

STATE OF NEW YORK COUNTY OF MONROE
ROCHESTER CITY COURT
HON. THOMAS R. MORSE

THE PEOPLE OF THE STATE OF NEW YORK,

v.

SISTER GRACE M. MILLER,
JOHN THOMAS MALTHANER, and
RYAN DAVID ACUFF,

Defendants.

CR No. 14-10731
CR No. 14-10730
CR No. 14-10751

STATE OF NEW YORK
ROCHESTER CITY COURT
CRIMINAL DIVISION

2014 DEC 10 PM 3:25

FILED

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS IN FURTHERANCE OF JUSTICE**

MCDA 10 DEC '14 PM 3:43

PRELIMINARY STATEMENT

Defendants Sister Grace M. Miller (“Sister Grace”), John Thomas Malthaner (“Malthaner”) and Ryan David Acuff (“Acuff”) (collectively, “Defendants”), by and through their attorneys, Bond Schoeneck & King, PLLC, hereby submit this memorandum of law in support of their motion to dismiss the criminal information against them in the furtherance of justice pursuant to CPL 170.30(1)(g) and 170.40. Prosecution of the defendants would result in a supreme injustice. Sister Grace, Malthaner, and Acuff are leading advocates for the homeless and shelterless population in the City of Rochester. Their advocacy should not be criminalized, nor should their effort to petition Monroe County officials to find an alternative solution for the homeless men, women, and children who have been forced from taking shelter at night in the Civic Center Garage and who have nowhere else to go.

BACKGROUND

On September 15, 2014, the defendants went to the County Office Building to advocate for the dozens of individuals who were recently forced out of the Civic Center Garage by the County. Their efforts to work with County officials to find an alternative solution for the many whom—for decades—had slept at the Civic Center Garage had reached an impasse. They requested a meeting with County officials in order to address this urgent problem, but they were ignored. While the defendants were waiting to be heard by County officials, they were arrested and charged with criminal trespass in the third degree.

Defendants’ motion to dismiss the criminal information in furtherance of justice is supported by the Affidavits of Sister Grace Miller (“Sister Grace Aff.”), dated December 4, 2014, John Thomas Malthaner (“Malthaner Aff.”), dated December 4, 2014, and Ryan David Acuff (“Acuff Aff.”), dated December 4, 2014, which are filed concurrently herewith. The

following provides the pertinent factual background to support defendants' motion to dismiss in furtherance of justice.

I. Personal Background of Sister Grace Miller

Sister Grace is a seventy-nine (79) year old Catholic nun who serves as the Executive Director of the House of Mercy, which she founded with the support of the Sisters of Mercy in 1985. (Sister Grace Aff. ¶ 1-2.) The House of Mercy is located at 725 Hudson Avenue, Rochester, New York, 14621, in a very impoverished area of the city. (*Id.* ¶ 2.) The House of Mercy was founded by Sister Grace to support the chronically homeless in the City of Rochester and Monroe County. (*Id.* ¶ 2.) For nearly thirty (30) years, the House of Mercy has been a lifeline for those who have nowhere else to turn. (*Id.* ¶ 2.) It provides lifesaving services to over 4,000 people a month, including basic food, shelter, health services, and other social services. (*Id.* ¶ 3.) As a basic tenet, the House of Mercy always has its doors open for anyone in need. (*Id.* ¶ 2.) Over the years, Sister Grace and the House of Mercy has assisted individuals with finding housing, avoiding utility shut-offs, and providing a dignified burial for individuals who die indigent. (*Id.* ¶¶ 3, 6.) The House of Mercy has provided funeral services for homeless and indigent persons for the last thirty (30) years. (*Id.* ¶ 3.) Currently, they provide funeral services for ten (10) to twelve (12) people per month. (*Id.*)

One of the House of Mercy's most important missions is to advocate for the poor and homeless, who often have little ability or means to advocate for themselves. (*Id.* ¶ 3.) This mission is increasingly needed in the City of Rochester, where the number of homeless regularly outnumbers available shelter space and where government spending on poverty and homelessness continually decreases. The City of Rochester ranks third in the nation for its concentration of poverty, and homelessness—particularly among children—is a growing

problem. (*Id.* ¶ 14.) The House of Mercy is especially concerned with the fate of those who are compelled to sleep outside in the freezing Rochester winters because there is no available room in shelters or because they are turned away from shelters because of their physical or mental illnesses, disabilities, or dependencies. (*Id.* ¶ 7.) It was with the goal of helping these individuals, many of whom were sleeping downtown in the Civic Center Garage until evicted without any due process, that Sister Grace and other individuals sympathetic to the plight of the homeless went to the Monroe County Office Building on September 15, 2014. (*Id.* ¶ 26.)

The House of Mercy and St. Joseph's House of Hospitality—a Catholic Worker house—had previously scheduled a meeting on September 9, 2014 with the Commissioner of the Department of Human Services (“DHS”) for Monroe County, Kelly Reed, in the hopes of addressing the crisis of the homeless who were being locked out of the Civic Center Garage with nowhere else to go. (Sister Grace Aff. ¶ 24.) This same group and other homeless advocates had previously attended and participated in regular meetings of the Civic Center Garage Local Development Corporation to advocate for the continued use and availability of the garage until a suitable alternative could be arranged. (*Id.*) Sister Grace hoped that a plan could be put into place to meet the needs of those who had been locked out until new shelter space could be found. However, County officials cancelled the meeting and did not reschedule it, stating that they believed the meeting was unnecessary. (*Id.*)

Sister Grace and others went to the Monroe County Office Building on September 15, 2014 to schedule a new meeting with a DHS official in an effort to continue their advocacy for the homeless. (*Id.* ¶ 26.) After being ignored for over two (2) hours, Sister Grace and two (2) other advocates went to the DHS office on the second floor of the building to speak with someone about rescheduling their meeting. (*Id.* ¶ 27.) Sister Grace was asked to leave the DHS

office, notwithstanding her legitimate basis for being there. (*Id.* ¶ 28.) Sister Grace refused to leave and was arrested. (*Id.*)

Subsequently, a criminal information was filed charging Sister Grace with a violation of section 140.10(a) of the New York State Penal Law for criminal trespass in the third degree. The criminal information is legally infirm, flawed, and objectionable on many grounds. Without formally moving the Court on those grounds, Sister Grace now moves this Court for a dismissal of the accusatory instrument in furtherance of justice pursuant to CPL 170.30(1)(g) and 170.40.

II. Personal Background of John Thomas Malthaner

Malthaner is a Catholic Worker at the St. Joseph's House of Hospitality (hereinafter St. Joe's). (Malthaner Aff. ¶ 1.) St. Joe's is a Rochester Catholic Worker community which provides food, clothing, shelter, and spiritually-centered care to its guests. (*Id.* ¶ 4.) After a thirty (30) year career as an accountant, Malthaner has worked full-time as a Catholic Worker at St. Joe's for the past seventeen (17) years and lived in the community at St. Joe's for fifteen (15) of those years. (*Id.* ¶ 1.) He is paid a stipend of \$40.00 per week for his work at St. Joe's. (*Id.* ¶ 6.) On average, St. Joe's serves 100 people a day, seven days a week, with food, housing, and other assistance to provide their guests with what they need to get back on their feet. (*Id.* ¶ 5.)

As stated above, Malthaner was scheduled to attend the September 9, 2014 meeting with Commissioner of Human Services, Kelly Reed, to address the crisis of the homeless who were being locked out of the Civic Center Garage. (*Id.* ¶ 24.) County officials cancelled the meeting, however, and did not reschedule it on the basis that they believed the meeting was unnecessary. (*Id.* ¶ 24.)

Malthaner then went to the Monroe County Office Building on September 15, 2014 with Sister Grace and others to schedule a new meeting with a DHS official in an effort to continue

their advocacy for the homeless. (*Id.* ¶ 27.) After being ignored for over two (2) hours, Malthaner and defendants Sister Grace and Acuff, went to the DHS office on the second floor of the building to speak with someone about rescheduling the meeting. (*Id.* ¶ 28.) Malthaner was asked to leave the DHS office, notwithstanding his legitimate basis for being there in the first instance. (*Id.*) Malthaner refused to leave and was arrested. (*Id.*)

Subsequently, a criminal information was filed charging Malthaner with a violation of section 140.10(a) of the New York State Penal Law for criminal trespass in the third degree. The criminal information is legally infirm, flawed, and objectionable on many grounds. Without formally moving the Court on those grounds, Malthaner now moves this Court for a dismissal of the accusatory instrument in the interests of justice pursuant to CPL 170.30(1)(g) and 170.40.

III. Personal Background of Ryan David Acuff

Acuff is a social worker and advocate at the House of Mercy, where he has worked alongside Sister Grace for the past four (4) years. (Acuff Aff. ¶ 1.) Acuff moved to Rochester to attend the University of Rochester for graduate school. He holds a Master in Psychology from the University of Rochester. (*Id.* ¶ 2.) He lives among several previously homeless men who have been provided shelter by the House of Mercy. (*Id.* ¶ 1.) He has been heavily involved with homelessness issues since graduate school and has witnessed first-hand the pervasive poverty and plight of the homeless. (*Id.* ¶¶ 1-2.) Acuff's work furthers the goals of the House of Mercy, which are: (1) to provide a refuge in Rochester for people who are poor, homeless, and have nowhere else to turn, (2) to treat every person with dignity and respect, (3) to advocate for the rights of the homeless, and (4) to never close its doors on people in need. (*Id.* ¶ 3.)

After the September 9, 2014 meeting with DHS Commissioner Kelly Reed was cancelled, Acuff went to the Monroe County Office Building on September 15, 2014 with Sister

Grace and others to reschedule the meeting in an effort to continue their advocacy for the homeless. (*Id.* ¶¶ 24, 26.) Acuff accompanied Sister Grace and Malthaner to the DHS office on the second floor of the building in order to speak with someone about rescheduling the meeting. (*Id.* ¶ 28.) He believed that they were allowed to be on the second floor of the building. (*Id.*)

As Acuff, Sister Grace, and Malthaner were waiting quietly on the second floor to have the meeting rescheduled, a police officer approached them and said that they would have to leave the office or be arrested. (Acuff Aff. ¶ 29.) Acuff complied with the police officer's order and dutifully left the office. (*Id.* ¶ 30.) He stepped outside the office and continued videotaping the events on his cell phone. (*Id.* ¶ 30.) The police officer then instructed Acuff to leave the second floor entirely. Acuff again obliged, and began walking backward toward the stairs to continue videotaping as he descended to the atrium. (*Id.* ¶ 31.) However, the police officer charged and tackled Acuff, bringing him to the floor and handcuffing him. (*Id.* ¶¶ 31-32.)

Subsequently, a criminal information was filed charging Acuff with a violation of section 140.10(a) of the New York State Penal Law for criminal trespass in the third degree. The criminal information is legally infirm, flawed, and objectionable on many grounds. Without formally moving the Court on those grounds, Acuff now moves the Court for a dismissal of the accusatory instrument in furtherance of justice pursuant to CPL 170.30(1)(g) and 170.40.

ARGUMENT

I. Prosecution of the Defendants Would Result in a Supreme Injustice.

This Court should dismiss the criminal informations against Sister Grace, Malthaner, and Acuff in furtherance of justice pursuant to CPL 170.30(1)(g). A dismissal in furtherance of justice is warranted under CPL 170.40 where there exists "some compelling factor, consideration or circumstances clearly demonstrating that conviction or prosecution of the defendant upon such

accusatory instrument . . . would constitute or result in injustice.” The purpose of a dismissal in furtherance of justice is to interpose the Court between the prosecution and the defendant in a case where its prosecution would result in a supreme injustice. *See People v. James*, 415 N.Y.S.2d 342, 345 (N.Y. City Crim. Ct. 1979) (granting motion to dismiss in furtherance of justice where the public interest was not served by criminal prosecution of the defendant).

The trial court has discretion to grant motions made pursuant to CPL 170.40. A dismissal in the furtherance of justice requires a "sensitive balancing of the interests of the individual and the State.” *People v. Benevento*, 59 A.D.2d 1029 (4th Dep't 1977); *People v. Belkota*, 50 A.D.2d 118 (4th Dep't 1975); *People v. Kwok Ming Chang*, 45 A.D.2d 613 (1st Dep't 1974). Under the landmark case *People v. Clayton*, 41 A.D.2d 204 (2^d Dep't 1973), the Court must consider ten factors in exercising its discretion, which are now codified at CPL 170.40. These include:

(a) the nature of the crime, (b) the available evidence of guilt, (c) the prior record of the defendant, (d) the punishment already suffered by the defendant, (e) the purpose and effect of further punishment, (f) any prejudice resulting to the defendant by the passage of time and (g) the impact on the public interest of a dismissal of the indictment.

Id. at 208; CPL 170.40(1).

An examination of these factors as applied to Sister Grace, Malthaner, and Acuff shows that prosecution of these individuals would do nothing more than punish these advocates for those in the community who are the neediest and whose voices are not heard. Moreover, prosecution of them would fail to address the real victims here—the homeless who were kicked out of the Civic Center Garage and literally forced out into the cold. But for the County’s refusal to work alongside the defendants to find an alternate shelter for those locked out of the Civic Center Garage, defendants’ advocacy would not have been necessary. Instead of spending time and resources prosecuting the defendants for their persistent advocacy on behalf of the homeless,

it would be more productive to focus the County's efforts on finding shelter for these homeless men, women, and children who have nowhere else to go.

As set forth below, an analysis of the *Clayton* factors shows that the court should exercise its discretion to dismiss the informations against the defendants in furtherance of justice.

II. Dismissal in Furtherance of Justice is Warranted for Sister Grace Miller.

a) The seriousness and circumstances of the offense.

To the extent that any offense occurred, the effect and consequences of Sister Grace's actions were not serious. Sister Grace and her fellow advocates were in a public building and in offices that are typically open to the public. There is no question that their presence on the premises was known, and no deception or deviousness was involved. There is no allegation that anyone was hurt or that any property was damaged during the incident. On the contrary, Sister Grace and her fellow advocates were peacefully and respectfully asking to meet with County officials regarding the plight of the homeless who had been kicked out of the Civic Center Garage. The circumstances surrounding the alleged offense were solely focused on Sister Grace's attempts to advocate for the homeless in Rochester and to reschedule a meeting with County officials that had previously been cancelled.

b) The extent of harm caused by the offense.

There was no physical harm, property damage, injury, or interference with the operation of County business as a result of Sister Grace's actions. No one at the Monroe County Office Building was more than mildly inconvenienced as a result of the alleged offense. Those who have been harmed are the dozens of homeless men, women, and children who have no shelter as a result of being forced out of the Civic Center Garage. Sister Grace's actions—rather than causing any harm to the public—have had the positive impact of focusing widespread media

attention on the issue of homelessness in Rochester and encouraged greater public support for the efforts of the House of Mercy and other advocates for the homeless.

c) The evidence of guilt, whether admissible or inadmissible at trial.

To be found guilty of criminal trespass in the third degree, an individual must have entered or remained unlawfully in a building or upon real property which is fenced in or enclosed in a manner designed to exclude intruders. Sister Grace, and her fellow advocates, were justified in entering the Monroe County Office Building, which is a public building, in furtherance of their legitimate business purpose of requesting a meeting with County officials.

d) The history, character and condition of the defendant.

Sister Grace is an exemplary member of this community. She is a Catholic nun who has devoted her life to charity and to serving the most vulnerable populations in the City of Rochester. She founded the House of Mercy, a homeless shelter, with the following goals: (1) to provide a refuge in Rochester for people who are poor, homeless, and have nowhere else to turn, (2) to treat every person with dignity and respect, (3) to advocate for the rights of the homeless, (4) and to never close its doors on people in need.

She works tirelessly to find solutions to the problems faced by those trapped in the cycle of poverty. She has been honored by the Greater Rochester Community of Churches for her commitment and dedication to this cause. She advocates for those who cannot advocate for themselves, and attempts to work with government officials to create plans that will alleviate the suffering of the underserved. Sister Grace is a well-known and respected advocate for the homeless. She regularly appears at Monroe County legislative hearings and at the Monroe County Office Building to raise awareness for the homelessness crisis in Rochester.

- e) Any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant.

It is not alleged that any exceptionally serious misconduct of law enforcement personnel occurred in this case.

- f) The purpose and effect of imposing upon the defendant a sentence authorized for the offense.

Sister Grace is a seventy-nine (79) year old Catholic Nun who has lived a life dedicated to the poor. Imposing a criminal punishment for her community-based advocacy efforts would serve no beneficial purpose and it would be a great disservice to the homeless individuals she supports and assists every day. She is needed every day at the House of Mercy. The continuation of this criminal prosecution diverts resources from addressing the real victims here—the homeless.

- g) The impact of a dismissal on the safety or welfare of the community.

Sister Grace is an individual who has spent the last thirty (30) years vigorously advocating for the welfare and safety of the homeless. She is a leader in this community, not a criminal. She spends every day of her life attending to those men, women, and children who are the most forgotten in this city—the homeless, the physically and mentally ill, those with drug and alcohol dependencies. Through her work at the House of Mercy, she provides food and clothing, she tries to find permanent housing, she assists in getting the homeless treatment for dependency and mental illness, and other services. Dismissal of the charges against her would allow Sister Grace to fully focus her time and energy on this important work.

- h) The impact of a dismissal upon the confidence of the public in the criminal justice system.

Sister Grace is an integral part of the House of Mercy. She is constantly organizing and spearheading efforts to serve the neediest in the City of Rochester. Sister Grace has devoted her

life to charity and to promoting the welfare of the poor. There has been an outpouring support for the work of Sister Grace and the House of Mercy to address the needs of the homeless since her arrest. Dismissing the charges will promote a sense of confidence of the public in the criminal justice system. The public will further be inspired by Sister Grace and others who similarly advocate for the chronically homeless—it will undoubtedly raise awareness and galvanize community support over this important issue. Dismissal of the charge would provide those most vulnerable with a sense of hope that the criminal justice system can take into consideration the best interests of the public.

- i) Where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion.

There is no victim or complainant behind this charge. If anything, the outpouring of support to Sister Grace and the House of Mercy for their work on behalf of the homeless demonstrates that the public would support dismissal.

- j) Any other relevant fact indicating that a judgment of conviction would serve no useful purpose.

Under Article 17 of the New York State Constitution, the “the aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions...” N.Y. Const. art. XVII, § 1. Through this, the Monroe County government has a legal mandate to care for the poor, but the County simply does not have enough shelters. Every shelter is at or over capacity, and every night there are hundreds of homeless people who have nowhere to go. There are as many as 1,000 homeless individuals—including women and children in the community—on any given day or night. For the past several decades, some of those people spent the coldest of nights in the confines of the Civic Center Garage. It was not ideal, but it was better than having no barrier at all between them and the harsh, bitter Rochester winter.

People like Sister Grace have dedicated their lives to helping the County fill the void in the lack of shelter space, reducing the burden on State, County, and City budgets, and also on the taxpayers. But in trying to make a difference and enact positive change, these advocates have been ignored, dismissed, and then arrested. The work they are doing benefits New York State, Monroe County, and the City of Rochester. It is in best interests of the public for the poor and vulnerable to have shelter. If it had not been so difficult for Sister Grace and others to schedule a meeting with county officials to construct potential solutions to the closing of the Civic Center Garage, then this prosecution would not have been necessary. It would be a grave injustice to prosecute Sister Grace, Malthaner, and Acuff for criminal charges for taking action to schedule a meeting with those who are supposed to be accountable to the public welfare.

III. Dismissal in Furtherance of Justice is Warranted for John Thomas Malthaner.

a) The seriousness and circumstances of the offense.

To the extent that any offense occurred, the effect and consequences of Malthaner's actions were not serious. Malthaner and his fellow advocates were in a public building and in offices that are typically open to the public. There is no question that their presence on the premises was known, and no deception or deviousness was involved. There is no allegation that anyone was hurt or that any property was damaged during the incident. On the contrary, Malthaner and his fellow advocates were peacefully and respectfully asking to meet with County officials regarding the plight of the homeless who had been kicked out of the Civic Center Garage. The circumstances surrounding the alleged offense were solely focused on Malthaner's attempts to advocate for the homeless in Rochester and to reschedule a meeting with County officials that had previously been cancelled.

b) The extent of harm caused by the offense.

There was no physical harm, property damage, injury, or interference with the operation of County business as a result of Malthaner's actions. No one at the Monroe County Office Building was more than mildly inconvenienced as a result of the alleged offense. Those who have been harmed are the dozens of homeless men, women, and children who have no shelter as a result of being forced out of the Civic Center Garage. Malthaner's actions—rather than causing any harm to the public—have had the positive impact of focusing widespread media attention on the issue of homelessness in Rochester and encouraged greater public support for the efforts of advocates for the homeless.

c) The evidence of guilt, whether admissible or inadmissible at trial.

To be found guilty of criminal trespass in the third degree, an individual must have entered or remained unlawfully in a building or upon real property which is fenced in or enclosed in a manner designed to exclude intruders. Malthaner, and his fellow advocates, were justified in entering the Monroe County Office Building, which is a public building, in furtherance of their legitimate business purpose of requesting a meeting with County officials.

d) The history, character and condition of the defendant.

Malthaner is an exemplary member of this community. He has devoted his life to charity and to serving the most vulnerable populations in the City of Rochester. He left a lucrative career as an accountant to spend his time and resources working at St. Joe's. He lived at St. Joe's, a homeless shelter, for fifteen (15) years, assimilating himself into the community, and he became a resource and friend to those in need. He works tirelessly to find solutions to the problems faced by those trapped in the cycle of poverty.

- e) Any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant.

It is not alleged that any exceptionally serious misconduct of law enforcement personnel occurred in this case.

- f) The purpose and effect of imposing upon the defendant a sentence authorized for the offense.

Malthaner is a seventy (70) year old Catholic Worker who has lived a life dedicated to the poor. Punishing him for his community-based efforts would serve no beneficial purpose and it would be a great disservice to the homeless individuals and organizations he supports and assists every day.

- g) The impact of a dismissal on the safety or welfare of the community.

Malthaner is an individual who has spent the last seventeen (17) years vigorously advocating for the welfare and safety of the homeless. He is an asset to the community, not a liability. Dismissing the charges will promote the welfare and safety of the community.

- h) The impact of a dismissal upon the confidence of the public in the criminal justice system.

Malthaner is an integral part of St. Joe's and he has devoted his life to charity and to promoting the welfare of the homeless in Rochester. Dismissing the charges will promote a sense of confidence of the public in the criminal justice system. The public will further be inspired by Sister Grace and others who similarly advocate for the chronically homeless – it will undoubtedly raise awareness and galvanize community support over this important issue. Dismissal of the charge would provide those most vulnerable with a sense of hope that the criminal justice system can take into consideration the best interests of the public.

- i) Where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion.

There is no victim or complainant behind this charge. If anything, the outpouring of support to Sister Grace and the House of Mercy, along with St. Joe's, for all of our work on behalf of the homeless demonstrates that the public would support dismissal.

- j) Any other relevant fact indicating that a judgment of conviction would serve no useful purpose.

Under Article 17 of the New York State Constitution, the “the aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions...” N.Y. Const. art. XVII, § 1. Through this, the Monroe County government has a legal mandate to care for the poor, but the County simply does not have enough shelters. Every shelter is at or over capacity, and every night there are hundreds of homeless people who have nowhere to go. There are as many as 1,000 homeless individuals—including women and children in the community—on any given day or night. For the past several decades, some of those people spent the coldest of nights in the confines Civic Center Garage. It was not ideal, but it was better than having no barrier at all between them and the harsh, bitter Rochester winter.

People like Malthaner have dedicated their lives to helping the County fill the void in the lack of shelter space, reducing the burden on State, County, and City budgets, and also on the taxpayers. But in trying to make a difference and enact positive change, these advocates have been ignored, dismissed, and then arrested. The work they are doing benefits New York State, Monroe County, and the City of Rochester. It is in best interests of the public for the poor and vulnerable to have shelter. If it had not been so difficult for Sister Grace and others to schedule a meeting with county officials to construct potential solutions to the closing of the Civic Center Garage, then this prosecution would not have been necessary. It would be a grave injustice to

prosecute Sister Grace, Malthaner, and Acuff of criminal charges for taking action to schedule a meeting with those who are supposed to be accountable for the public welfare.

IV. Motion to Dismiss in Furtherance of Justice is Warranted for Ryan David Acuff.

a) The seriousness and circumstances of the offense.

To the extent that any offense occurred, the effect and consequences of Acuff's actions were not serious. Acuff and his fellow advocates were in a public building and in offices that are typically open to the public. There is no question that their presence on the premises was known, and no deception or deviousness was involved. There is no allegation that anyone was hurt or that any property was damaged during the incident. On the contrary, Acuff and his fellow advocates were peacefully and respectfully asking to meet with County officials regarding the plight of the homeless who had been kicked out of the Civic Center Garage. The circumstances surrounding the alleged offense were solely focused on Acuff's attempts to advocate for the homeless in Rochester and to reschedule a meeting with County officials that had previously been cancelled. Furthermore, when asked to leave, he dutifully obeyed. He was arrested amidst his attempt to leave the second floor.

b) The extent of harm caused by the offense.

There was no physical harm, property damage, injury, or interference with the operation of County business as a result of Acuff's actions. No one at the Monroe County Office Building was more than mildly inconvenienced as a result of the alleged offense. Those who have been harmed are the dozens of homeless men, women, and children who have no shelter as a result of being forced out of the Civic Center Garage. Acuff's actions—rather than causing any harm to the public—have had the positive impact of focusing widespread media attention

on the issue of homelessness in Rochester and encouraged greater public support for the efforts of advocates for the homeless.

c) The evidence of guilt, whether admissible or inadmissible at trial.

To be found guilty of criminal trespass in the third degree, an individual must have entered or remained unlawfully in a building or upon real property which is fenced in or enclosed in a manner designed to exclude intruders. Acuff, and his fellow advocates, were justified in entering the Monroe County Office Building, which is a public building, in furtherance of their legitimate business purpose of requesting a meeting with County officials.

d) The history, character and condition of the defendant.

Acuff has devoted his life to charity and to serving the most vulnerable populations in the City of Rochester. He has used his Master's degree in Psychology from the University of Rochester to contribute and enhance the Greater Rochester community. He works tirelessly to find solutions to the problems faced by those trapped in the cycle of poverty. Acuff is an exemplary member of this community.

e) Any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant.

It is not alleged that any exceptionally serious misconduct of law enforcement personnel occurred in this case.

f) The purpose and effect of imposing upon the defendant a sentence authorized for the offense.

Punishing Acuff for his community-based efforts, especially given that he attempted to obey law enforcement's instructions, would serve no beneficial purpose and it would be a great disservice to the homeless individuals and organizations he supports and assists every day.

g) The impact of a dismissal on the safety or welfare of the community.

Acuff is an individual who has spent the past several years vigorously advocating for the welfare and safety of the homeless. He is an asset to the community, not a liability. Dismissing the charges will promote the welfare and safety of the community.

h) The impact of a dismissal upon the confidence of the public in the criminal justice system.

Acuff is an integral part of House of Mercy, and he has devoted his life to charity and to promoting the welfare of the Rochester community. Dismissing the charges will promote a sense of confidence of the public in the criminal justice system. The public will further be inspired by Sister Grace and others who similarly advocate for the chronically homeless—it will undoubtedly raise awareness and galvanize community support over this important issue. Dismissal of the charge would provide those most vulnerable with a sense of hope that the criminal justice system can take into consideration the best interests of the public.

i) Where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion.

There is no victim or complainant behind this charge. If anything, the outpouring of support to the House of Mercy for their work on behalf of the homeless demonstrates that the public would support dismissal.

j) Any other relevant fact indicating that a judgment of conviction would serve no useful purpose.

Under Article 17 of the New York State Constitution, the “the aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions...” N.Y. Const. art. XVII, § 1. Through this, the Monroe County government has a legal mandate to care for the poor, but the County simply does not have enough shelters. Every shelter is at or over capacity, and every night there are hundreds of homeless people who have nowhere to go.

There are as many as 1,000 homeless individuals—including women and children—on any given day or night. For the past several decades, some of those people spent the coldest of nights in the slightly heated and somewhat protected Civic Center Garage. It was not ideal, but it was better than having no barrier at all between them and the harsh, bitter Rochester winter.

People like Acuff have dedicated their lives to helping the County fill the void in the lack of shelter space, reducing the burden on State, County, and City budgets, and also on the taxpayers. But in trying to make a difference and enact positive change, these advocates were ignored and dismissed, and then treated like criminals for attempting to get the attention and cooperation of the County government. The work they are doing benefits New York State, Monroe County, and the City of Rochester. It is in the best interests of the public for the poor and vulnerable to have shelter. If it had not been so difficult for Acuff and others to schedule a meeting with County officials to construct potential solutions to the closing of the Civic Center Garage, then this prosecution would not have been necessary. It flouts justice to prosecute Sister Grace, Malthaner, and Acuff of criminal charges for taking action to schedule a meeting with those who are supposed to be accountable to the public.


CONCLUSION

For the foregoing reasons, defendants respectfully request that the criminal informations against them be dismissed in furtherance of justice.

DATED: December 10, 2014

BOND, SCHOENECK & KING, PLLC

By: _____



Edward P. Hourihan, Esq.

Attorneys for Defendants

350 Linden Oaks, Suite 310
Rochester, New York 14625
Telephone: (585) 362-4700

TO: Shani C. Mitchell, Esq.
Assistant Monroe County District Attorney
47 S. Fitzhugh Street
Rochester, NY 14614