ed.), Apr. 9, 1991, at B3, B6.

237. The United Streets of Hollywood organization arranges for graffiti crews to paint legally on large spaces such as building sides or construction sites; in exchange, crews have pledged to eliminate tag graffiti, help develop murals, police the murals themselves, and encourage other youths to get involved. There are now at least 10 of these crews, totalling more than 500 artists. Josh Meyer, Street Legal: Youths Form New "Gangs" with Designs on Changing Graffiti Tagging into Art, L.A. TIMES (Home ed.), May 13, 1990, at J1.

238. A Los Angeles radio station, KACE-FM, conducted outdoor advertising to discourage graffiti. It posted 400 billboards from Hollywood to Long Beach bearing the words "Graffiti: Don't Play That Mess!" and depicting a morning deejay team wearing stern expressions. An additional 200 billboards, 150 bus shelter signs, and 220 bus bench signs were later added to the campaign. This program came to fruition through over a half a million dollars worth of donations. Phil West, Inglewood Radio Station Mounts Billboard Blast at Graffiti, L.A. TIMES (Home ed.), July 18, 1990, at F5. Whether these signs work, however, is debatable. The radio's target audience is 18- to 49-year-olds with an annual salary of $35,000, a target group into which most writers do not fall. In this respect, the message is simply another admonition from the older authority figures against whom taggers seek to rebel. Daniel Martinez, head of graffiti abatement for Community Youth Gang Services, explained that "[i]t gives out a message—rather than individual property owners telling kids not to do it, which makes them more defiant, such a sign shows that the whole community is telling them not to do it." Id.

239. Haldane, supra note 51, at B3 (discussing the findings of psychologists who have studied graffiti).

240. The CTA tours elementary schools with its subway car, "The Other Side." The car is spotless on one side and is graffitied and dirty on the other side. Kids are told to choose the side they would rather sit on. Washburn, "Artists" Get 2d Chance
by the community, writers themselves have instigated or participated in programs, such as creating commissioned murals with anti-graffiti messages, giving talks about their graffiti and sharing reform stories, counseling other writers, and organizing and participating in anti-graffiti drives.\(^{241}\)

Another successful approach has been commissioning murals in order to discourage and cover up unwanted graffiti and beautify urban areas.\(^{242}\) Murals themselves, whether they contain an anti-graffiti message or not, discourage graffiti because writers tend to respect artwork.\(^{243}\) Although often not

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\(^{242}\) Philadelphia’s Anti-Graffiti Network program is just one such program whose principal goal is to encourage vandals to express themselves through more acceptable means. Youths who admit that they have painted graffiti are given immunity from prosecution and ordered to perform community service. Those with an interest in art are given training by local artists to help paint murals around the city. The trainees begin as volunteers, and those with the most experience can earn five dollars an hour for up to eight hours a day. Each of the over 600 Network murals bears the Network’s logo, a red circle with a slash over a hand holding a spray paint can. James Rainey, Color Him Angry: Artist Says He May Give Up Painting Murals in L.A., L.A. TIMES (Home ed.), July 27, 1989, pt. II, at 8. This program has introduced writers to high-tech computers that can work in 16.7 million colors in an effort to foster writers’ creative talents. This effort recognizes that most of the young people in the program will not be career mural painters and that introducing them to computer graphics provides them with another skill. Lewis, supra note 161, at 58. Philadelphia also has commissioned professional muralists from outside the city, such as Los Angeles artist Kent Twitchell. Rainey, supra, at 8.

A similar program is Project Pride in Paterson, New Jersey. Under the program, police supervise graffiti writers’ painting of defaced walls and encourage them to paint murals with themes reflecting the city’s history and street life. The program expected to receive $25,000 in donations from local businesspersons and over 700 youths participated during the summer of 1982. Parisi, supra note 159, at 9.

\(^{243}\) Rainey, supra note 242, at 8 (noting that in Los Angeles, the local murals were largely immune to graffiti); see also Marcos Breton, Murals: Symbols of Pride or Violence to East L.A. Gangs?, L.A. TIMES (Home ed.), Oct. 27, 1986, pt. V, at 1 (recognizing that in East L.A. many murals remain untouched out of respect for the artwork, and noting the special significance that murals carry in Latino neighborhoods because murals historically have represented pride in the community); James Brooke,
directed primarily against graffiti, mural preservation programs prevent graffiti because they increase the commissioned artists' potential for lasting notoriety. Accordingly, writers who seek notoriety will, if given the opportunity, be motivated to do commissioned works rather than vandalize. These programs are successful because they capitalize on the motivation of the writers: notoriety, respect, getting up, and being cool.

7. **Youth Programs**—A number of communities have developed other youth programs to address the needs of writers and thereby discourage illegal and unwanted graffiti. These programs range from art classes which allow writers to practice their craft in a legal environment to community centers that get youths off the streets and involve them in other activities. In some programs, grants may be given to artists and crews to create works. Because these programs are the crux of any effective program to combat graffiti, they will be discussed in greater detail as part of the proposed reform.244

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**V. TOWARDS AN INTEGRATED SOLUTION THAT RECOGNIZES AND MEETS THE NEEDS OF THE WRITERS**

This Part advocates a number of reforms to better enable society to respond to unwanted urban scrawl. While a combination of these reforms is the best way to protect the diverse interests involved, adoption of at least some of these reforms is preferable to no change at all. Two points, however, are particularly critical. First, the needs of our youth must be recognized. Second, youths need a forum to express themselves. No program will provide an effective solution to unwanted graffiti unless it accounts for these two considerations.

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244. See infra Part V.B.

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*Whimsical and Diverse Murals Under the Sun*, N.Y. Times, Apr. 19, 1985, at C21 (discussing the commissioned murals in New York and noting that most of them remain free of graffiti); Steve Johnston, *Metro Counters Graffiti with Student Art—High Schoolers Give Bus Shelters a Touch of Class*, Seattle Times, Apr. 2, 1990, at B3 (noting that a mural painted by high-school students at a bus stop has remained almost free of marks for over a year and a half).
A. Drawing a Clearer Line Between Graffiti Art and Graffiti Vandalism

Any graffiti policy must recognize that not all graffiti is vandalism, but that graffiti may become vandalism when it is done in an inappropriate place and without permission. Vandalism is a crime; graffiti can be art. The solution is not to try to prevent graffiti, but rather to strive to prevent vandalism. In equating all graffiti with vandalism, statutes and policies ignore the fact that graffiti and vandalism are not mutually inclusive.

The best way to address this dilemma is to legitimize graffiti when done with permission and to condemn graffiti when done without permission. This distinction focuses on the community's real goal: to prevent vandalism. Condemning all graffiti does not prevent vandalism because it fails to account for the motivations underlying illegitimate graffiti. Condemning all graffiti endangers graffiti as an art form and ignores its meritorious social content. Most true artists do not perform their work merely for the sake of its illegality. Providing accessible, legalized space will help distinguish genuine artists from those who simply want to deface property.

The distinction between graffiti and vandalism needs to be drawn more clearly in the laws, in public debate, and by the art community. Youths should be taught that they earn respect when graffiti is done with permission but do not earn respect when graffiti is done illegally. Communities must recognize that what they oppose is not graffiti per se, but vandalism. By drawing this line more clearly, communities will be better able to address the writers' needs, thereby reducing vandalism by giving writers an outlet and legitimizing their work.

B. More Youth Programs: Involving Youth in Society

Policymakers should recognize that youths use graffiti to express themselves and communicate with each other.

245. See discussion supra Part I.
246. Graffiti represents an important form of expression for many in the urban underclass. Some commentators have proposed that graffiti be encouraged for this reason. See generally Mailer, supra note 12.
247. See discussion supra Part I.
Graffiti is a necessary part of writers' subculture and their development. Even more importantly, graffiti allows writers to avoid involvement with violent gangs. Society should look for ways to channel youths' energies and interests into pursuits that are less destructive of property. Many writers do not realize the impact of their work or that others are offended by it. They need education and direction, not condemnation. They must be involved in the community and made to feel needed.

A number of successful programs that recognize these facts have been developed. These programs, encourage youths to develop their artistic ability through legal means. Youths who participate in these programs are less likely to engage in acts of vandalism or become embroiled in other criminal activities.

In Stockholm, Sweden, for example, writers are sent to "graffiti

248. So many youths are involved in graffiti that companies have used it in advertising targeted to kids. Further, programs and competitions revolving around graffiti are well attended. See supra Part I.

249. "For one thing, 'aerosol art' groups generally exist apart from gangs and other violent behavior . . . . It's a great mistake to assume that all graffiti is mindless and senseless . . . and that vandalism itself is the prime motive." Wong, supra note 53, at E5 (quoting Devon Brewer, urban researcher). "Many of the kids who write hip-hop graffiti see it as an alternative to all these other things they are faced with in their lives . . . So in that sense, having kids write graffiti saves lives." Zan Dubin, Seawall Graffiti Swells Concerns, L.A. TIMES (Orange County ed.), June 29, 1991, at F1 (quoting Brewer). "[Graffiti artists are] not gang members, and doing this is not going to make them gang members. They view this as an alternative to the other violence and crime that goes on in the street." Parsons, supra note 50, at B1 (quoting Brewer).

250. "Their motives seem basically to be fame-seeking and artistic ones—not deliberate destruction." Parsons, supra note 50, at B1 (quoting Brewer); see also Beth Holland, Group Says Graffiti Covers Teen Problems, NEWSDAY, Oct. 9, 1990, at 23 (noting that one citizen stated that youths did not realize what people in the neighborhood thought about graffiti, and that when he told the writers what others thought about graffiti, the writers were offended and no graffiti was put on the walls for a week after).

251. Social workers have echoed this sentiment. See Janzon, supra note 39, at A13.

252. In the words of John A. Calhoun, an author who has studied teens and crime:

It's time we stopped putting so much energy into waiting for problems to occur. We should challenge teen-agers, make them feel part of their communities and channel their energies to positive ends. Given the opportunity for responsible, useful involvement and the chance to contribute, they will acquire a stake in their communities that will help them mature into successful adults. What is needed is an approach that gives them the message that they are responsible and are needed.


253. As one police detective noted, "graffiti is the bottom rung of the [criminal] ladder for a 12-year-old . . . . If you stop kids at that first rung, and show them how to help themselves, there's no need for them to keep climbing that vicious ladder." Parisi, supra note 159, at 9 (quoting Detective Rodriguez of the Paterson, New Jersey Police Department).
school" when they are caught in acts of vandalism. Writers attend the four day program for a few hours after school to confront their aggressions and paint legally. The program was a resounding success: vandalism sharply declined and much artistic talent was discovered among the teenagers.

In Philadelphia, youths help design and paint murals as part of the Anti-Graffiti Network's city-run program. The program was created to clean up and stop the spread of graffiti. Although many kids participate in the program as part of their punishment for vandalism, the majority participate voluntarily. The murals have had such a tremendous effect on neighborhoods that 2000 people are waiting to have their walls decorated by the program.

In the South Bronx of New York City, The Hub: A Center for Change youth center has developed a program called More American Graffiti in Control, or MAGIC. MAGIC encourages

254. Janzon, supra note 39, at A13. The program, run in an empty high school building, was established in 1987 in response to a public outcry for the police to crack down on vandalism. As of 1990, the project's $27,500 budget had run out and the lease on the building had been lost. Social workers hoped that the project would be granted more money, heralding it as "a good example of the way social offenders should be handled—with guidance and rehabilitation, not punishment." Id.

255. Id.

256. Id. According to officials, vandalism declined more than 50% while the school was in operation. Insurance company statistics record graffiti as having decreased between 50% and 70% after the school opened. The Swedish government has awarded the school a medal for reducing vandalism. Id.

257. Dan Finnigan, Graffiti Vandals Brush Up on Good Citizenship, L.A. TIMES (Home ed.), Nov. 18, 1991, at A5. The program has been very successful. In October 1991, the Network was awarded $100,000 by the Ford Foundation and Harvard University for being one of the 10 most innovative social programs in the country. Id.

258. Id. According to director Tim Spencer, over 900 kids participated in the program during 1991 alone. Over 100 of these were sent to the program by the juvenile courts for vandalizing with paint. Id.

259. Id. The murals' presence have led many neighborhoods to take more pride in their area. Communities are cleaner and gardens have been planted. Much of this new pride is motivated by the fact that murals draw visitors. Id. A similar result occurred in Tyree Guyton's Heidelberg Project in Detroit, Michigan. Guyton used abandoned houses and the surrounding areas to create his junk art. Because of the visitors and increased traffic, residents from the area took more time to mow the grass, sweep the streets, and keep their own houses in good condition. See Creator of Post-Industrial Art Honored by Detroit City Council, P.R. NEWSWIRE, July 3, 1989, available in LEXIS, Nexis Library, Wires File. Unfortunately, this project recently was torn down. See Artist Strikes Back at Bulldozing Mayor, WASH. TIMES, Nov. 27, 1991, at A6.
kids to move their talents from the street to an easel. Under
the program, each participant signs a contract, pledging not to
deface property in exchange for art supplies and space to work.
The members meet weekly to discuss their progress in meeting
the twin goals of the project: (1) "to gain recognition and respect
for their work as artists in the community" and (2) "to develop
a greater sense of self-respect."\footnote{260}

The Los Angeles City Art and Cultural Affairs Department
is working to establish more youth programs as a solution to
graffiti vandalism.\footnote{261} As a result of a recent conference on
graffiti, the Cultural Affairs Department has recommended that
the city establish more centers where youths can "enjoy and
celebrate the Hip-Hop movement and youth culture, receive
counseling, tutoring, and other youth and family social
services."\footnote{262} The Department also recommended developing
programs for youths that would instill pride and self-esteem,
including: (1) mentorships and job training programs to help
youths learn how to use their skills and talents in the job
market; (2) classes regarding individual rights and the
responsibilities of citizenship; (3) classes on the technical and
historical context of the art form; and (4) classes about music
and other Hip-Hop cultural expressions.\footnote{263}

These programs are not prohibitively expensive, but they do
require an expenditure of resources, just like every other
measure that has been used to combat vandalism. In order to
lower costs, volunteers and abandoned property can be used.
Companies who have an incentive to keep their products legal
may be willing to make donations. Relative to the billions of
dollars that are spent each year on futile cleanup, security, and
prosecution, these programs are inexpensive and stand a greater
chance of actually decreasing vandalism. These programs
encourage expression, give youths the respect and attention they
need to grow into responsible, contributing adults, use resources
more wisely, and protect the freedoms of both youths and
property owners.

\footnote{260}{From Subway Graffiti to the Canvas: Bronx Program Transforms Vandals, N.Y. TIMES, Nov. 22, 1987, § 1, at 68.}
\footnote{261}{See STREET ART, supra note 50, at 3.}
\footnote{262}{Id.}
\footnote{263}{Id. These programs also can be run by nonprofit organizations. For example,
the Artists for Humanity, based in Boston, has a program in which young artists design
t-shirts, paint murals, and make wooden furniture. The program is oriented toward
career development for youths and teaches them how to run a business. Elizabeth
Ross, Art Program Offers Life Lessons, CHRISTIAN SCI. MONITOR, Aug. 11, 1992, at 14.}
Another low-cost measure to reduce vandalism is to provide art space for graffiti and encourage commissioned works. Property owners should be offered property tax credits, credits for developers' endowment requirements, or maintenance of their buildings free from unwanted scrawls in order to encourage them to donate art space. Public or abandoned property should be considered for potential art space. Art space can be inexpensively and evenhandedly distributed by allowing communities, individual citizens, or artists to petition for mural space on a first come, first serve basis. Sites also may be set aside where anyone may paint provided they have a permit. Permits or petitions should be granted upon a proper filing and a showing of the intended design; this procedure could address problems of unwanted placement and inappropriate content. The sites could be outdoors or indoors. The sites need not be permanent; many artists would be glad for any opportunity to showcase their work, even on a temporary site.

264 Beverly Steele, president of the Steele Corporation "which specializes in marketing to the needs of minority children," has proposed raising walls in a "little-used Los Angeles city park" for sanctioned graffiti and has solicited corporate sponsors such as Nike, Nestle, and Reebok to pay for construction of the walls and the paint. The walls would be painted over every few weeks to allow more youths an opportunity to use them. Bruce Horovitz, Graffiti Central, L.A. TIMES (Home ed.), July 9, 1992, at D1.

265 The Huntington Beach Cultural Affairs Department approved the use of a seawall as artspace available for painting. The Department requires only that a daylight hour painting permit be acquired and the images be "in general good taste and noncommercial." The program aims to deter unwanted graffiti through peer pressure and by creating a sense of community pride. According to city administrators, these goals were attained when the program was state-run prior to 1986. See Zan Dubin, Huntington Will Look at Aerosol-Art Program, L.A. TIMES (Orange County ed.), Oct. 5, 1991, at F2. Unfortunately, because of unsubstantiated claims that the program increased the amount of graffiti in the Huntington Beach area, the program was terminated. See Bill Billiter, "Graffiti Art" Banned: Huntington Beach Council Votes to Kill Controversial Seawall Project, L.A. TIMES (Orange County ed.), June 9, 1993, at B1.

The CTA, however, recently developed a program to awards scholarships to graffiti artists to paint on "permission walls" designated by the CTA. The walls will be painted over every three months to give more artists an opportunity to paint. The program is an effort to shift graffiti to more desirable places in the face of strained budgets and a desire to cut $13 to $14 million dollars a year in graffiti expenses. Steve Aggergaard & Gary Washburn, CTA Hoping to Put Graffiti in Its Place, CHI. TRIB. (City ed.), Sept. 20, 1992, §1, at 1.
such as the barriers surrounding a construction site.\textsuperscript{266}

The city or the artists could pay for the murals. Although space could be leased for a fee, free use would better address the needs of inner-city youth. Filing fees may be used to cover the administrative costs of the program. Paint could be provided by the city or the petitioner, donated by others in the community, or sold at a discount. An alternative is to create a paint-recycling center where community members can take partially used spray and household paint containers, which youths can then obtain at a reduced price.\textsuperscript{267} Paint recycling could become part of the city's normal recycling program, with paint picked up by the city at residents' homes.

A program of legalized graffiti art will reduce vandalism. By providing an outlet for artistic expression and a forum which showcases writers' work, the incentives to vandalize are removed.\textsuperscript{268} The murals themselves often discourage vandalism because such works are respected by the writers, who see themselves as artists and would not deface another's work of art. Information on or near the mural should publicize that these spaces are legal and require permission to use.

A program of legalized graffiti has the potential to reduce vandalism while allowing an important art form and cultural tradition to flourish legally. Thus, legalized art space results in social, aesthetic, cultural, and expressive benefits. The costs of providing art space are minimal. Such a program is an important part of any anti-graffiti program because it provides an outlet for youths' artistic and expressive impulses.

\textsuperscript{266} The Los Angeles Cultural Affairs proposal effectively recognizes the desire of graffiti artists to express themselves and recommends that developers be able to commission street art murals as part of their required one percent city endowment, even when the mural will last only as long as the construction phase of the project. \textit{Street Art, supra} note 50, at 4.


\textsuperscript{268} In the words of a former illegal writer, when he painted legally, "[m]ore older people than young kids came to see our artwork. . . . Lord, Jesus, I'd rather do this than do it without permission. It's more seeable than doing it illegally. I can take my time. Before, I couldn't really show what I can do because I had to do something real quick." Barbara Gilford, \textit{Writers of Graffiti, in Turnabout, Vow a Cleaner Paterson}, \textit{N.Y. Times}, July 6, 1986, § 11, at 1, 16.

Such policies speak directly to the writer's need for notoriety. This is only true, however, where the notoriety gained from painting illegally is less than that gained from painting legally. The recognition that a writer gets depends on both community condemnation of illegal painting, which will limit the respect that such work gets in the art world, and on immediate cleanup, which will limit the amount of time that an illegal work is visible.
D. A Better Deterrent: Letting the Punishment Fit the Crime and Increased Enforcement

As discussed earlier, the penalties for vandalism should better fit the crime. This can be accomplished by making graffiti vandals clean up their work or pay for the cost of that cleanup. Judges feel more comfortable imposing sentences of community service, education, and the payment of cleanup costs. The increased conviction rate will provide greater incentives for prosecutors to bring these cases and for police to search out and arrest vandals. Police and prosecutors who do not feel that writers deserve harsh sentences may be more motivated to pursue convictions if they know that these kids will not receive undeserved jail time. With a greater number of convictions and sentences, there will be less of an incentive to commit vandalism.

These types of punishments have the additional benefit of helping to fund graffiti cleanup projects sponsored by the community. Instead of hiring laborers or depending on volunteers, the community would be able to utilize essentially cost-free, guaranteed labor. With a larger labor force, more cleanup could be accomplished.

E. Cleaning Up Graffiti Vandalism as Soon as Possible

A program of immediate cleanup of all graffiti vandalism must supplement the provision of legalized art space. Immediate cleanup deprives vandals of the notoriety they seek, forcing them to realize that legalized painting yields greater recognition than vandalizing property. Vandalism should be cleaned off legal murals as quickly as possible. This can be done either through an agreement with the creator to restore the work or by having it restored as part of a community cleanup project.

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269. If the vandal has committed other more serious offenses or is a repeat offender, guidelines could be created to take this into account.
270. See supra note 113 and accompanying text.
271. See supra notes 113–116 and accompanying text.
272. Id.
273. Artists have an incentive to make arrangements to maintain their own work
Care should be taken to not cover walls without permission or notice, especially if a work exists on a wall targeted for cleanup, lest legal works be destroyed by mistake. A system of listing walls not to be painted over should be developed and distributed to all organizations conducting cleanup.

The cleaning can be done by neighborhood groups, by sentenced vandals under the supervision of these groups or the police, or by public or private employees. Convicted vandals are the most inexpensive and dependable labor source. Another inexpensive alternative is to use volunteers from the neighborhood or to organize cleanup days to mobilize the community. Paint companies or neighborhood business councils frequently donate paint and cleaning supplies. Measures also can be taken to graffiti-proof buildings to make them easier to clean. Again, both the labor and resources for this job could be donated or paid for by the city.

F. Stimulating Community Involvement

Imaginative community involvement programs often deter vandalism because they demonstrate the depth of the community’s concern for its neighborhood and members. The Adopt-A-Station program of many of the transit authorities is an excellent example of this theory in practice. The authorities solicit proposals to upgrade the stations and select the most promising proposals. Adopters then pay the costs of any improvements or repairs, which can include painting, and often do so. See, e.g., Meyer, supra note 237, at J1 (noting that crews have pledged to help protect and maintain the murals they create). Artists usually are willing to maintain the works without additional labor costs to the owner of the property and may be willing to pay the paint costs. See, e.g., Zan Dubin, L.A. Muralists’ Second Cover Story, L.A. TIMES (Home ed.), Feb. 4, 1987, pt. VI, at 1 (quoting L.A. muralist Kent Twitchell as saying that “I’ve gone back to the mural constantly through the years to repaint and retouch it.”).  


275. See supra note 173.

landscaping, cleanup, artwork, advertisements, or community service notices. These programs are designed to help the authorities reduce maintenance costs, to instill community pride, and to discourage vandalism. Community involvement helps to get youths involved and to develop youths' respect for property and the law. In fact, such community involvement may lead youths to start their own initiatives for keeping their neighborhoods and schools clean.

G. Preserving Finished Murals

An effort should be made to preserve commissioned murals. Preserving legal murals addresses an artist's desire for continued recognition and combats vandalism by stimulating legal art.

Legal murals should be protected from four threats: (1) graffiti vandalism, (2) time, (3) social pressures, and (4) destruction by a subsequent owner. As the protection from these threats increases, so does the incentive to paint legally. Preservation against the first two threats is easier to achieve, and can be accomplished through an agreement with the original creator to maintain the work, applying anti-graffiti materials to make cleanup and preservation easier, or hiring other painters to maintain the work. Whether a work can be preserved against social pressures will depend on the circumstances of each case. A mural should not be removed, however, merely because it is graffiti or because it has some commercial content.

277. Id.
278. See, e.g., Children Rally Against Graffiti, L.A. TIMES (Home ed.), June 20, 1991, at J2 (discussing a flyer that children in the community developed that reads "Do You Care About Your Community? Stop Doing This!" and shows a childish drawing of a hand gripping a spray paint can and the children's signatures).
279. See supra note 273.
280. See Zan Dubin, Battle Against the Spray-Paint Can Intensifies, L.A. TIMES (Home ed.), Feb. 3, 1989, pt. VI, at 17 (noting that although most muralists cover their works with protective acrylic coatings that prevent the graffiti from penetrating through, preservation still requires removing the graffiti).
281. The recent experience of Lawndale, California with a commissioned graffiti mural provides an excellent illustration of how a community can recoil at legal graffiti. Residents protested against the mural on the grounds that it would attract more graffiti and the city attacked the mural as an advertisement which violated the city's sign ordinance. See Kowsky, supra note 93, at B6.
Preservation of the mural against destruction by subsequent owners is more difficult. Such preservation endorses the moral rights of the artist in a work and would limit subsequent owners' freedom to alter the property in a way which would destroy the artwork. While European countries and California may provide artists with this protection, most of the United States has not. To be effective, preservation need not be forever nor even for the life of the artist. Nonetheless, in order to maximize the incentive to write legally, legal graffiti ideally would enjoy a greater degree of permanence than that enjoyed by illegally painted graffiti.

CONCLUSION

The solutions proposed above are the most effective ways to address the problem of vandalism because they address the motivations behind vandalism. They are effective solutions because they are feasible, even in an environment of strained budgets. By utilizing convicted vandals as a source of labor, much of the costs of graffiti cleanup can be reduced. Legalizing art space also will require minimal resources. Paint could be bought at a discount, donated directly, or acquired through recycling centers. The costs of maintaining the murals in a state of good repair will be minimized if the artist is retained for its upkeep. Although there will be costs for implementing and maintaining such programs, they are small compared to the current cost of graffiti.

Although more expensive than other measures, one of the


283. For example, two of Los Angeles artist Kent Twitchell's murals were painted over without his permission or notice to him. Dubin, supra note 273, at 1 (quoting Twitchell as saying that "I do wish whoever did it would have at least have contacted me."). Because of public outcry, the advertising company that painted over the "Old Woman of the Freeway" pledged to restore the mural. Zan Dubin, Freeway Mural to Be Restored, L.A. TIME (Home ed.), Dec. 23, 1986, pt. VI, at 1.
most important aspects of an anti-graffiti effort is educating youths and providing them with a creative outlet that keeps them out of vandalism. These programs are worth the greater expense because they work. Rates of vandalism have decreased consistently in communities offering such programs. All other "solutions" have yielded little overall reduction in the rate of vandalism.

This Note's analysis has focused on assisting policymakers to understand why graffiti occurs and why it continues to exist despite efforts to reduce it. The reason anti-vandalism policies often fail to reduce graffiti vandalism is that they ignore the motivations behind it. Graffiti is an important expressive outlet, and therefore, alternative means of expression are needed if graffiti vandalism is to be reduced. Legalized graffiti keeps youths away from violence and crime, teaches them skills that enable them to acquire scholarships and jobs, helps them to acquire the respect and recognition that they seek, and constitutes a part of their culture. Graffiti will not go away because we outlaw it. We have to outlaw graffiti when it is wrong, protect it when it is right, and teach youths and ourselves the difference.

284. The Swedish school for graffiti offenders and Philadelphia's Anti-Graffiti Network are examples of programs that have decreased graffiti effectively. See supra Part V.B.