



Western Regional Advocacy Project

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WITHOUT RIGHTS

*"We will not obey unjust laws or submit to unjust practices" **

Anytime government tells a person, "Your presence is unacceptable in our community," it is a civil rights issue. Anytime local governments demonize one segment of society in order to control their movements and justify their removal from public spaces, it is a civil rights issue. Local "anti-homeless" police enforcement campaigns, separate court systems, property confiscations, and the closing of public spaces - these are in the forefront of today's civil rights battles. Homelessness has now become a civil rights issue.

HISTORY

Local governments know that they cannot successfully criminalize people strictly because they do not have housing. In response to California's "anti-Okie" laws of the 30s and the South's Jim Crow laws of the 50s and 60s, federal protections prohibit local and state governments from removing people from their communities due to the color of their skin or economic/employment status.

Nor can they force people to leave their communities because they are poor and have no place to live. The federal government, however, no longer provides the kind of resources that were first offered under the New Deal, resources that ensured housing, treatment, education and employment for poor people. As a result, local governments are left with ever increasing numbers of poor people without housing.

Beginning in 1983, homelessness has been escalating in communities across the country while the federal government continues to dismantle its housing/treatment/welfare and employment programs. Since then, local governments have been experimenting with different programs designed to ensure that their communities do not become a "magnet for the homeless" and that the "quality of life" for the housed and business sectors of the community is not affected by the presence of homeless people. If homeless people were to be tolerated at all, it was only under very stringent "time place and manner" restrictions that were enforced by private security and local and state police departments.

RESTRICTIONS

By the early 90's, the business sector began to join forces with local governments to enforce open space and activities restrictions. Business Improvement Districts (BIDs) use private security that has various levels of enforcement authority and that works with police. BID security is most commonly financed with some form of government subsidy or direct funding or a combination of both, but it is not under the purview of any government oversight body.

WRAP Member Organizations

Building Opportunities for Self Sufficiency, Berkeley, CA | Coalition on Homelessness, San Francisco |
Los Angeles Community Action Network | Real Change, Seattle, WA |
Sisters Of The Road, Portland, OR | Street Spirit, Oakland, CA

The most common public space and activity restrictions are those aimed at camping, sitting, lying or trespassing on either public or private land, panhandling, sleeping, blocking the sidewalk and possessing "stolen property" such as shopping carts and milk crates. There are others. This list is in no way exclusive. Furthermore, these restrictions are often implemented in conjunction with the closure of public parks and the outlawing of free food and clothing distribution.

While certain communities highlight different controls at different times, often depending upon the outcome of local elections and legislative and court efforts, all have one primary common goal: removing the presence and resulting impact of people without housing from local communities. As the Mayor of Las Vegas recently stated when he outlawed feeding people in city parks: "If we stop feeding them, they will leave."

This nationwide pattern has escaped Civil Rights protections because, these programs, on their faces, are not clearly discriminatory. Local laws are often drafted in such a way as to appear to apply equally to all people in a community. In fact, however, enforcement is very much impacted by both skin color and appearance.

INFRACTIONS AND DUE PROCESS RIGHTS

Anti-homeless laws and their application have in fact created a loophole that allows for the circumvention of a homeless person's right to due process under law. The process by which homeless people face repeated incarceration generally follows this scenario:

A homeless man is sleeping on the sidewalk. A local ordinance makes it illegal to do so. The man gets a ticket. Because he doesn't have any money, he can't pay the ticket. He also fails to appear in court to dispute the ticket. The failure to appear in court and the failure to pay the ticket become the basis for a bench warrant for arrest. The police approach the same individual for the same violation some time later and learn that the man has an outstanding arrest warrant. He gets arrested. He spends a couple of days in jail, and when brought before the judge, the case either gets dismissed or the man is sentenced to time served, i.e. the couple of days he spent in jail before seeing the judge.

The overwhelming majority of the thousands and thousands of homeless people incarcerated under these laws are incarcerated for not responding to the tickets they were originally given, but not for the offense they committed in the first place. Because that original offense did not carry a jail penalty, they were not entitled to the free representation provided by the Public Defender office. If they are going to fight the ticket in court at all, they will have to do it alone and in the belly of the very system (criminal justice) that is trying to get rid of them in the first place. More often than not, the government, through the local District Attorney or a police officer trained in court-presentation, will have representation in court but the homeless person will not.

Additionally, homeless individuals who have an active warrant for minor offenses such as sleeping in public are often prevented from getting the services needed to exit homelessness. Due to warrants, they can be denied public housing or they can lose social security benefits, general assistance benefits, a place in a treatment program, and employment opportunities.

Local governments know that these tickets will ultimately lead to a person's incarceration, and unpleasant interactions with the police, and therefore feel confident that a strong enough police and private security presence can get people to leave areas where they are not wanted. Using this approach

frees local government of the burden and expense of granting defendants the right to representation. At the time of the warrant-arrest, the court has already found them guilty (due to failing to respond to the infraction) and the original crime has become irrelevant. The homeless person may serve jail time for a crime he or she did not commit and without having had the benefit of legal counsel or a trial. Over time, enough of these convictions become the justification of longer jail sentences for "repeat offenders" of crimes for which they were convicted without due process.

This chasm in "due process rights under law" for poor and homeless people is being exploited by local governments and the business community to remove people from neighborhoods and communities where they are unwanted. Because the state defines itself the "owner" of public space, it enforces discriminatory time, place and manner restrictions and works with local private property owners to do the same. People without housing are left with no other options than to keep walking, get very lucky, or wind up in jail.

OUR CAMPAIGN: COMMUNITY ORGANIZING AND LEGAL DEFENSE

WRAP is entering this civil rights battle with a combined strategy of street outreach, organizing, documentation of homeless people being denied their rights, and legal defense. None of us can do this alone. Community members and local, statewide and national organizations must work in solidarity with one another to defend those being attacked and to bring pressure to bear on local governments to stop and dismantle the discriminatory programs they have initiated.

COMMUNITY ORGANIZING

Local community organizers conduct outreach to document and respond to police and private security enforcement efforts. Homeless people being harassed are informed of their rights. If tickets have been issued or if their right to occupy public space has been infringed upon, outreach workers can intervene right then, make a referral, collect the tickets that can then be assigned to an attorney, or gather documentation that can be in the form of video, written notes or the taking of declarations from the people being criminalized.

In community and staff meetings at the office, organizers and community members meet to decide how to respond. They have several options. Where an area such as a park or a specific neighborhood has become a focus of harassment, organizers can be concentrated into that area. We have learned that the presence of witnesses can be a deterrent to harassment. Organizers across the western region and, eventually, the country can access various WRAP databases that describe research on effective strategies to stop programs that harass homeless people. The strategies can be implemented locally where appropriate. Organizers can also use the WRAP blog and other web tools to connect with allies nationally. They can initiate a media response. They can initiate a direct action campaign targeted at either local government, police departments and/or private security firms.

LEGAL DEFENSE

Legal defense is essential as long as homeless and poor people are being criminalized with no right to representation. Volunteer local attorneys who get trained by WRAP's legal support and organizing members can be called upon for representation in court. Ironically, and to their credit, these pro bono attorneys are often with firms that are part of the business community that the City

and business leaders claim are being “protected” by the laws and programs we are fighting. Their participation also allows for stronger strategic planning for possible class action litigation or legislative remedies. Legal defense work documents the racial and disability discrimination that is so prevalent in the implementation of campaigns that target homeless people. Legal defense work attempts to set local precedent that curbs civil rights violations by police and by unconstitutional legislative attempts to criminalize homelessness. Additionally, through Small Claims Court case assistance, it also enables people to be compensated when their belongings are illegally confiscated and discarded by local authorities.

WHY WE ARE USING THIS APPROACH

It is a systemic program that diverts homeless and poor people from criminalization and/or incarceration by ensuring their due process rights to representation. Infractions fall through the current representation networks that have been established by both non-profit legal service and government systems. We organize with and ensure legal representation to people at the original point of police contact so as to break the cycle of infractions continually becoming criminal offenses.

WHAT ARE THE LIMITATIONS?

This model has proven effective in curtailing the level of criminalization locally. But because it operates in isolation and is not part of a national or regional campaign, it has not led to the real systemic changes needed to stop the proliferation of these programs. Local governments fight to make it hard for citation defense to work smoothly. Consistent volunteer attorneys can be difficult to come by and running a citation defense program takes a lot of work

HOW DOES EXPANDING THIS MODEL INTO A REGIONAL/NATIONAL CAMPAIGN HELP TO OVERCOME THESE LIMITATIONS?

When local governments initiate new programs designed to remove people from their communities, it becomes a civil and human rights issue that cannot be overcome solely by those being targeted. The combined skills, resources and talents of many communities working in concert with each other are vital to stopping the trend. This model that has communities working jointly whenever and wherever needed brings all of us together in a common campaign of Civil Rights defense. A coordinated and effective campaign being initiated jointly in many communities will force all levels of government to start responding to our demands.

HOW CAN COMMUNITIES PLUG INTO THIS CAMPAIGN?

Local groups that want to join this campaign and implement this model can join WRAP through our Civil Rights work group. WRAP will have training manuals and also will provide on-site trainings and support.

* Dr. Martin Luther King, Jr., Nobel lecture, December 11, 1964