

FROM BEYOND SHELTER TO BEHIND BARS

By Jennifer McIntyre and Alissa Riker

INTRODUCTION

Four years ago, San Francisco's public policy toward homelessness was encapsulated in the award winning plan *Beyond Shelter*, which called for the coordinated involvement of all city departments to address the causes of homelessness. On August 1, 1993, one city department - the Police, was pushed to the forefront to address the problem in what is called the "Matrix" or "Quality of Life" Program. The Mayor's Office has repeatedly asserted that they are focusing on the criminal element with this program, and are not targeting homeless people. There are, however, hundreds of homeless people who have been brought into the criminal justice system for the crimes of camping or sleeping, offenses based on status, not behavior. This paper attempts to provide a general understanding of San Francisco's Matrix Program - its historical roots, similar measures in other cities, and the fiscal impact on the County. A final section illustrates who the people being arrested for Matrix are, and how much it costs to put them in jail.

Historical Treatment of the Homeless ¹

In sixteenth century England, economic and social conditions created a new class of displaced, unemployed individuals. As the number of homeless poor increased, the English government adopted progressively more punitive vagrancy laws directed against wandering, unemployed indigents. These laws were enacted to protect against potential crime by punishing anyone who seemed to be suspicious or undesirable. Vagrancy laws culminated with Parliament's enactment of the Elizabethan poor laws. These laws charged local governments with the responsibility for the poor and an almost unlimited control over their lives.

United States statutes, derived from the English laws, empowered local authorities to return the newly arrived poor against their will to their last places of residence. The Articles of Confederation (1781-88) specifically excluded paupers from the right of free movement between states and from the privileges and

immunities guaranteed to all other citizens. In 1837, the United States Supreme Court approved New York State's exclusion of paupers arriving by ship, stating that it is "as competent and as necessary for a state to provide precautionary measures against the moral pestilence of paupers, vagabonds and possibly convicts; as it is to guard against the physical pestilence, which may arise from unsound and infectious articles".²

Soon after such decisions, every state enforced vagrancy laws against the unemployed poor. These statutes, designed to prevent crimes thought to accompany poverty, varied from state to state. Their common goal was to punish the poor without visible means of support. Vagrancy laws punished status rather than conduct. Thus, unlike most criminal statutes, an illegal act was not necessary and vagrancy alone was a reason for arrest.

During the Depression, states continued to enforce laws removing the newly arrived poor. Some states

went further making the "knowing importation of vagrants into their jurisdiction" a crime. In 1941 the United States Supreme Court struck down a California law that prohibited the importation of indigents into the state. The Court concluded that California's efforts to isolate itself from the effects of the depression felt in other states violated the Commerce Clause. California suggested that its exclusion of the homeless had a firm basis in English and American history. The Court responded that "the theory of the Elizabethan poor laws no longer fits the facts." In a concurring opinion, Justice Jackson questioned the legality of California's statute under the Privileges and Immunities Clause. He encouraged the Court to "say now, and in no uncertain terms, that a man's mere property status, without more, cannot be used by a state to test, qualify, or limit his right as a citizen of the United States."³

Frustrated Cities Criminalize the Homeless

The homeless population in American cities increased rapidly during the 1980's. One official estimate of the homeless population in New York City shows a 350% increase from 1981 to 1989.⁴ Three million Americans are homeless, while another 14 million are marginally housed, living in shelters, with friends or in hotels.⁵ Since the U.S. population is 255,082,000 this means that 1-5 % of Americans are without housing.⁶

Cities, increasingly frustrated with the complexities of the homeless problem, have once again turned to the criminal justice system. Bursts of police action against the homeless and new "quality of life" ordinances are typical temporary responses, particularly when a city is to be in the national spotlight. Infractions, usually ignored, are vigorously enforced in an attempt to rid the streets of the visible homeless and increase the city's appeal to tourists. As Atlanta readied itself for the 1996 Olympic Games, the City Council passed ordinances making it a crime to sleep in a vacant building, loiter in the parking lots and panhandle in an aggressive, threatening manner.⁷ Houston had a similar push to rid the streets of undesirable inhabitants before the Republican National Convention. One homeless man explained, "They put everyone in jail. They ID you. They harass you unnecessarily. They slap a curfew on the park and run you out. Any time they want the city to look picture-perfect, they sweep up all the trash -- that means us."⁸

In New York City, the Transit Authority created regulations which prohibit begging and sleeping in subway stations. The violation of these rules, including the extension of a cup in silence, leads to removal from the station or arrest. The homeless are the only ones to whom these rules apply. Organized charities, artistic performers, and members of charitable religious or political groups may still ask for donations as long as they do not interfere with the transit services.⁹

In Chicago a "homeless relocation program" has been initiated at O'Hare Airport. Under this program, airport terminals, where approximately 500 homeless people live, are periodically closed and all of the homeless are told to leave. The city is now also considering prohibitions on window washing, selling the homeless publication Street Wise, and other activities in which the homeless engage to earn money.¹⁰

These laws and the criminalization of activities engaged in by the homeless have fostered an anti-homeless sentiment in many communities. In Dallas, the president of an organization representing 200 downtown businesses circulated fliers encouraging businesses to allow employees time off to testify against homeless people arrested under the city's panhandling law.¹¹ In addition, the Dallas City Council has taken steps to ensure that the homeless are not welcome in the central business district by revising zoning codes to prohibit the construction of shelters in the area. One city official went as far as to propose giving the homeless one way tickets to the neighboring city of Fort Worth.¹²

All of these anti-homeless activities have the common goal of making a city less desirable for the homeless. What they do not do is offer any solutions to the plight of America's most down and out population. Writ large, harassing the homeless until they are forced to move to a less restrictive neighborhood is not good nationwide public policy. The problem is not alleviated, but simply moved on to the next beleaguered community.

San Francisco's Quality of Life

On August 1, 1993, San Francisco joined these other cities in dispatching police officers to address homelessness. In the August edition of The New Fillmore newspaper, Captain Cairns of the Northern

Station stated that in addition to crimes of violence, "What will also be high on our list, will be those quality of life issues that plague our communities. These 'nuisance' crimes, although for the most part misdemeanors, make our lives miserable. Crimes such as aggressive panhandling, urinating in public, blocking the sidewalks, graffiti, and a host of other 'minor' crimes will be targeted for enforcement. Citations will be issued and if necessary, arrests will be made. A no tolerance policy for the officers will be in effect and all violations will be enforced."

An August 12 Tenderloin Task Force memo outlines the quality of life, also known as Matrix, offenses to be targeted by police. These include: lodging and trespassing, consuming alcoholic beverages on public streets, obstructing, possession of shopping carts, soliciting near a highway, sleeping in a park during prohibited hours, camping, and aggressive panhandling. In a Washington Post article, Maria Foscarinis, Executive Director of the National Law Center on Homelessness and Poverty, whose office has been tracking "hostile government actions toward the homeless", describes San Francisco's effort as one of the "most aggressive."

According to an article published by the San Francisco Examiner on November 20, 1993, the Mayor stated that the Matrix program is targeting those "people who in the guise of being homeless are selling drugs or attacking people." However, for those homeless who are not criminals in disguise, the threat of having their few possessions confiscated and of being arrested is very real. According to a summary of shelter turn-aways prepared by Independent Housing Services, approximately 15,000 people are denied a bed each month. The current public policy prescribes that the only option for these thousands seeking shelter is 850 Bryant Street -- County Jail Number 1.

Unlike the shelters, the Sheriff's Department cannot turn people away. Yet the overcrowded facility is under Federal Consent Decree which mandates fines and

the early release of felons. From 1982 to 1993, the daily average population in San Francisco's jail system has nearly doubled, from 1,121 to approximately 2,200. The city's jails are designed to hold only 1,652.

The path from camping in the parks to jail can be winding and complex, involving a variety of county departments. Still the threat of incarceration is real and the fiscal impact on San Francisco's coffers is serious. What follows is an attempt to trace that path while noting the cost of each step where the figures are available. (See graph 1.)

Police officers throughout the City make up the frontline of the Matrix Program. Analyzing the SFPD's Operation Orders, an October 5th Tenderloin Times article reported that "at least 1,320 officer-hours per week were spent enforcing public nuisance laws." At \$30.17 an hour for a Police Officer's salary and fringe benefits, the monthly expenditure is nearly \$160,000, or \$637,000 for the first four months of Matrix. This figure includes the time the Officers spend issuing verbal admonishments. There are two separate methods of taking what the Police Department describes as an enforcement action. Their costs are described below, but are assumed to be included in the \$637,000 officer hour expense figure above.

*Police
Department
time
allocation
= \$637,000*

- 1) **The Officer can write a citation, like a parking ticket. This requires that the offender pay a fine by check or money order or appear in Room 101 of the Hall of Justice within 21 days.**

The overwhelming majority of enforcement actions have been citations. According to a resolution prepared by Supervisor Angela Alioto's Office, 3000 people have received citations for nuisance violations since August 1. A report from the Budget Analyst's Office estimates the Police cost of issuing a ticket or citation at \$23, which translates as \$69,000 to date.

2) The Officer can make a custodial arrest.

If the violator is uncooperative or does not possess identification, the Officer has the option of taking the person into custody and booking him or her into the County Jail. According to the Budget Analyst's Report this takes approximately two hours of the Officer's time and costs taxpayers roughly \$60. A search of the Court Management System computers for three types of Matrix offenses; drinking in public, camping, and possessing a shopping cart, reveals that 23 such custodial arrests were made between August 1 and November 15. Upon being booked into the County Jail, the violator is released on a Sheriff's Department citation either by the Deputies if they are able to obtain an address, or by the Homeless Citation Project of the Supervised Citation Release Program. An analysis of the Homeless Citations issued between August 1 and December 2, reveals that 21 additional persons were brought to jail for Matrix offenses. The sum of these two groups (44) provides a minimum number of custodial arrests made during the first four months of Matrix. The cost incurred by the Sheriff's Department for processing someone into custody is estimated by the Budget Analyst's Office to be between \$75 and \$100. Using a \$87 figure, the 44 custodial arrests amount to \$3,828. Using the Budget Analyst's formula (contract cost divided by annual number of citations) for determining the cost of a Homeless Citation, the price per citation is \$71.

When the offender is released on citation and ordered to appear in Municipal Court, the paperwork winds its way to the District Attorney's Office and to Room 201 where the information is entered into the computer and calendared for court if the charges are not dismissed. The charges were dismissed on 37 of the above mentioned 44 cases. It is not known what the charge to the County is for processing this paperwork and issuing these dismissals.

**Police
Department
time
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= \$637,000**

**44 bookings
at \$87 each
= \$3,828**

**21
Homeless
Citations
at \$71 each
= \$1,491**

Warrants

Imagine for a second that as a driver you are constantly vulnerable to being stopped and questioned by the police. Now imagine the police discovering that you have several unpaid parking tickets. Your car is confiscated, all of your property inside the car is deemed to have no value and is destroyed, and you are off to the County Jail. According to Dave Ewing, Managing Attorney of Swords To Plowshares, a veteran's self-help group, the vast majority of the legal questions asked at their annual Stand Down, where the vets have access to volunteer attorneys, had to do with outstanding tickets. "The most pressing concern of the homeless veterans was infractions warrants. It is a loss of freedom to live with the threat of arrest. They are afraid that any bureaucrat they approach for help could turn them in. There is also the fear of not knowing what will happen if they are arrested or how long they will be in jail." (Personal interview on December 7, 1993.)

According to an October 22, San Francisco Chronicle article: "21 Matrix cases have been closed in traffic court,"- 8 through dismissal and 13 through payment of the fine. It is safe to assume that the many hundreds of cases that have not been closed have now turned to warrants. It takes about two months from the date of the original citation for a warrant to be issued. Section 3.12 of the Park Code, the violation code for camping carries a fine of \$76 (close to one week's rent in a residential hotel). When payment is not received, a \$180 warrant is automatically issued. According to Gordon Park Li of the Municipal Court, because the process of generating an infraction warrant is so highly automated, the cost is minimal, including the labor involved in entering the information into the computer and the price of two stamps, one for the reminder notice and one for the warrant notification.

When a police officer runs a warrant check on a suspected Matrix violator, the officer has the choice of warning the offender about the warrant, or to make an

arrest. To date, the number of persons booked into the jail solely for Matrix related infraction warrants have been small. The most likely explanation for why the hundreds of homeless people with Matrix warrants have not been arrested is that the officer is reluctant to take the time for a custodial arrest unless the violator has amassed several warrants.

There are two discernible groups of homeless persons booked into the County Jail on infraction warrants:

1) Those whose bail amounts total less than \$1000, and are therefore citeable.

If the individual with Matrix infraction warrants provides the Sheriff's Department Deputies with an address, he or she is released on the promise to appear in Department A on the next court day. An analysis of the calendars for Departments A and B for the week of November 29 through December 3, reveals that 14 persons were cited by Sheriff's Department Deputies and ordered to appear for warrants from Matrix specific charges. Assume 14 is an average amount of Matrix violators scheduled to appear per week, then the number of custodial arrests for the past ten weeks since the Matrix warrants have been issued would be 140. With Sheriff's Department expense of \$87, the total expenditure, excluding the Traffic Court costs of the Referee and the Bailiff, is \$12,180.

Those who were unable to provide an address were released with a court date in Department A by the Homeless Citation Project. An analysis of Homeless citations reveals that only 11 persons fall into this category, yet these 11 represent a minimum county expenditure of \$258 each or \$1,738. Again, this figure does not include the cost of the Traffic Court Referee's and Bailiff's time.

If the person released on citation makes the court date the charges are usually discharged. If the person fails to appear, a bench warrant is issued, increasing the fine

amount and making them ineligible for another Homeless Citation.

2). If the bail or fine amount exceeds roughly \$1,000, which represents about six separate citations or multiple failures to appear on one citation, the person is ineligible for citation release and is incarcerated until the court day.

An analysis of the custody calendar for infraction warrants shows that 17 persons have been held in jail for warrants stemming from Matrix identified offenses. The cost to book these 17 persons is \$1,479. If someone in this category is arrested on a Friday, he or she will remain in custody until Monday. Due to this fact, the above 17 persons represent 35 jail bed days. At \$65 per day this equals a county expenditure of \$2,275. In addition, the Federal Court imposes a fine of \$300 per inmate per day upon which the jail exceeds the mandated maximum capacity. Five of the 17 persons were held on days when fines were imposed at a cost to taxpayers of \$1,500.

**Total Minimum Criminal Justice System Spending on the Matrix Program
\$661,491**

Please note the word **minimum** here. The figure does not include the court costs on the cases that are not immediately dismissed, and the Police Officer's time to make that court appearance, which is estimated by the Budget Analyst's Office to be between \$90 and \$137 per appearance.

Most importantly however, the number of jail inmates resulting from Matrix to date in no way reflects the very predictable impact Matrix will eventually have on the Jail population. As persons targeted by the Matrix Program accumulate more than six tickets or fail to appear on subsequent court dates, they will be detained in our city's jail in increasing numbers. Jail costs, particularly when \$300 fines are in effect, clearly reflect the highest per person daily

Police Department time allocation = \$637,000

44 bookings at \$87 each = \$3,828

21 Homeless Citations at \$71 each = \$1,491

140 bookings and citations due to warrants at \$87 each = \$12,180

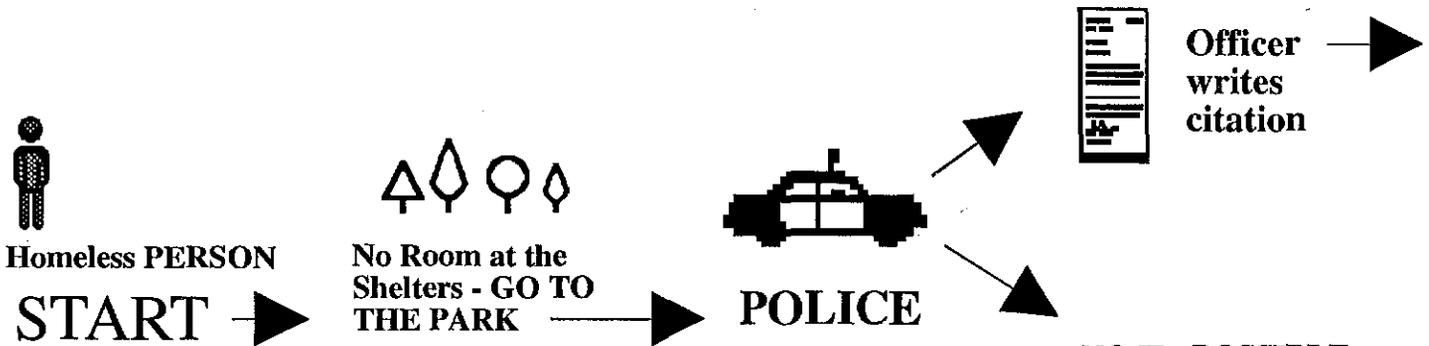
11 bookings and Homeless Citations at \$158 each = \$1,738

17 bookings at \$87 each = \$1,479

35 jail bed days at \$65 each = \$2,275

5 days of overcrowding related fines at \$300 each = \$1,500

TOTAL = \$661,491



NO ID - POSSIBLE ARREST

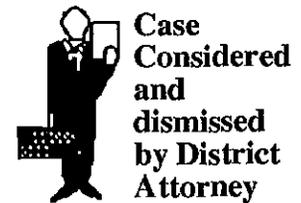


MATRIX:

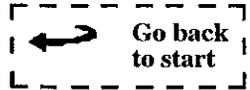
THE WINDING ROAD

TO JAIL

Booked & Cited to Municipal Court



1. Pay fine or appear in court;



2. Failure to pay fine or to appear in court:



Warrant automatically issued



Homeless PERSON
With warrant



GO TO JAIL



1. Warrants total = more than \$1000

REMAIN IN CUSTODY

2. Warrants total = less than \$1000

CITED WITH DATE IN TRAFFIC COURT

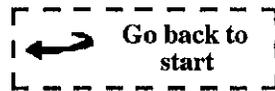
Case calendared in Court following Court day (24 - 72 hours)



Case dismissed. Credit for Time Served.



Defendant appears; case dismissed.



Defendant fails to appear, Warrant issued.

(Go to "Homeless Person with warrant".)



criminal justice system expenditures. As such, this figure represents only the tip of the iceberg.

Additionally, while this figure may not seem dramatic in this time of multi-million dollar shortfalls, it is worth noting that, at the cost of \$11 per day for one shelter bed, the City could have purchased 60,136 shelter beds for the estimated cost of the four months of Matrix.

jeopardize his new living situation and he will be forced back into the hard life of the streets. His clothes, food and shoes are in his rented room and if he does not show up to pay his rent his things will be thrown out and the room rented to someone else. He tries to contact the hotel but the telephone number is disconnected, so all he can do is hope that his belongings will still be there when he is released.

Cost breakdown for Ronald

6 citations at \$23 = \$138

Custodial arrest = \$60

Booking charge = \$87

3 days incarcerated at \$65 each = \$195

Total = \$480

Case Studies

The following two cases are examples of homeless persons booked into the County Jail. Their names are fictitious. Those interviewed did so with written consent.

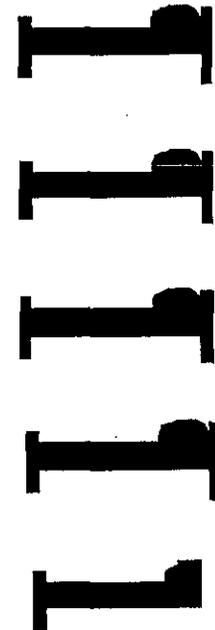
RONALD

Ronald was held in custody for warrants stemming from six separate citations for vending without a permit, that were issued in May, July and August. Although not a Matrix-specific offender, Ronald serves as an example of the homeless people occupying San Francisco's scarce jail beds. After three days in custody, Ronald's charges, which totaled \$1,620 in fines, were dismissed credit for time served.

Ronald is a 57 year old, African American man who was arrested for selling clothes on the street without a permit. He has been arrested several times but never for a serious offense. His last arrest was in 1982 for drinking in public. Ronald has been homeless for three years. At the time of his arrest he had just saved enough money to rent a room in a hotel and get off the streets. He explains, "I finally came around to where I got myself to a place where I have everything a man needs to make himself comfortable. I take care of myself selling used clothing on the streets which helps people. I don't sell dope or steal and I don't hurt nobody."

Ronald worries that his arrest will

Ronald has no living family. Raised in Detroit, Michigan he has lived between San Francisco and Seattle since 1963. He observes that it is only recently that "San Francisco's finest have been chasing after merchants. It's silly, for months they've been giving tickets to merchants. One time the policeman was hassling me while a dope dealer was doing a deal across the street. I take care of myself. I want to know why Mayor Jordan is concentrating on my little corner and me selling clothes when this city is infested with drugs and all he needs to do to see that is step out of the door of City Hall. I know what is right and what is wrong and I know what I do is not wrong so why do the police keep playing these mind games?"



Each bed = 100 shelter beds at a cost of \$11 each.

JACK

Jack is a 51 year old African American man arrested for soliciting near a highway. He was picked up by the police while he sat at a curb near a freeway off-ramp holding a sign asking for money. The police took him to the County Jail where he spent eight hours before being cited out. This was the first time Jack had been in jail. He has two past citations for the same solicitation offense. The day after he was released from jail, Jack was scheduled to appear at two different courts at 9:00 a.m. First he went before the Municipal Court and his most recent charge was dismissed. He then hurried over to Traffic court where his previous two citations for solicitation near a highway were set for trial in February of 1994.

Jack was raised in South Carolina where his father was a landscaper and his mother a nurse. Both died by the time he was 15. Jack then enlisted in the Navy where he spent 6 years, 3 months and 26 days. His Navy time included two years in Viet Nam. Upon leaving the Navy Jack decided to work on ships which he did for 22 years. He remembers working on the docks and watching San Francisco's Embarcadero being built.

Two years ago, Jack's health started to fail due to asbestos exposure and a problem with his heart. He was unable to continue working. In February of 1993 his girlfriend of 15 years left him. Her leaving combined with his job loss and failing health caused him to go into a depression, begin drinking heavily and lose his housing. Jack slept under a bridge until, after a six week wait, he was assigned a case manager who got him a bed in a shelter. His case manager also set up a savings account so he could start accumulating his Veteran's benefits and Disability pay to eventually become independent again.

Cost breakdown for Jack

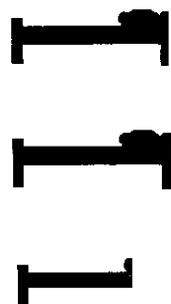
2 citations at \$23= \$46

Custodial arrest = \$60

Booking = \$87

Homeless Citation = \$71

Total = \$264



Each bed = 100 shelter beds at a cost of \$11 each.

CONCLUSION

The question before San Franciscans is whether we want to spend scarce city resources arresting and incarcerating people like Ronald and Jack. Our Officers and Deputies are highly trained individuals, but they can not be expected to protect us from poverty. It is as grossly inappropriate to assign Police Officers to hide the problem of homelessness, as it would be to send surgeons from General Hospital to retrieve used syringes from the street in order to hide the problem of drug addiction. The costs extend beyond what is itemized here, as now San Francisco must find the money to justify its flawed public policy in the courtroom, and must scramble to pay fines for a jail system increasingly taxed by minor offenders. The ACLU and the Lawyers Committee for Civil Rights have challenged the Matrix Program on the grounds that it violates the State and U.S. Constitutions. Additionally, religious leaders representing Buddhist, Jewish, Muslim, and Christian denominations, have challenged Matrix on moral grounds. This paper has attempted to evaluate the fiscal impact of Matrix on an already overburdened county budget.

Two weeks prior to the onset of the Matrix Program, Mayor Jordan hosted a meeting of the U.S. Conference of Mayors. A policy adopted at this meeting called for the "prohibition of laws which discriminate against homeless people including laws which target them or the activities which they must engage in because they are homeless."¹³ A new report from the National Law Center on Homelessness and Poverty describes local government actions like the Matrix Program as "misguided reactions to legitimate concerns about sanitation, civic image and safety, (which when defended) ... fosters divisiveness, wastes scarce resources, and diverts efforts from more positive responses."¹⁴ The report concludes with innovative alternatives to police action that are being attempted throughout the country. Among the examples listed are:

- Miami, Florida where a new meal tax raises funds to address the problem of homelessness.
- Saint Paul, Minnesota where a city council comprised of business people, homeless people, staff from city agencies and service providers maintain an ongoing dialogue to formulate response to problems associated with homelessness.

Furthermore, San Francisco's own Ad-Hoc Committee on Criminal Justice recommends that the City establish a continuum of community options to ameliorate jail overcrowding and assure that minor offenders do not needlessly clog our Jail system.

Ultimately, then, the current amount of interest in the issues of homelessness provides San Francisco with an opportunity to redress the frustrations of merchants and residents without punishing the homeless for their plight.

FOOTNOTES

1. Historical background information obtained from Simon, Harry, "Towns without Pity: A Constitutional and Historical Analysis of Official Efforts to Drive Homeless Persons from American Cities", 66 Tulane L. Rev. 631 (1992).
2. Mayor of New York v. Miln, 36 U.S. 102 (1837).
3. Edwards v. California, 314 U.S. 162 (1941).
4. Kay, Paula E., "A Tale of Two Cities: A Comparative Analysis of the Causes and Legal Responses to Homelessness in New York City and London," 15 Brooklyn J. Int'l L. 465, 466 (1989).
5. Rangel, Charles B., "On the Edge of the American Dream: A Social and Economic Profile in 1992." A Report by the Chairman, Select Committee on Narcotics Abuse and Control, (1992).
6. U.S. Department of Justice, Bureau of Justice Statistics, "Jail Inmates 1992".
7. Hill, Alma E., "City is Trying to Hide the Homeless", Atlanta Constitution, July 12, 1993.
8. Chriss, Catherine, "Getting Ready for the GOP: Homeless Fear Harassment During Convention", The Houston Chronicle, May 29, 1992.
9. Sims, Calvin, "Transit Police Intend to Remove All Subway Panhandlers", New York Times, May 31, 1990.
10. National Law Center on Homelessness and Poverty. The Right to Remain Nowhere: A Report on Anti-Homeless Laws and Litigation in 16 United States Cities, December 1993.
11. Stahl, Lori, "Fines Urged for Abusive Panhandlers", Dallas Morning News, August 27, 1991.
12. Eig, Jonathan, "Homeless Evictions May Take Effect Soon", Dallas Morning News, May 11, 1993.
13. Policy Statement, The U.S. Conferences of Mayors, adopted, 1993.
14. National Law Center on Homelessness and Poverty. The Right to Remain Nowhere: A Report on Anti-Homeless Laws and Litigation in 16 United States Cities, December 1993.

The Center on Juvenile and Criminal Justice is a public policy organization which engages in research and provides technical assistance on criminal and juvenile justice issues.

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