

REPRESENTING
THE
POOR
AND
HOMELESS



INNOVATIONS
IN
ADVOCACY

SIDNEY D. WATSON, EDITOR

AMERICAN BAR ASSOCIATION • COMMISSION ON HOMELESSNESS & POVERTY

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ISBN: 1-57073-995-1

Representing the Poor and Homeless: Innovations in Advocacy
American Bar Association Commission on Homelessness and Poverty
Washington, DC

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INTRODUCTION

The American Bar Association has long been engaged in efforts to ameliorate homelessness. Policy adopted over the past seventeen years articulates its deep concern about the legal barriers that keep homeless people from enjoying benefits and opportunities that lead to stable, productive lives. In 1986, the ABA Section of Individual Rights and Responsibilities (IRR), troubled by the apparently sudden influx of homeless people in our cities, introduced policy to the House of Delegates. Once adopted, the resolution committed the Association to address homelessness and encourage stronger pro bono engagement to ameliorate its devastating effects. Bar associations, nonprofit organizations and federally funded legal services programs began turning their attention to the social and legal difficulties faced by homeless people including the unjust denial of rights because of their homeless status. As lawyers learned more about the causes of homelessness, they refined the strategies they had initially devised to attack it. Landmark cases addressing the right to vote, to use public facilities such as libraries, to attend school and to receive social welfare benefits were successfully brought.

To coordinate efforts occurring nationwide and link local projects with other interested lawyers and homeless initiatives, the ABA established the Representation of the Homeless Project, a committee of the IRR Section. Shortly thereafter and under the leadership of President Jack Curtin, the ABA elevated the Project to the level of Commission and expanded its mandate to include poverty. This underscored the ABA's commitment to using its organizational strength to both inform lawyers about the legal needs of homeless people and provide resources for representing their homeless clients.

The enlarged scope of the ABA Commission on Homelessness and Poverty reflected a new understanding of homelessness – that it is the extreme end of a more enduring tragedy -- poverty. Because of their financial precariousness, poor people (including those who are employed) move in and out of homelessness – from rental housing to extended stays with family and friends to shelters and, for some, onto the street. As a result, the ABA and lawyers representing indigent clients began treating poverty as a prime cause of homelessness and launched vigorous efforts in areas of community economic development, the expansion of affordable housing and financial investment in low income neighborhoods, among others.

To catalyze volunteer action among its members, the Commission encouraged increased pro bono engagement, and assisted bar associations, law schools, legal services and other nonprofit legal programs in their remarkable endeavors in the new field of homeless law. Though most apparent in large cities, we learned that homelessness is equally devastating in rural communities. Other victims include immigrants (for whom an undocumented status may mean complete disenfranchisement), and children living with homeless parents or separated from family by poverty and its consequences. The ABA adopted Commission-proposed resolutions on these and other topics. These allowed the Association to speak publicly, including to members of Congress, about the urgent legal needs of homeless people.

The ABA devoted resources to Commission publications and videotapes to inform the public and train lawyers about the special concerns of homeless litigants. Commission members and staff spoke at ABA meetings, legal services conferences and bar association gatherings to help lawyers understand the breadth of the legal needs experienced by homeless children and adults, as well as the importance of pro bono involvement. Policy and publications ranged from the basic rights and needs of homeless individuals to the importance of subsidized housing to civil rights issues such as redlining and Not In My Back Yard (NIMBY) problems. Most recently the Commission examined how the Internet can increase access to legal representation

for poor people, and successfully brought “digital divide” policy to the House of Delegates. All of these publications and resolutions highlight the pivotal role of lawyers in helping homeless litigants and their advocates resolve these issues.

The ABA’s extensive homeless efforts are founded in two critical beliefs. The first is that homeless people have serious legal problems that, once resolved, can give them control over their lives. Secondly, lawyers have a public service obligation, because of their unique skills, to donate their legal expertise to people whose poverty denies them access to justice. This volume is an extension of that vision. It was conceived as a tool to help pro bono lawyers who represent homeless clients as well as the advocacy organizations established to protect the rights and well being of homeless adults and children.

Included in this handbook are themes sounded by the Commission and other ABA entities such as the Young Lawyers Division, the Special Committee on the Unmet Legal Needs of Children, the Commission on the Legal Needs of the Elderly, the Coordinating Committee on Immigration Law and other collaborators. Readers will learn about barriers that prevent the expansion of subsidized and low-income homes for poor residents and the successes of indigent people who, with modest financial and legal assistance, run their own micro-businesses. Topics addressed here have been the subject of Commission-sponsored ABA policy and legal education material produced over the years. In addition to covering the critical issues in homeless law, these chapters reveal our deepening comprehension of homelessness. They illustrate both a realistic assessment of the parameters (Discharges to the Streets: Hospitals and Homelessness; Affordable Housing: Can NIMBYism be Transformed into OKIMBYism), and a constant idealism that keeps hope alive (The Lawyer as Abolitionist: Ending Homelessness and Poverty in Our Time; Homelessness and Human Rights: Towards an Integrated Strategy). They also reflect the trajectory of the ABA policy on homelessness, from a belief that with enough legal representation, homelessness would be eradicated by the end of the 20th century to a grim acknowledgment that homelessness is the most public form of poverty, one that will endure until significant systemic changes occur.

The many attorneys who have given their time through pro bono initiatives or public interest legal employment on behalf of poor and homeless litigants are the backbone of this volume. Their landmark legal victories and day-to-day toil has resulted in housing, employment, stability and family reunification for many homeless adults and children. Their bold, creative thinking has given us new laws and protections for the weakest in our communities. This volume and the positive outcomes that ensue from its use are in large part their legacy.

We are grateful to all of them, although the majority are not listed or recognized here. Those who participated in this publication also inaugurated or assisted in much of the cutting edge legal work around the country. Many of them also helped craft the ABA’s homeless policy. We are grateful for their contributions to this text and elsewhere. They are Gary Blasi, Forence Roisman, Susan Bennett, John Ammann, Maria Foscarinis, Sidney Watson, Susan Jones, Matthew Diller, Lucie White, Peter Salsich, Robert Solomon, Robert Brandt and Zachary Abeles. Special thanks must go to Maria Foscarinis, one of the founders of the Commission and a resource throughout; she is an inspiration to all who work on homeless issues. Pete Salsich, a Commission chair and member for many years, focused our energy and talent on the significant housing needs of homeless clients.

Sidney Watson faithfully nurtured this volume through its first life as the St. Louis University Public Law Review symposium volume 19 (A special thanks to the editors and staff of the St. Louis University Public Law Review for cite checking and footnoting the articles, and for hosting the Commission’s symposium on homeless advocacy) on homelessness and to the ultimate goal of a useful primer on homelessness. She nudged, cajoled, edited, organized and

wrote – always with patience, grace and humor. Her tenure on the Commission was a highlight for us, and this volume a testament to her commitment.

Thanks to the members of the Commission who served as reviewers: Josephine McNeil, Jonathan Asher, William Hoch, Susan Jones, Della Mitchell, Clare Pastore, Florence Roisman, Mark Tilden, and Pauline Weaver. Thanks also to the liaisons from other ABA entities who reviewed various essays: James Forman, Patricia Hanrahan, Myles Lynk, and Joseph O'Connor. Thank you to ABA staff members Elizabeth Yang and Mondy Kumbula-Fraser for their help as readers.

A very special thanks to Patricia Hanrahan, former Staff Director of the Commission on Homelessness and Poverty, who was the initial inspiration for this project. Thanks also to John Calmore, former Commission member, and Roger Clay, Jr., former Commission chair, for their support and inspiration.

Thanks are also owed to the following law student research assistants and ABA interns who worked on this project: Jerritt Hooper, Laura Bedingfield, Dorisa Shahmirzai, Jonathan Haines, and Jerri Mauldin.

Finally, we gratefully acknowledge the valuable contributions of ABA staff members, especially Amy Horton-Newell, the present Staff Director for the Commission on Homelessness and Poverty, Elizabeth Yang, the former Staff Director, and Eileen Zorc, Staff Assistant.

PART I:

THE LAWYER'S ROLE

ADVOCACY AND ATTRIBUTION: SHAPING AND RESPONDING TO PERCEPTIONS OF THE CAUSES OF HOMELESSNESS

GARY BLASI*

I. INTRODUCTION

Organizing people to collective action requires, among many other things, altering their understandings of their own circumstances and the alternatives. Advocacy requires, among many other things, changing how more powerful people understand the circumstances of the less powerful. In both instances, a crucial aspect of understanding itself is the perception of the causes of behavior and of social facts—what psychologists call “social attribution.”¹ If we come upon a well-dressed woman pushing a shopping cart down the sidewalk near a supermarket, we attribute her behavior to the desire to get her groceries to her car for the trip home. If we come upon a disheveled woman pushing the same shopping cart down the same sidewalk, we may attribute her behavior to her homelessness. We understand both individual behavior and social problems in terms of causal attributions, and we often use very limited information to make complex causal judgments.

Consider Kim, an apparently homeless person pushing a shopping cart full of plastic bags down the sidewalk near a supermarket in Los Angeles. Neither you nor I know anything about Kim and what has happened in the 40-odd years of Kim’s life before this day. But both of us already have causal theories, both about Kim and about homelessness in general. What we think should be done with regard to Kim, and about homelessness more generally, largely depends on the content of those causal attributions. If we believe Kim’s situation is the consequence of bad choices and individual deficits, we come to one set of feelings. If we believe Kim’s homelessness is the product of the failings of our institutions or the fundamental structure of society, we have an entirely different reaction. Our attributional beliefs are also affected by whether we believe Kim is, in fact, homeless or merely very poor. And, for reasons I will explain in this essay, our belief about what has caused Kim to be pushing a shopping cart down the sidewalk on this day is also likely to be affected by what we imagine to be Kim’s gender and race.

By now, few careful people would argue that there is a single cause of homelessness, either as a social phenomenon or as the circumstance of one individual.² I will not here engage the various social science literatures that touch on the various causes of homelessness.³ For this essay is not about the causes of homelessness, but rather about beliefs about those causes, and about how advocacy is shaped by, and also sometimes shapes, such beliefs. The general topic of how people understand the causes of the behavior and circumstances of others occupies an entire field within social psychology—social attribution theory—that has been too long ignored by advocates.⁴ I introduce a bit of this literature here, on the way to considering its applications for practicing advocates.

I take as a point of departure what seems to me a quite surprising finding of many polls, surveys, and experiments: While most people blame poverty on the poor, most people blame homelessness on society.⁵ This is especially surprising, given the obviously close connections between homelessness and poverty and given the general disposition of the dominant Western culture to ascribe unpleasant personal circumstances to personal deficits.⁶ In the course of exploring the reasons for the difference in attributing the causes of poverty and of homelessness,

I want to suggest four things about social advocacy. First, effective advocacy, whether conducted in an individual courtroom or a national media campaign, always pays close attention to the attributional beliefs of those who matter to decisions. Second, although advocates operate in a world of preexisting beliefs about social causation that are part of the general culture, advocacy can sometimes re-shape widely-held attributional beliefs. Indeed, I will argue that one plausible explanation for the attributional differences between poverty and homelessness lies in the work of advocates, particularly in the media, during the period in which the very concept of “homelessness” entered common public discourse in the United States. Third, while courtroom lawyers and skilled policy advocates may intuitively understand the significance and shaping of causal beliefs about problems, there is now a large body of scientific knowledge on this subject also worth considering, for an important reason: our intuitions are sometimes simply wrong. Finally, recent work in the cognitive science of causal beliefs suggests that advocates must deal with a world of beliefs about social problems that are not merely sometimes incorrect, but also inherently irrational and even entirely subconscious. In particular, I will suggest that another plausible explanation for the differences in attribution of the causes of homelessness and poverty relates to often purely implicit connections to race and stereotyped beliefs about African Americans.

II. CAUSATION AND THE ROLE OF ADVOCACY

As both experienced advocates and social theorists know, causation matters. First, causation determines whether blame attaches—to anyone—and whether some remedy should therefore follow. A trial lawyer’s first job is to prove that the damages sustained by the plaintiff were caused by *someone* else and were not the consequence of—in the ancient phrase—an “Act of God.”⁷ Without causation there is no blame and hence no plaintiff’s verdict—even if the defendant happens to be ecstatic at the plaintiff’s misfortune. In the realm of social problems as well, causation is crucial in determining what areas we regard as suitable for intervention, and which interventions we will come to support.⁸ The social advocate’s first job is to prove that the conditions that concern us are not in the natural order of things, but have been caused, and are therefore subject to change—by altering the cause. As Murray Edelman has written, “[p]overty, unemployment, and discrimination against minorities and women are accepted as problems today, but through much of human history they were regarded as part of the natural order. . . .”⁹ Similarly, lung cancer was once thought inexplicable; but once we discovered that tobacco smoke causes lung cancer, then lung cancer became a social problem—a situation “caused by human actions and amenable to human intervention.”¹⁰

A. *Advocating for a Cause*

Thus, for both individual cases and social controversies, the existence of perceived causation amenable to action is a necessary predicate to further advocacy. But it is merely a predicate: necessary but not sufficient. Most advocacy focuses on *which* cause is chiefly to blame. The trial lawyer’s job is not merely to prove that the plaintiff’s damages were caused by someone, but that they were caused by the defendant. The policy advocate’s burden is to show that, among all the possible causes of a social problem, one cause is especially significant and will be altered by a given policy change. According to the “story model” of juror decision-making of Pennington and Hastie, jurors reach decisions by imposing “a narrative story organization on trial information, in which causal and intentional relations between events are central.”¹¹ Judicial decisions, such as sentencing decisions, can be understood in the same terms.¹² The job of the trial lawyer is thus to present the causal story that is most coherent with the evidence. A policy advocate may see her objective in the same terms: to provide to decision-makers and the

general public a narrative about the problem that foregrounds a particular cause, and thereby a particular potential change in policy.

Both trial lawyers and policy advocates work in a world of often deeply held, if entirely false, opinions about social causation. Every experienced trial lawyer knows that jurors come to cases with prejudices and preconceptions—certain default assumptions about how people behave and why. One purpose of *voir dire* is to explore the causal theories that jurors have brought with them to the courtroom. Moreover, trial lawyers generally have some idea of what causal theories will be advanced by the litigants in the course of a trial. In the typical two-party case, there are only two basic contending narratives. For example, *either* O.J. Simpson caused the deaths of his ex-wife and her friend and was arrested because he was guilty, *or* their deaths were caused by someone else and Simpson was framed by overzealous or racist police officers (who may or may not have believed him guilty).¹³ Which of those stories seems most plausible depends, of course, on preexisting beliefs about many things, including the probable behavior of police officers toward African American men.¹⁴ In the constrained arena of a trial, the lawyer's function is to introduce and explain evidence in terms of a causal theory that will, in interaction with the preexisting beliefs of the jury, lead to a particular belief about causation in the minds of the jury.

In contests over public policies and social problems, advocates have a similar function: altering public perceptions of the causes of problems by either injecting new causal stories or emphasizing particular causal stories in the preexisting public discourse. In the social arena, there are often many contending causal stories, not just the two found in most trials. Sometimes, it seems that there are as many causal stories as there are interests that might be affected by the problematic situation. In the early years of my work on issues of homelessness in Los Angeles, I was invited at various times to speak to groups of psychiatrists, building industry leaders, urban planners, welfare bureaucrats, nonprofit housing developers, religious missions, labor unions, and even one group that kept alive the beliefs of Henry George about the need for a single tax on land.¹⁵ Each of these groups had a pretty clear set of beliefs about the causes of homelessness in Los Angeles. Their causal theories were, of course, all entirely different. And to some extent at least, they were all true, or at least plausible (though I remain agnostic about Henry George). One noticed, however, that the most salient perceived cause of homelessness always had something to do with the issues that already concerned the group: psychiatrists saw mainly issues of how society responds to mental disorders; developers blamed a shortage of housing caused by excessive land-use regulation, and so on. We can ascertain the dominant causal theories of various groups by interacting, as I did, with many different kinds of people and groups. And, although policy advocates cannot conduct a *voir dire* of their “jury”—the general public or a subset of decision-makers—they sometimes have a functional equivalent: the data gathered from samples of people in surveys or focus groups. Sometimes advocacy resources might be well spent on such inquiries into preexisting causal belief.

B. Ideology and Attributional Belief

Although there are often many different contending causal theories for a social problem like homelessness, virtually all causal theories tend to cluster around one of two kinds of explanation: those that emphasize individual-level characteristics and those that emphasize social and structural conditions. And on this score, most people come to the question with powerful predispositions. Among the early of systematic studies of how people understand the causes of human behavior, one robust finding was this: observers tended nearly always to overestimate how much behavior is determined by the characteristics of the person, compared to the situational context in which the person acted. For example, if I have one encounter with a judge who snaps at me in oral argument, I am unduly likely to assume that this behavior reflects some stable internal disposition of the judge, and to pay less attention to what may have been the frustrating circumstances that gave rise to the anger. So persistent was this error, in experiment

after experiment, that social psychologists denoted this the Fundamental Attribution Error, or FAE, and assumed it was a standard feature of human cognition.¹⁶

Further cross-cultural research suggested that the Fundamental Attribution Error might not be so fundamental after all. It appears to operate with particular force in the United States and other individualist Western cultures, as compared to other, less individualistic, cultures like China.¹⁷ In Western cultures, however, the FAE seems to operate with regard to all kinds of perceived behavior and circumstances. If we add to the FAE the effects of the (perhaps not unrelated) dominant ideology in the U.S. concerning the causes of poverty,¹⁸ then we should expect a very strong disposition among Americans (in particular) to attribute poverty to individual failings.

In the case of homelessness, as with poverty, ideologues and advocates of both right and left have long recognized the policy implications of the structural/individualist causal dichotomy. If homelessness (or poverty, or crime, or other unpleasant situations) are the result of individual deficit, moral failing, poor personal choices and the like, then these are merely disquieting phenomena to be managed and controlled by the police. On the other hand, if homelessness is related to social or economic policies, then those policies come into question. Such questions, in turn, may implicate the distribution of wealth and power in society, with consequences not only for the poor and homeless, but also for the wealthy and well-housed—for all those in a position to shape policy and public opinion. In the case of simple poverty, the outcome of this struggle over blame is reasonably well-settled: Although there are variations among countries, cultures, social classes, races, genders, and those with differing educational backgrounds, the dominant popular view is that poverty is caused by the poor—especially their disinclination to work.¹⁹

III. DATA ON ATTRIBUTIONAL BELIEFS ABOUT HOMELESSNESS

Attitudes toward “the homeless” are more complex. As between the homeless and the poor, people feel both more social distance from, and more sympathy for, the homeless.²⁰ People are, for example, far more willing to see public funds go toward ameliorating homelessness than poverty and many other social problems.²¹ These attitudes are related in complex ways to one other belief: *By roughly the same proportions (as high as 2 to 1), people tend to blame poverty on the poor but homelessness on society.* Because these data are both surprising and important to the remainder of this essay, I provide some of the detailed findings of several different studies in this section.

A. The Data

Reporting on a survey of residents of Nashville, Tennessee, Lee et al. noted that “[c]ompared to their views on generic poverty, members of the public seem more willing to blame homelessness on external factors than individualistic ones.”²² They found that almost three-fifths of respondents attributed homelessness to structural forces, while less than two-fifths thought homelessness resulted from personal choice.²³ Their data was consistent with reports from a national sample survey conducted in 1988 by Media General, which found that among those with opinions, 58% blamed society for homelessness, compared to 42% who blamed the homeless themselves.²⁴

Notably, the 1988 national survey had forced respondents to choose between social and individualist explanations. In their local survey in Nashville, Lee et al. used a 40-question instrument to probe at a range of beliefs. Only 10% of the sample selected a single cause; the remaining 90% reported 51 different combinations of multiple causes.²⁵ Nevertheless, when subjected to factor analytic techniques, the greatest number of respondents attributed homelessness to a variety of “structural forces.”²⁶ The data from Nashville was consistent with that from a similar study in Erie County, New York, done at about the same time by Toro and McConnell.²⁷ Using the same questions as had been used in the Media General survey, Toro and

McConnell found that respondents blamed society rather than the homeless themselves by an even wider margin (65.6% to 34.4%) than in the national sample.²⁸ Another local study, this time of undergraduates at San Jose State University in California, found similar emphasis on structural attributions when the question was presented in dichotomous form. Also in 1992, the Gallup Organization reported in a national survey that large majorities of respondents identified as factors contributing to homelessness the following: unemployment (78%), job loss (67%), lack of affordable housing (55%), while most believed mental illness and laziness were *not* the causes of homelessness.²⁹

Finally, in a provocative and very useful study, George Wilson surveyed causal beliefs among adults in Baltimore, Maryland, in order to compare beliefs about three forms of what Wilson termed “extreme socioeconomic failure”: welfare dependency, homelessness, and migrant labor.³⁰ He found that respondents were much more inclined to attribute welfare dependency than homelessness to “lifestyle choice” (70.4% vs. 44.9%), and in general preferred structural explanations for homelessness but individualist explanations for welfare dependency, with migrant labor status occupying a middle ground.³¹ Wilson did not force respondents to a dichotomous choice, but offered instead a menu of 8 nonexclusive causal possibilities.

All of these survey data are, of course, summary statistics reflecting averages among often quite disparate subgroups of respondents. There are considerable differences among respondents of differing political beliefs, academic training, gender, and so on. Conservatives prefer individualist explanations of homelessness, whether in California³² or Great Britain.³³ Students trained in social sciences are more likely to prefer structural accounts.³⁴ American women are more likely than American men to credit structural accounts of homelessness. For example, in a national survey study, Lee et al. found that, while men preferred structural explanations by barely a percentage point (39.3% to 38.1%), almost twice as many women attributed homelessness to structural factors (50.3% to 27.9%).³⁵ Toro and McDonnell found the same gender gap in their Erie County, New York study.³⁶ And, of course, these factors can interact. Sixty nine per cent (69%) of Republican men locate the causes of homelessness in individual homeless people, compared to thirty two per cent (32%) of Democratic women.³⁷ Thus, reports on “average” attributions of cause should be understood as masking significant variations among various demographic and political groups within the broad class of respondents.

Attitudes toward the homeless are complex and go well beyond beliefs about causation. Although the surveys mentioned above have suggested that people view “the homeless” more favorably than “the poor,” things are a bit more complicated than that. Phelan et al. conducted a “vignette” study with a national sample.³⁸ Respondents were read a description of a particular man, with information about his mental health status and homelessness being varied. They found that the label “homeless” resulted in significantly higher ratings for social distance and assessments of dangerousness. They found no statistically significant variation in whether the man in the vignette was to blame for his situation.³⁹

Although we have vastly more information on attributions of homelessness than we did in 1991, there are still too many degrees of freedom in the research designs of the various studies, even when they are considered together, for us to be entirely certain of explanations. First, there is some reason to believe that attitudes toward homelessness have changed over time, so that apparent contradictions between results of 1989 surveys and 1997 surveys may accurately reveal historical trends rather than conflicting evidence. Second, lay people (like social scientists) do not have an easy time sorting out the multiple connections between homelessness and other phenomena: mental illness, welfare, poverty, alcoholism and substance abuse, and so on. Forcing respondents to a choice between the social and the individual may suppress the complexity of real respondent beliefs. Third, people respond differently to questions about the abstract category of “the homeless” than to vignettes about a particular homeless person described in some detail.

Finally, as I explore in greater depth below, one cannot probe attitudes toward “the homeless” or one hypothetical individual in the same way one can assess reactions to simple stimuli like colors or geometric shapes. One of the findings of modern cognitive science is that our beliefs, categorizations, conceptual schemes, and so on are not well represented by set theory or other clean categorizations, even in seemingly simple cases. Rather, such mental representations are more accurately represented as emergent properties of connectionist networks, in which many different things interact simultaneously. Thus, the “vignette” study by Phelan et al. portrayed a hypothetical “Jim” in a text that highlighted numerous social categories in addition to homelessness. “Jim” was described as having always been “a poor man having come from a large family that had to get along with a very small income” who “quit school before finishing high school in order to get a job at a fast food restaurant.”⁴⁰ Contemporary theories of discourse comprehension⁴¹ suggest that subjects could not thereafter disentangle all the other associations and images created by this text from whether “Jim” was homeless or poor but housed.

Having raised these methodological quibbles, I want to set them aside for now. I will assume for purposes of this essay that there is in fact a greater general tendency on the part of many Americans to attribute homelessness more than poverty to societal or structural causes, and to focus on three further questions: Are these findings surprising? What accounts for them—to what do we attribute these attributional beliefs? Finally, does any of this matter to advocates?

B. Reasons These Findings Are Surprising

There are many reasons to be surprised by the greater causal attribution of homelessness to society. First, as has been very well documented in many studies, if homelessness is seen as connected to poverty, the dominant ideological conception of poverty, especially in the United States, greatly prefers individualist explanations.⁴²

In addition to being poor, however, homeless people have several other features that should strengthen individualist explanations. First, a distinct subset of the homeless individuals—those with evident mental disorders and substance abuse problems—are highly visible. There are good reasons to think that people will generalize from these “available” instances to reach more general conclusions about homelessness in general.⁴³ These most visible homeless individuals have problems that are generally seen as individual. Sophisticates might blame crack addiction on international economic forces in Latin America or alcoholism on advertising, but surely most people believe substance abuse is the consequence of personal choices. Similarly, some people may attribute a publicly visible mental disorder to the lack of an adequate mental health care system, but most people must certainly see serious mental illness as a property of individuals, and not something caused by social forces. For these reasons in 1994, I felt comfortable in assuming that the dominant ideology and concomitant individualist explanations for poverty would obtain with even greater force in the case of homelessness.⁴⁴ But I was wrong.

C. Some Possible Explanations

In preparing this paper, I asked a number of colleagues and students how they might account for the disparity between attributions of causation for poverty and for homelessness, in effect conducting an informal survey of attributions of attribution. I recount the more common explanations here.

First, it is possible that people develop causal theories by the commonsensical method of trying to place himself or herself in the situation of a prototypical poor or homeless person. People may find it easy to imagine circumstances that might result in being poorer—preferring leisure to work, for example. But if they can imagine no circumstance under which they would themselves make choices that would result in homelessness, then homelessness must be the

product of something else. The “something else” might well be a diffuse notion of “structural” or “social” causation, as a general residual possibility rather than an articulated social theory.

Second, as compared to poverty, homelessness is seen as a relatively recent phenomenon. While the poor we may have always had with us, not until the early 1980’s was homelessness identified in the media and broader culture as a significant problem. And then, it appeared as a “new” problem. Indeed, the phrase “the new homeless” was contrived to describe a class of homeless persons whose demographics and life trajectories appeared significantly different from the “traditional homeless”—older men, typically alcoholics, concentrated in urban cores.⁴⁵ The dominant ideology supplied individualist explanations for poverty, but the “new homeless” were not part of the social landscape already mapped by that ideology. Again, in reaction, many people may have thought that something structural must have happened to account for the new phenomenon. This need for a residual, and possibly structuralist, explanation increased the more the “new” homeless varied from the older stereotypes accommodated by the dominant ideology.

A third explanation for the relative pervasiveness of structural explanations for homelessness is cultural and historical. Although “the homeless” category in its current form is of fairly recent vintage, it did not arise in a culture in which forms of homelessness were completely alien. The last period in American history when homelessness was so salient a feature of the culture was the Great Depression, which produced not only mass homelessness but also great literature about homelessness. Christina Sheehan Gold argues that the novelist John Steinbeck and essayist Carey McWilliams produced works during the Depression that facilitated “a permanent shift in many Americans’ conception of the homeless.” The force of these cultural works, Gold argues, was such that “Many Americans, but by no means all, came to pity, rather than fear, the homeless.”⁴⁶

A fourth reason people may privilege structural explanations for homelessness relates to the connection, or lack thereof, between homelessness and welfare. Of all the groups that have some potential relation to homelessness, Americans are most hostile toward welfare recipients.⁴⁷ More than any other group, welfare recipients are seen as being responsible for their own plight.⁴⁸ One simple explanation for this fact is the success of the ideologues and polemicists employed to disparage welfare recipients as a means of reducing transfer payments (and thereby taxation). Although homeless people have more recently become the focus of animosity and disparagement, primarily as threats to decency and public order, there is a significant difference in the content of the attacks. The fundamental difference between “the homeless” and “welfare recipients” is that “the homeless” are not (at least in any salient way) getting something for nothing, i.e., receiving benefits without working for them. This diminishes the pragmatic reasons for the voices of the wealthy to attack them, and thereby both the volume and intensity of the propaganda directed toward them.

The differences in attitudes toward the welfare poor and the homeless may also have far deeper, even evolutionary, roots. A full exploration of this point is beyond the scope of this paper, but it is worth noting that careful experiments demonstrate that people have particularly acute cognitive abilities to detect “cheaters”—people who take but do not contribute. Evolutionary psychologists suggest that this ability must necessarily have evolved during the vast reaches of human history when our ancestors lived in hunter-gatherer bands, as a defense to another tendency with great survival value—the ability to obtain the fruits (and nuts and game) of the labor of others.⁴⁹

All of these explanations have at least a superficial plausibility. But there are two other explanations I want to explore in some depth, because they may have particular relevance to the work of advocates for homeless and poor people. First, I will suggest that current attributions of the causes of homelessness may themselves be the product of past advocacy, much of which tried very explicitly to locate the causes of homelessness in social structure and social policy. Second, I will suggest that differential causal attributions for homelessness and poverty may also

be the product of the interaction of a hidden, or at least unspoken, process: the differential racialization of homelessness and of poverty and welfare. Put simply, attributional beliefs about the poor and about the homeless are mediated by both conscious assumptions about the racial composition of the two groups, and by unconscious processes, the power of which cognitive scientists have only recently begin to document. Finally, of course, unlike the typical juror, we need not choose between narratives of causation. For example, there is some evidence that the work of advocates had something to do with the differential racialization of “the homeless” as compared to “the poor.”

IV. ADVOCACY AND THE SHAPING OF ATTRIBUTION: DID HOMELESS ADVOCATES DO IT?

One possible explanation for the attributions of causes of homelessness is that these pervasive public attitudes are the product of conscious advocacy, aided by the mass media, during the time that “the homeless” took shape in contemporary American popular culture. Although homelessness may have long existed in many different forms in the United States, the modern construction of homelessness began in New York City and Washington, D.C. in late 1970’s and early 1980’s. In Washington, D.C., Mitch Snyder, Mary Ellen Hombs and others at the Community for Creative Non-Violence (CCNV) brought homelessness into public view with a series of brilliantly conceived acts of civil disobedience and public education.⁵⁰ In New York City, consciousness of homelessness increased as the result of well-publicized litigation against the City of New York conducted by an advocacy group, the Coalition for the Homeless. Sympathetic articles, first in the *New York Times* and then in other media, highlighted the seriousness of the problem and gave voice to one view of its causes.

The National Coalition for the Homeless, of which Robert Hayes was the best known spokesperson,⁵¹ produced studies, papers and polemics on the causes of homelessness. Hayes, a brilliant lawyer and publicist, was frequently quoted as saying there were three reasons people were homeless: “housing, housing and housing.”⁵² Hayes would later write that, “[h]omelessness, of course, is nothing more than the most radical symptom of everything else that has not worked, the most dire example of poverty caused by any number of things—bad housing, bad education, bad industrial development and so on.”⁵³ Although the “three things” that cause homelessness were no longer confined to housing, they remained at the societal or structural level.

Other advocacy groups throughout the country were making the same causal arguments, often in less nuanced form than that just quoted. The media was entirely receptive to these ideas. Content analysis of articles on homelessness in five major newspapers between 1989 and 1993 is very revealing.⁵⁴ Only 4% articles attributed individualistic causes to homelessness, compared to 63% of articles on welfare dependency.⁵⁵ A sociologist friend once observed to me that polls and surveys are much like multiple choice examinations given to students: The media provide the instruction to the public, and surveys determine how well the lessons have been learned. The plausibility of this explanation increases when one learns that even in New York City, where personal encounters with homeless people are frequent, most people state that they have relied on the media in forming their opinions about the homeless.⁵⁶

This framing of homelessness in structural terms by advocates and the media has been mentioned by several researchers on causal attribution. Thus Lee et al. observe, “Unlike other contemporary forms of poverty, or even its own skid-row incarnation in the past, homelessness today has been “framed” as a structural phenomenon sufficiently often in the news and other “arenas of public discourse” to mute traditional beliefs about the individualistic roots of socioeconomic failure.”⁵⁷ The reference to “arenas” comes from the “public arenas” theory of social problem construction.⁵⁸

The public arenas theory is sometimes juxtaposed against the theory that most people accept the causal attributions embedded in the “dominant ideology,” which serves to maintain stratification by attributing what might otherwise be seen as troubling inequalities to the deficiencies of those in the lower classes.⁵⁹ By contrast, public arenas theory suggests that particular causal views emerge in the course of a contested public discourse, in which various issues and conceptions of issues compete for public recognition as “problems.” Wilson’s comparative study of attitudes toward the homeless, welfare recipients and migrant laborers tends to support the public arenas theory.⁶⁰ The dominant ideology theory accounts less well for variations in attitudes toward the poor, as variously described and situated. Further, the public arenas theory has perhaps great pragmatic utility, in suggesting ways in which dominant attributional schemes can be affected by conscious actors, including advocates. Challenging the dominant ideology seems, almost by definition, an impossible task, short of major social upheaval.

Ironically, the supposed contest between the dominant ideology and public arena theories replays at a new level of analysis a familiar discursive theme. Are the most important causes of homelessness structural *or* individual? Should attitudes toward the homeless be explained as the consequence of long term and large scale ideological dispositions toward the lower social strata *or* as the product of actions and choices of actors in arenas of public discourse? One is reminded of the observation that there are only two kinds of people: those who classify people into two kinds and those who do not. Plainly, just as the homelessness of any particular person or group can be fully accounted for only considering simultaneously the operation of historical/sociological forces and biographical/psychological factors, it seems unwise to fix too early on any single causal explanation of popular causal explanations for homelessness. While resisting the temptation ourselves, we might note in ourselves the seeming universality of poles of argument.

Perhaps it is in the nature of ideologies (rather than social theories) to force causal attributions to one extreme or another. The “dominant ideology” thesis suggests that the outcomes of these contests are preordained. But the case of American homelessness suggests otherwise. The relative “success” of structuralism in the case of homelessness can be gleaned by comparing two articles by the conservative scholar Thomas Main. Writing in the neo-conservative *The Public Interest* in 1983, Main criticized advocates and structuralists among the social sciences, concluding:

For the fact of the matter is that the homeless, like the poor, we will always have with us. The only question is how to help them without encouraging them in their pathologies and dependency.⁶¹

A mere decade later, Main was writing fairly plaintively (if entirely reasonably) that, . . . no account of [the] problem can be entirely structural or entirely individualistic. To see these accounts as polar opposites and then come down on one side or the other is to oversimplify.⁶²

What the history of the homeless issue suggests for concerned citizens is that the dominant ideology, though powerful, has no inevitable grip on how the public will come to understand a social problem. Within the dominant ideology, there may be ideological lacunae in which conscious citizens can act to some effect. It may be that the dominant ideology operates less powerfully to constrain conceptualizations of poverty to those that do not fundamentally contest social inequality. For one can, though perhaps not easily, subscribe simultaneously to the beliefs that (a) great inequality is both natural and efficient, and (b) that homelessness and utter destitution are neither inevitable nor desirable.

Other legal scholars have noted that the strategic advocacy choices made by lawyers may have affected perceptions of homelessness beyond those of causal attribution. Lucie White has suggested that the choice of advocates to focus on homelessness itself (rather than a “diverse and

ugly” poverty) resulted in the proliferation of “simplistic, indeed invidious, images of the poor” that can be linked to “disturbing trends in housing and welfare policy.”⁶³ Wes Daniels has argued that the particular characterizations given to homelessness by litigators gave rise to later judicial hostility toward the homeless.⁶⁴ Daniels notes that the attributed causes of homelessness in judicial opinions have changed—from early cases about helpless “derelicts,”⁶⁵ to later cases emphasizing “recurring misfortune”⁶⁶ and “economic hard times”⁶⁷ to the most recent cases—all of them lost by homeless litigants—that portray homelessness as a “lifestyle choice.”⁶⁸ I fear, however, that Daniels may himself be making an attributional error here: Legal Realists would suggest that the political backgrounds and ideological dispositions of the judges in the cases Daniels discusses—the consequence of shifting political tides for which homeless advocates can probably not be blamed—fully account for the differences in causal attributions reflected in their opinions. In any case, I do accept White’s point that emphasizing homelessness brings up unpalatable images of poverty and hence may result in less public support for the poor. But I find implausible Daniels’ particular argument that by emphasizing external causes of homelessness and portraying homeless people as “unfortunate victims of forces beyond their control,” homelessness litigators adopted an approach that “carried the seeds of its own destruction,” leading to the more recent cases that assume or assert that homelessness is a matter of personal choice.⁶⁹

V. HOMELESSNESS, POVERTY, RACE AND WELFARE: ATTRIBUTION THEORY AND AUTOMATIC BELIEFS

Thus far our analyses and the various arguments discussed have effectively treated attributional beliefs as if they were simply beliefs about facts. It is possible that beliefs about the causes of homelessness are similar in kind to beliefs about the causes of winter or sunspots. If this is the case, then the job of advocacy is primarily education, the correction of mistaken empirical belief. As I explain in this section, however, such a perspective gives far too rational a gloss to attributional beliefs, and fails to take account of powerful and predictable, if irrational and unconscious, processes of social cognition.

A. *What We Think About When We Think About “The Homeless”*

Let me begin by turning back to the empirical studies and surveys already reported. When we conduct surveys or experiments in which people respond in various ways to questions or vignettes containing words like “homeless,” are we really measuring in some way the responses to a fairly simple linguistic stimulus? Although we are accustomed to making quite a lot of the distribution of answers we receive, we should perhaps be more cautious. Certainly, no trial lawyer would consider accepting at face value a prospective juror’s response to a single question like, “Do you believe homelessness is mainly the fault of individual homeless people or of society.” A litigator would persist in a more extended interrogation, exploring any answer with more questions before being satisfied that she had obtained an accurate picture of a witness’ true beliefs about causation. Such a procedure might elicit, for example, that on hearing the word “homelessness,” that people have quite different implicit assumptions about the age, family status, race, mental disability, and so on of people who are homeless. Lay people and social scientists alike understand that etiologies of homelessness may vary across the different subgroups within “the homeless.” Thus, answers regarding the causes of homelessness might reflect more about assumptions and beliefs about the composition of “the homeless” than about attributions of cause or implicit social theories.

B. *Prototypes and Bad Information*

Some theories hold that we understand concepts or categories like “the homeless” with reference to a prototype or a set of exemplars, which define the “best example” of the

category.⁷⁰ The structure of these concepts can be probed by measuring how long it takes people to assign candidate objects to a category. For example, for North Americans, the prototypical bird is a robin, the prototypical fruit a red apple.⁷¹ According to modern cognitive theory, when any of us thinks about the concept “homeless,” we also retrieve a prototype or set of exemplars. Prototypes and exemplars have the same types of features, as do real-world instances of the category: gender, disposition, age, race, and so on. If you are like most people, if I ask you to imagine a carpenter, and then ask you to imagine the color of her hair, two things will happen. First, you may be a bit surprised when you encounter the pronoun “her” in the previous sentence, and then you will likely respond with “brown.”

Something similar probably happened when you read about a hypothetical, apparently homeless person named Kim, pushing a shopping cart near the beginning of this essay. If you are like most people, you assumed Kim was a woman, of early middle age, and that she was in fact homeless. You probably did that because of (1) your experience as to the gender of persons named Kim—which might not include Kim Hopper, a noted scholar (male) on the subject of homelessness, (2) your assumptions about the gender and apparent age of seemingly homeless persons who push shopping carts, and (3) your assumption about the living arrangements of persons who “appear” to be homeless. What we think about social categories as well as hypothetical individuals is affected by our reactions to what we take to be prototypical features of those in the category. If our prototype of “the homeless” is male and black, our reactions will be affected by what we think, both consciously and unconsciously, about men, African Americans, or African American men.⁷²

C. Prototypes and Attribution

There are a couple of additional significant experimental findings worth noting about prototypes and attributional belief. First, people tend to see “out-groups”—groups to which one does not belong and with which one does not identify—as more homogeneous than “in-groups.”⁷³ This “out-group homogeneity effect” is related to the perceived “entitativity” of the group—the degree to which the category of persons is perceived as a single entity. Members of “out-groups” are also more likely to be represented by singular prototypes than members of “in-groups.”⁷⁴ The more entitative a group—the better represented by a singular prototype—the more we attribute individual behaviors and situations to individual dispositions rather than situational factors.⁷⁵ Given the seemingly greater social distance survey respondents feel toward “the homeless” (compared to the merely poor), these phenomenon should result in more individualist accounts of the causes of homelessness. Moreover, the processes of social discourse that have transformed a more undifferentiated group into “*the* homeless” would have amplified these effects.⁷⁶ This might be the case, but for other powerful countervailing forces, described below.

D. Associations and Automaticity

In order to get to the main point of this section, I need to explain a bit more about recent findings about the architecture of human cognition. Classic studies in cognitive science suggest that, unlike digital computers, human beings do not store information in neatly labeled memory registers, but rather in the connections within immensely complex associative networks.⁷⁷ These theories suggest, for example, that I can influence how you will respond to a stimulus like “Name an Ivy League university” merely by exposing you to objects colored pale blue or crimson red. We would expect, then, that asking someone about “the homeless” or a person described as homeless will also activate concepts, words or images associated with the word “homeless” in semantic memory. Our reactions—both attitudes and behavior—will be affected not merely by the stimulus word or concept, but also by the entire web of associated concepts.

Some recent experiments are highly suggestive of the power of these associational networks for affecting both beliefs and behavior. Consider for a moment the concept and category “elderly.” The “elderly” stereotype is associated with many qualities, some of them unique to individuals but many of them common throughout a culture. Experimental subjects in one study were asked to solve “scrambled sentence” puzzles involving large numbers of words, a few of which were associated with the “elderly” stereotype, including: “worried,” “Florida,” “lonely,” “wise,” “bingo,” etc.” Another feature of the “elderly” stereotype *not* mentioned in any of the words in the puzzles is slowness of gait. Nevertheless, when subjects left the experiment room, those who had merely unscrambled sentences containing words like “worried,” “Florida,” “lonely,” “wise,” “bingo,” walked substantially more slowly down the hall toward the elevator.⁷⁸ Merely activating the web of associations connected with “elderly” had produced a dramatic behavioral result.

In a similar experiment in the same study, subjects were asked to perform a tedious, demanding computer task. During the computer work, pictures of Caucasian and African American men were flashed on the computer screen for a few thousandths of a second, well below the level of conscious perception. Then, after 130 tedious entries, the computer flashed an error message: “All data lost—please begin again.” A video camera mounted above the screen captured the facial expressions of the experimental subjects, which were then independently rated as to the anger they displayed. Remarkably, those subjects who had merely been exposed to subliminal pictures of African American men exhibited substantially more anger than subjects who had been exposed either to no pictures or pictures of white men. Psychologists describe these processes as “automatic” because they operate entirely below the level of consciousness: subjects in both experiments reported no awareness of having seen the stimuli, the “elderly” words or the flashed face pictures. In effect, the subjects’ associational networks had demonstrably controlled behavior and emotion directly, without conscious processing by the subjects. Plainly, then, when we ask survey respondents about “the homeless” or any other social category, any response will be affected by the entire web of related associations. Further, the content of those associations seems to play out at a subconscious level, beneath the level we commonly think of as holding our beliefs about facts and causation.

E. Homelessness, Poverty, Welfare and Race

What, then, are the associational networks in which “homeless” and “poor” are embedded? The networks of individuals vary some, of course. For example, for some social scientists, but few lay people, the term “homeless” may activate “disaffiliation.” Without doing experiments, we cannot describe the semantic networks in which the notion “homeless” is embedded for most people. But I would hypothesize that among the ideas activated in American minds by sentences containing the word “homeless” are the following (in no particular order): poverty, mental disorder, drug addiction, welfare, alcoholism, begging, racial minority, public disorder, and so on. Of course, the strength of the associations will vary, and the associated concepts are themselves also all interconnected. The concepts “poor” and “welfare” will activate different, albeit not completely dissimilar, associational networks. Might the differences in those associations account for differences in observed attributional belief?

In particular, we know that Americans’ perceptions and prejudices about welfare, race and poverty are deeply intertwined.⁷⁹ In the United States, the hostility toward welfare is thoroughly racialized. Despite the empirical data to the contrary, welfare is seen as mainly benefiting African Americans.⁸⁰ Belief that most people on welfare are African American correlates strongly with the belief that welfare recipients’ circumstances are due to “a lack of effort on their own part.”⁸¹

In the case of “the homeless,” popular stereotypes significantly understate the prevalence of African Americans among the homeless. In fact, African Americans are far more likely to be

homeless than other groups.⁸² But surveys of beliefs about the racial composition of “the homeless” consistently underestimate the proportion of African Americans, as compared to the best local data. For example, respondents in Erie County, New York underestimated the percentage of African Americans among the local homeless population by 18%.⁸³ In a national survey by the Gallup Organization, a quarter of respondents were unsure whether the “average homeless person” was white or nonwhite; and of those with an opinion, most (54%) believed that the average homeless person was white.⁸⁴

These beliefs about the demography of homelessness strongly affect what people think about “the homeless.” A national survey examining the relation between subjective estimates of the proportion of African Americans among the homeless and the application of racial stereotypes to the homeless found what we might expect: the higher the estimate, the more racial stereotypes were applied to the homeless.⁸⁵ And, in a direct test of the racialization hypothesis, George Wilson used regression techniques to measure the connection between the perceived racial composition of “the homeless” and perceived causes of homelessness. He found very strong evidence among his Baltimore respondents that attributional beliefs derived from perceptions of the racial composition of the groups identified in his survey (welfare recipients, homeless persons, and migrant laborers).⁸⁶ Wilson summarizes his findings on this issue as follows:

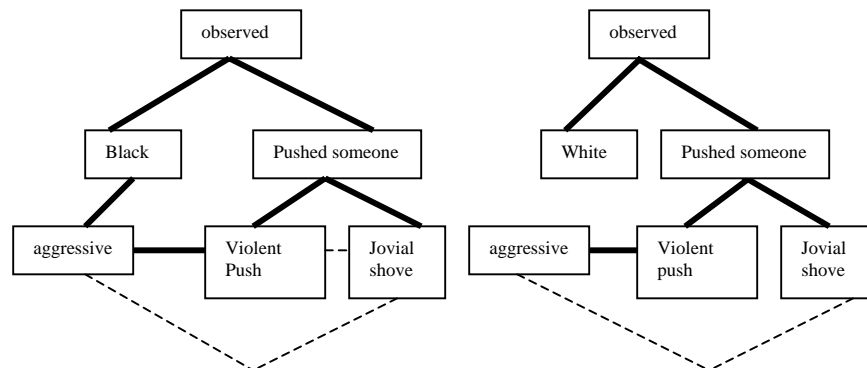
[P]erceptions that African Americans constitute the welfare dependent population is a powerful predictor of individualistic beliefs about the causes of welfare dependency, while perceptions that the homeless are white strongly influence the adoption of structural beliefs about their economic plight.⁸⁷

There are at least two ways to make sense of these data. First, it may be that people apply a kind of logical syllogism to their racist stereotypes. If one believes that African Americans are generally individually responsible for their circumstances (owing to out-group effects or simple prejudice), and one believes that most homeless people are African American, then simple logic compels a particular attributional belief, albeit one deriving from false premises. But the cognitive science literature on the associational and often automatic character of attitude formation suggests a process other than simple deduction.

Consider the formation of an attributional belief of a another kind: You observe two people you do not know engaged in an energetic conversation, the contents of which you cannot hear. Suddenly, one of them pushes the other. A classic study finds that precisely the same “push” is interpreted differently: the “push” of a white person is seen as a jovial shove, while that of a black person is perceived as a “violent push.”⁸⁸ Thagard and Kunda interpret these findings as the consequence of the differential activation of a network of associated concepts, as indicated in Figure I:

Figure I⁸⁹

STEREOTYPES AND THE MEANING OF BEHAVIOR



Within cognitive scientific theory, the power of such network models is that the complex interaction of many different factors, acting simultaneously can be simulated on computers and the results predicted. An exposition in that form is not feasible here. The prose explanation of the mathematical model that simulates these results is, however, as follows:

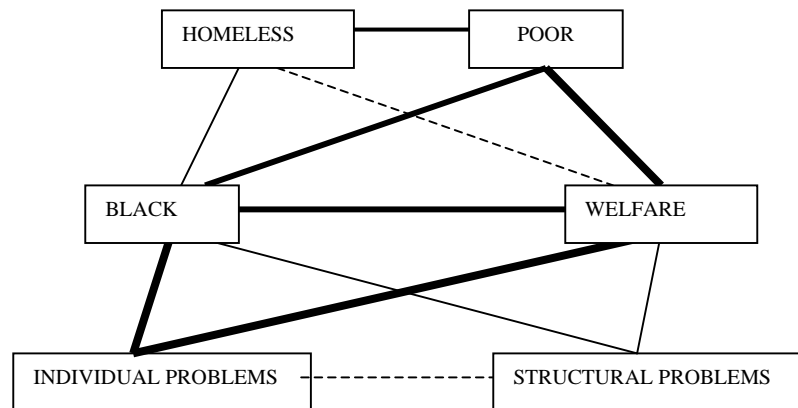
When one observes that a person pushed someone, *pushed someone* activates both *violent push* and *jovial shove*. If one also observes that the pusher is Black, at the same time, *Black* activates *aggressive*, which further activates *violent push* while deactivating *jovial shove*. If, on the other hand, one observes that the pusher is White, *White* does not activate *aggressive*. Therefore, both *aggressive* and *violent push* end up with less activation when the pusher is White than when the pusher is Black. In this matter, stereotypes color (sic) one’s understanding of a person’s behavior and one’s impression of that person.⁹⁰

Notably, such models of social cognition do *not* assume that the associations come in the form of conscious, propositional beliefs about empirical facts. Subjects may not consciously adhere to propositions like, “African American men tend to be more aggressive than white men.” Indeed, the research on automaticity of beliefs described above suggests that subjects may truthfully deny any such subjective belief, and still exhibit the same differences in the attribution of the ambiguous event.

To extend these ideas to the subject at hand, we can hypothesize the simultaneous interaction of related concepts and stereotypic beliefs in the model depicted in Figure II:

FIGURE II⁹¹

A CONSTRAINT NETWORK FOR THE CONCEPTS OF HOMELESSNESS AND POVERTY



In prose form: poor activate both *Black* and *welfare*, which in turn activate *individual* attributions. But *homeless* activates *Black* far less, and probably inhibits *welfare* (most people believing—incorrectly—that welfare recipients can always avoid homelessness), thereby activating individualist attributions less and *structural problems* more.

In sum, observed differences between causal attributions of homelessness and of poverty may be entirely, as they seem. These differences may be traceable to the work of advocates and the operation of the mass media in the early 1980’s. It is also possible, however, that these differences are not entirely as they seem, and that most of the differences in how the causes of homelessness and poverty are perceived are accounted for by differences in the assumed racial composition of the categories activated in survey questions about “homelessness” or “poverty.”

Like most important questions, an answer requires empirical investigation. No doubt there is *some* connection between differential racialization of the two categories; an equally important question is: how *much*? I hope in future work to begin to answer this question, using vignette studies in which the race, poverty, and homeless status of the characters in the vignettes are systematically varied and controlled.

VI. IMPLICATIONS FOR ADVOCATES

Near the end of any article written in part for practicing lawyers and other pragmatists, both author and reader come to the inevitable question: “So what?” What are the implications for the ways in which lawyers and other advocates go about their work? The following are four implications I take from the evidence already discussed and contemporary attribution theory.

A. Effective Advocacy and Attribution

Every skilled lawyer already knows that advocacy is aimed at audiences, and that one must know something about how each audience thinks the world works, whether in order to craft an opening statement or to design an entire advocacy campaign. The decisions of jurors and of policy makers are the product both of preexisting beliefs and of the information and reframings that advocates bring to them. No careful lawyer would consider how to present a case without taking into account those preexisting beliefs, particularly as to the crucial dimension of causation.

Most lawyers think they know what those preexisting beliefs are, based on their common experience and intuition. In this respect, lawyers are often wrong—as I was in 1994 in assuming that individualist attributions regarding poverty would carry over to homelessness.⁹² But lawyers can learn about the actual contours of preexisting attributions and attitudes. In the case of homelessness, for example, we now have a rich literature on the topic produced by skilled and sophisticated scholars, much of it referenced here. Where the empirical evidence has not already been gathered, advocates can work with social scientists to collect and analyze it. Not to do so is akin to trying a case to a jury, having waived *voir dire*.

B. Shaping Attributions

I do not claim to have proven beyond doubt that the work of homeless advocates is responsible for current popular understandings of the causes of homelessness. But it does seem plausible that advocates at least contributed to the ways in which homelessness and its causes came to be understood by the general public, particularly during the period in which homelessness took shape as a social problem. It also seems plausible that the resulting configuration of common beliefs about homelessness has persisted in the culture, long after the initial shaping took place in public discourse. There is evidence from other sources that attributional beliefs about social problems that sometimes crystallize during periods of intense interest can live on for decades. For example, Lawrence Friedman has described how Progressive reformers in New York shaped perceptions of the causes of slum housing into the “persistent model of the evil slumlord.”⁹³ In my experience those attributional beliefs continue quite strongly a century later in the causal understandings of other reformers in Los Angeles.⁹⁴ Advocates, therefore, have perhaps both more opportunities and greater responsibilities than they can now fully appreciate.

C. Opportunity and Opportunism

That advocates can take account of attributional beliefs, and sometimes even shape them, suggests both opportunity and considerable risk. Sometimes the seemingly easiest path leads into the quagmire. A colleague in the National Coalition for the Homeless, tiring of the effort to

“re-present” homeless people in an appealing light to reporters, once suggested that perhaps we should focus attention on “homeless blonde white girls with AIDS who are Vietnam veterans.” The point is that it is important for advocates not to fool themselves into believing that they have achieved real support for policies to help homeless people when those supporting those policies have quite another version of “the homeless” in mind. For support can dwindle, as Martha Burt has written, “when middle-class Americans come face to face with the facts,”⁹⁵ or at least, a different version of the facts than they have hitherto believed. Indeed, one could combine the accounts in Sections IV and V above to argue that to the degree that homeless advocates altered attributional beliefs about homelessness, they may have done so in part by downplaying the great overrepresentation of African Americans in the homeless population.⁹⁶ This has likely had consequences for public discourse about both race and civil rights that advocates never took into account. Hence, the greater responsibility that comes with greater knowledge.

D. Islands of Advocacy: Whatever Happened to “The Movement”?

Which brings me to the last lesson I take from the evidence and history recounted here. In recent times, reformers and advocates have tended to work on fairly narrowly construed issues. Indeed, even within homeless advocacy, most advocates now conceive themselves as advocates for subgroups: homeless families, veterans, the chronically mentally ill, and so on. Among reformers generally, Balkanization—or at least a fairly fine division of political labor by issues and groups—is seemingly universal. Advocates tend to specialize: on race discrimination and affirmative action, gender equity, low wage work, welfare reform, child care, housing, education, trade globalization, and so on. In truth, there may never have been a time when advocacy was conceived differently, when social advocacy tended to link issues rather than to distinguish them ever more finely. The cultural mythology of progressives locates such episodes in the Progressive era, in the 1930’s and again in the 1960’s, but an empirical assessment of the myth is well beyond my scope here. On the other hand, advocacy on behalf of homeless people has always had significant potential—sometimes fulfilled—for bringing together people whose initial interests were more narrowly focused on housing issues, welfare, education, and so on. But most advocacy work remains more narrowly focused and rarely framed in a way that enables those most concerned about housing or AIDS or mental health or welfare reform to understand their daily work as part of a common, and greater, enterprise.

It should also be clear by now that homelessness is not a social problem that can be either understood or ameliorated without attending more directly to a range of other problems. In particular, it is clear that we cannot deal with homelessness in the twenty-first century without trying as hard as we can to solve what W.E.B. DuBois characterized as “The problem of the twentieth century . . . the problem of the color line.”⁹⁷

The problem of homelessness *is* the problem of civil rights, as that concept was itself initially constructed in the century just ended, and not merely as a right to be let alone, free of police harassment. And, of course, homelessness *is* many other problems as well. And none of those problems can be understood or solved in isolation either. We may not have a grand theory of everything, as Marxism was once misunderstood to be. But neither can we merely tend our separate gardens of concern. By their very existence on the streets of America, and increasingly on the streets of other advanced countries as well, homeless people continue to silently signal that *all* is not well. How we collectively understand and respond—and whether we can respond collectively at all—will continue to define this generation of advocates and the next.

Notes

* Professor of Law, University of California at Los Angeles School of Law. Earlier versions of this paper were presented at the International Conference on Public Spaces and Socio-Spatial Exclusion, Svo Paulo, Brazil, November 1998, and at a conference and meeting of the ABA Commission on Homelessness & Poverty at St. Louis University in March 2000. I am grateful to the participants in both conferences for helpful criticisms. Thanks also to Florence Roisman for correcting some glaring historical errors in an earlier version. Dave Lin provided exceptional research assistance and many useful ideas in conversation. All the remaining errors are, of course, mine alone.

1. Michael W. Morris et al., *Attribution Theory*, in THE MIT ENCYCLOPEDIA OF THE COGNITIVE SCIENCES 45 (Robert A. Wilson & Frank C. Keil eds., 1999).

2. Paul Koegel, M. Audrey Burnam & Jim Baumohl, *The Causes of Homelessness*, in HOMELESSNESS IN AMERICA 24-33 (James Baumohl ed., 1995) (arguing for an “integrated” perspective that takes account both of individual variation and social context).

3. I have written briefly elsewhere about the pragmatist’s need to situate such inquiries in the context of what might be done about homelessness. Gary Blasi, *What’s A Theory For?: Notes On Reconstructing Poverty Law Scholarship*, 48 U. MIAMI L. REV. 1063 (1994).

4. Good introductory texts include ZIVA KUNDA, *SOCIAL COGNITION: MAKING SENSE OF PEOPLE* (1999); SUSAN T. FISKE & SHELLEY E. TAYLOR, *SOCIAL COGNITION* (2d ed. 1991).

5. See Section IIIA below for a summary of the evidence on this point.

6. As noted below, this tendency is so strong that it came to be described as the “Fundamental Attribution Error,” thought to be a pervasive feature of human cognition—until cross-cultural and developmental studies demonstrated that it is a learned feature of the culture.

7. “The earliest use of the expression “act of God” in law books is by Lord Coke who applied it to death, sudden tempest, and the like. Lord Mansfield later introduced the idea which has been at the basis of the modern conception of the term—namely, that an act of God is one which could not happen by human intervention.” 1 AM. JUR. 2d *Act of God* § 1 (1994).

8. Deborah A. Stone, *Causal Stories and the Formation of Policy Agendas*, 104 POL. SCI. Q. 281 (1989).

9. MURRAY EDELMAN, *CONSTRUCTING THE POLITICAL SPECTACLE* 12 (1988).

10. *Id.*

11. Nancy Pennington & Reid Hastie, *Explaining the Evidence: Tests of the Story Model for the Juror Decision Making*, 62 J. PERSONALITY & SOC. PSYCHOL. 189 (1992).

12. ARTHUR J. LURIGIO ET AL., *Understanding Judges’ Sentencing Decisions: Attributions of Responsibility and Story Construction* 91 (Linda Heath et al., eds., 1994).

13. In most cases, the causal stories are seen as mutually exclusive: few people seem able to grasp the possibility that the police might plant evidence implicating a guilty man. The very notion of “framing” is associated with the innocence of the framed. That concept seems, somehow, to fit less well a scenario in which police officers, concerned that a person they believe guilty may escape justice, plant additional evidence.

14. Thus, my colleague Peter Arenella, who was employed by ABC News and others to watch the Simpson trial closely, accounted for the verdict partly in these terms:

Everybody interprets information from their own point of view and their perspective reflects in part their sense of how the world works. Race, gender, and class help to define a person’s story of how the world works because these three factors generate so many of one’s social experiences. Jurors rely on these stories in interpreting evidence at a criminal trial. Numerous studies point out that “each juror, using her own life experiences, organizes the information she receives about a case into what for her is the most plausible account of what happened and then picks the verdict that fits that story best. Jurors may interpret the same evidence differently depending on which stories they choose.” [citing Nancy J. King, *Postconviction Review of Jury Discrimination: Measuring the Effects of Juror Race on Jury Decisions*, 92 MICH. L. REV. 63, 78 (1993).]

Peter Arenella, *Explaining The Unexplainable: Analyzing The Simpson Verdict*, 26 N.M. L. REV. 349, 355 (1996).

15. HENRY GEORGE, *PROGRESS AND POVERTY* 427 (1937). George’s ideas are kept in circulation by very 21st century means. See Henry George, *Taxes: What are They Good For?*, at <http://www.henrygeorge.org> (visited Mar. 2, 2001).

16. Lee Ross, *The Intuitive Psychologist and His Shortcomings: Distortions in the Attribution Process*, in 10 *ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY* 174-221 (L. Berkowitz ed., 1977). See generally SUSAN T. FISKE & SHELLEY E. TAYLOR, *SOCIAL COGNITION* 67-72 (2d ed. 1991).

17. Michael W. Morris & Kaiping Peng, *Culture and Cause: American and Chinese Attributions for Social and Physical Events*, 67 J. PERSONALITY. SOC. PSYCHOL. 949-971 (1994). See generally G.J.O. Fletcher & C. Ward, *Attribution Theory and Processes: A Cross-cultural Perspective*, in THE CROSS CULTURAL CHALLENGE TO SOCIAL PSYCHOLOGY (M.H. Bond ed., 1988).

18. See, e.g., WILLIAM RYAN, *BLAMING THE VICTIM* 6-7 (1976).

19. The literature on these topics is summarized briefly in Anup K. Singh, *Attribution Research on Poverty: A Review*, 32 PSYCHOLOGIA 143 (1989). There is a good deal of cross-cultural and other empirical work on the issue as well. See, e.g., Goktug Morcol, *Lay Explanations for Poverty in Turkey and their Determinants*, 137 J. SOC. PSYCHOL. 728 (1997); Shanto Iyengar, *Framing Responsibility for Political Issues: The Case of Poverty*, 12 POL. BEHAV. 1 (1990); Serge Guimond & Douglas Palmer, *Type of*

Academic Training and Casual Attributions for Social Problems, 20 EUR. J. SOC. PSYCHOL. 61 (1990); Stuart C. Carr & Malcolm MacLachlan, *Actors, Observers, and Attributions for Third World Poverty: Contrasting Perspectives from Malawi and Australia*, 139 J. SOC. PSYCHOL. 189 (1998).

20. Robert J. Pellegrini et al., *Political Identification and Perceptions of Homelessness: Attributed Causality and Attitudes on Public Policy*, 80 PSYCHOL. REP. 1139 (1997).

21. Bruce G. Link et al., *Public Knowledge, Attitudes, and Beliefs About Homeless People: Evidence for Compassion Fatigue*, 23 AM. J. COMM. PSYCHOL. 533, 542 (1995).

22. Barrett A. Lee et al., *Public Beliefs About the Causes of Homelessness*, 69 SOC. FORCES 253, 262 (1990).

23. *Id.* at 257.

24. *Id.* at 262.

25. *Id.* at 257.

26. *Id.* at 262.

27. Paul A. Toro & Dennis M. McDonell, *Beliefs, Attitudes, and Knowledge About Homelessness: A Survey of the General Public*, 20 AM. J. COMM. PSYCHOL. 53, 60 n.1 (1992).

28. *Id.* at 61.

29. GALLUP ORGANIZATION, HOMELESS BUT NOT HELPLESS: A LOS ANGELES MISSION REPORT ON WHAT AMERICANS BELIEVE ABOUT HOMELESS PEOPLE, THEIR PROBLEMS, AND POSSIBLE SOLUTIONS, at <http://www.iugm.org/statistics/homerpt1.html> (Feb. 10, 2000).

30. George Wilson, *Toward a Revised Framework for Examining Beliefs About the Causes of Poverty*, 37 SOC. Q. 413 (1996).

31. *Id.* at 419.

32. Pellegrini, *supra* note 20, at 1146.

33. Adrian Furnham, *Why Are the Poor Always With Us? Explanations for Poverty in Britain*, 21 BRIT. J. SOC. PSYCHOL. 311 (1982).

34. Serge Guimond & Douglas L. Palmer, *Type Of Academic Training And Casual Attributions For Social Problems*, 20 EUR. J. SOC. PSYCHOL. 61 (1990).

35. Barrett A. Lee et al., *Are the Homeless to Blame: A Test of Two Theories*, 33 SOC. INQ. 535, 541 (1992).

36. Toro & McDonell, *supra* note 27, at 73.

37. Pellegrini et al., *supra* note 20, at 1143.

38. Jo Phelan et al., *The Stigma of Homelessness: The Impact of the Label "Homeless" on Attitudes Toward Poor Persons*, 60 SOC. PSYCHOL. Q. 323 (1997).

39. *Id.* at 331.

40. *Id.* at 329.

41. *See, e.g.*, Walter Kintsch, *The Role of Knowledge in Discourse Comprehension*, 95 PSYCHOL. REV. 163 (1987). *See generally* T. A. VAN DIJK & W. KINTSCH, STRATEGIES OF DISCOURSE COMPREHENSION (1983).

42. *See generally* JOE R. FEAGIN, SUBORDINATING THE POOR (1975); Carr & MacLachlan, *supra* note 19, at 189; David J. Harper, *Accounting for Poverty: From Attribution to Discourse*, 6 J. COMMUNITY & APPLIED SOCIAL PSYCHOL. 249 (1996); Patrick C.L. Heaven, *Economic Locus of Control Beliefs and Lay Attributions of Poverty*, 41 AUSTL. J. PSYCHOL. 315 (1989); Janak Pandey et al., *Right-left Political Ideologies and Attribution of the Causes of Poverty*, 12 EUR. J. SOC. PSYCHOL. 327 (1982); Furnham, *supra* note 33, at 311.

43. Amos Tversky & Daniel Kahneman, *Availability: A Heuristic for Judging Frequency and Probability*, 5 COG. PSYCHOL. 207 (1973).

44. Gary Blasi, *And We Are Not Seen: Ideological and Political Barriers to Understanding Homelessness*, 37 AM. BEHAV. SCI. 563, 581 (1994).

45. The term "new homeless" was quickly adopted both by social scientists and the popular media. *See, e.g.*, Constance Holden, *Homelessness: Experts Differ on Root Causes*, 232 SCIENCE 569 (1986); *The Shanty Builders*, PEOPLE, Feb. 17, 1986, at 94. The latter article demonstrates in its opening paragraph how far the framing had gone in the popular (as in PEOPLE) literature:

This is the final article in PEOPLE's series on the homeless in America, who now number two million by some estimates. We have looked at the plight of 95 percent of these men and women—the "new homeless"—people suddenly out of work, out of housing they can afford or discharged from mental hospitals without a place to go. This concluding story describes the life of more familiar figures, the country's hoboes. Ironically, although they make up only 5 percent of the homeless population nowadays, they remain the stereotype for all.

Id.

46. *See generally* CHRISTINA SHEEHAN GOLD, THE CHANGING FACE OF HOMELESSNESS: JOHN STEINBECK & CAREY MCWILLIAMS (1998), abstract available at <http://www.sjsu.edu/depts/steinbec/abstract.html> (Feb. 12, 2000).

47. MARTIN GLENS, WHY AMERICANS HATE WELFARE 28 (1999) (comparing attitudes regarding public spending for the unemployed, the poor, the elderly, welfare, and other social needs).

48. *Id.* at 32-39.

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49. Leda Cosmides, *The Logic of Social Exchange: Has Natural Selection Shaped How Humans Reason? Studies with the Wason Selection Task*, 31 COGNITION 187 (1989).
50. See, e.g., MARY ELLEN HOMBS & MITCH SNYDER, HOMELESSNESS IN AMERICA: A FORCED MARCH TO NOWHERE (1982). Victoria Rader has also written a sympathetic account of CCNV's work in SIGNAL THROUGH THE FLAMES: MITCH SNYDER AND AMERICA'S HOMELESS (1986).
51. Candor requires the disclosure that I was then a member, and later President, of the Board of Directors of the National Coalition for the Homeless.
52. See, e.g., *Homeless Ranks Swell*, U.S. NEWS & WORLD REPORT, Feb. 1987, at 10.
53. Robert Hayes, *Litigating on Behalf of Shelter for the Poor*, 22 HARV. C.R.-C.L. L. REV. 79, 80 (1987).
54. George Wilson, *Toward A Revised Framework For Examining Beliefs About The Causes Of Poverty*, 37 SOC. Q. 413 (1996).
55. *Id.* at 425.
56. Annette Benedict et al., *Attitudes Towards the Homeless in Two New York City Metropolitan Samples*, 17 J. VOLUNTARY ACTION RES. 90, 92 (1998).
57. Lee et al., *supra* note 35, at 547.
58. *Id.*; Stephen Hilgartner & Charles L. Bosk, *The Rise and Fall of Social Problems: A Public Arenas Model*, 94 AM. J. SOC. 53 (1988).
59. Wilson, *supra* note 54, at 413.
60. *Id.*
61. Thomas J. Main, *The Homeless of New York*, 72 THE PUBLIC INTEREST 3, 28 (1986).
62. Thomas J. Main, *Analyzing Evidence for the Structural Theory of Homelessness*, 18 J. URB. AFF. 449, 452 (1996).
63. Lucie White, *Representing The Real Deal*, 45 U. MIAMI L. REV. 271, 312 (1991) (arguing that "'Homelessness' is an intrinsically negative way to conceptualize shelter uncertainty. It too easily suggests images of absence and depletion, of defeated human beings.").
64. Wes Daniels, *'Derelicts,' Recurring Misfortune, Economic Hard Times and Lifestyle Choices: Judicial Images of Homeless Litigants and Implications for Legal Advocates*, 45 BUFF. L. REV. 687 (1997).
65. *Id.* at 698. Notably the first "homeless case," Callahan v. Carey No. 79-42582 (N.Y. Sup. Ct. 1979), in which, as Daniels notes, the trial court judge referred to those before him no less than 7 times in 900 words as "derelicts."
66. *Id.* at 696 (citing Hodge v. Ginsberg, 303 S.E. 2d 245, 250 (W. Va. 1983)).
67. *Id.* (citing Pottinger v. City of Miami, 810 F. Supp. 1551, 1564 (S.D. Fla. 1992)).
68. *Id.* (citing Tobe v. City of Santa Ana, 27 Cal. Rptr. 2d 386, 389 (Ct. App. 1994)), *rev'd*, 892 P.2d 1145 (Cal. 1995); Church v. City of Huntsville, No. CIV.A.No. 93-C-1239-S, 1993 WL 646401, at *2 (N.D. Ala. Sept. 23, 1993), *vacated and remanded*, 30 F.3d 1332 (11th Cir. 1994).
69. *Id.* at 708.
70. There is some controversy about whether categories are represented by prototypes, by sets of exemplars, or whether in fact such an account of categories can fully account for all the kinds of categories people use. See, e.g., Brian H. Ross & Valerie S. Makin, *Prototype Versus Exemplar Models in Cognition*, in THE NATURE OF COGNITION 205-241 (1999).
71. Edward E. Smith, *Categorization*, in THINKING: AN INVITATION TO COGNITIVE SCIENCE 44-46 (Daniel N. Osherson & Edward E. Smith eds., 1991).
72. Eliot R. Smith & Michael A. Zarate, *Exemplar-Based Model of Social Judgment*, 99 PSYCHOL. REV. 3 (1992).
73. David L. Hamilton & Steven J. Sherman, *Perceiving Persons and Groups*, 103 PSYCHOL. REV. 336, 349 (1996).
74. *Id.* (citing M.B. Brewer & A.S. Harasty, *Seeing Groups as Entities: The Role of Perceiver Motivation*, in 3 HANDBOOK OF MOTIVATION AND COGNITION: THE INTERPERSONAL CONTEXT (R. Sorrentino & E.T. Higgins eds., 1996)).
75. Vincent Y. Yzerbyt et al., *Group Entitativity and Social Attribution: On Translating Situational Constraints into Stereotypes*, 24 PERSONALITY & SOC. PSYCHOL. BULL. 1089 (1998).
76. There is sometimes significant evidence of social categorization and entitativity in the language people use. I do not recall the first time I ever read or heard the term, "the homeless," but I recall an immediate sense of unease, one more easily explained to others, perhaps, by analogy to terms like "the Irish," or "the Jews."
77. An early example is A.M. Collins & E.F. Loftus, *A Spreading-activation Theory of Semantic Processing*, 82 PSYCHOL. REV. 407 (1975). This "connectionist" paradigm is now pervasive throughout cognitive science, including social psychology.
78. John A. Bargh et al., *Automaticity of Social Behavior: Direct Effects of Trait Construct and Stereotype Activation on Action*, 71 J. PERS. & SOC. PSYCH. 230 (1996).
79. For an excellent study of the development of welfare policy and the complexity of attitudes toward welfare, see JOEL F. HANDLER & YEHESKEL HASENFELD, THE MORAL CONSTRUCTION OF POVERTY: WELFARE REFORM IN AMERICA (1991).
80. GILENS, *supra* note 47.
81. *Id.* at 140.
82. Kim Hopper & Norweeta G. Milburn, *Homelessness Among African Americans: A Historical and Contemporary Perspective*, in HOMELESSNESS IN AMERICA 123 (Jim Baumohl ed., 1996) (summarizing more than 60 studies finding that African Americans comprise an average of 39-44% of the homeless population in the samples studied); Susan Gonzalez Baker, *Homelessness and the Latino*

Paradox, in HOMELESSNESS IN AMERICA 133 (Jim Baumohl ed., 1996) (comparing the racial/ethnic composition of samples of homeless people in 24 studies conducted in 18 U.S. cities to the general population data for the same metropolitan areas).

83. Toro & McDonell, *supra* note 27, at 64.

84. GALLUP ORGANIZATION, *supra* note 29, at 26.

85. Arthur Whaley & Bruce G. Link, *Racial Categorization and Stereotype-based Judgments About Homeless People*, 28 J. APP. SOC. PSYCHOL. 189 (1998). The study by Whaley and Link, using national sample survey data, examined the relationship between estimates of the proportion of different racial groups among the homeless population and beliefs about homeless people, including their perceived dangerousness and the degree to which “laziness/irresponsibility” is a cause of homelessness. Their data and regression analyses are hard to interpret because of the research design. On the one hand, they find that subjective estimates of the percentage of African Americans in the homeless population correlates with the perceived dangerousness of homeless people. *Id.* at 197. But they find that a positive correlation between subjective estimates of the percentage of African Americans and belief that laziness/irresponsibility causes homelessness disappears when they control for “other psychological variables.” One of those “other psychological variables” is the “extent to which respondents believe that homelessness is caused by structural factors.” *Id.* at 194. Since structural attributions and attributing homelessness to laziness or irresponsibility are, almost by definition, highly inter-correlated, it is difficult to interpret regression equations in which they are on either side of the equation.

86. Wilson, *supra* note 54, at 421.

87. *Id.* at 423.

88. H.A. Sagar & J.W. Schofield, *Racial and Behavior Cues in Black and White Children’s Perceptions of Ambiguously Aggressive Acts*, 39 J. PERS. & SOC. PSYCHOL. 590 (1980) (cited in Paul Thagard & Ziva Kunda, *Making Sense of People*, in CONNECTIONIST MODELS OF SOCIAL REASONING AND SOCIAL BEHAVIOR 7 (Stephen J. Read & Lynn C. Miller eds., 1998)).

89. Ziva Kunda & Paul Thagard, *Forming Impressions From Stereotypes, Traits, and Behaviors: A Parallel-Constraint-Satisfaction Theory*, 103 PSYCHOL. REV. 284, 290 (1996). Thick lines indicate a positive, or excitatory link; thin dotted lines indicate a negative or inhibitory link.

90. Thagard & Kunda, *Making Sense of People*, *supra* note 88, at 8.

91. Solid lines indicate positive or excitatory links; thicker lines indicate stronger links. Broken lines indicate negative or inhibitory links. This graph is for illustration purposes only. It does not reflect a formal model that has been tested, although it sufficiently simple that its behavior can be predicted by inspection. At the moment, this model of the role of race and welfare in attributional beliefs about poverty and homelessness is merely empirically plausible, based on a compilation of different existing studies. It would be possible to test the model more directly, by vignette studies in which subjects respond to hypothetical situations in which the characteristics of the fictional protagonist vary.

92. Blasi, *supra* note 44, at 41.

93. LAWRENCE M. FREIDMAN, GOVERNMENT AND SLUM HOUSING: A CENTURY OF FRUSTRATION 42 (1968). Friedman writes, “It was convenient . . . to assume that landlords were a class of evil men, overcharging ignorant tenants and callous to the point of criminality.” *Id.* at 40.

94. Since 1996, I have served as research director, and later member, of a Los Angeles Citizens’ Blue Ribbon Committee on Slum Housing, whose work resulted in substantial reforms in the way slum housing is regulated in Los Angeles. Hector Tobar, *Council OKs Apartment Inspection Reform Plan*, LOS ANGELES TIMES, July 1, 1998, B-1. Although my students and I presented as full an account as we could of all the factors contributing to the increase in slum housing, members of the Committee—all sophisticated lawyers, landlords, tenant activists and political figures—quickly gravitated toward a law enforcement focus aimed at “slumlords.”

95. MARTHA BURT, OVER THE EDGE: THE GROWTH OF HOMELESSNESS IN THE 1980’S, at 81 (1992).

96. Blasi, *supra* note 44, at 575-579.

97. See generally W.E.B. DUBOIS, THE SOULS OF BLACK FOLK 1903.

THE LAWYER AS ABOLITIONIST: ENDING HOMELESSNESS AND POVERTY IN OUR TIME

FLORENCE WAGMAN ROISMAN*

“We see dimly in the Present what is small and what is great,
Slow of faith how weak an arm may turn the iron helm of fate,
But the soul is still oracular; amid the market’s din. . . .”¹

Homelessness and poverty are “formidable institutions which appear[] to be . . . invulnerable” and “could never be abolished.”² Ending homelessness and poverty is said to be “economically unfeasible.”³ People who seek to end homelessness and poverty are “fringe figure[s],”⁴ “very remote from the mainstream,”⁵ “a powerless and marginal handful”⁶ of reformers, “without influence or position, poor and little known, strong only in their convictions and faith in the justice of their cause,”⁷ “a very small minority”⁸ that is “despised, scorned, and actively opposed.”⁹ Their campaign seems “absurd.”¹⁰

Acknowledging this, I nonetheless urge that lawyers focus on abolishing homelessness and the cause of homelessness: poverty. I use the word “abolition” deliberately, to make the connection to the battles against slavery in the nineteenth century and for civil rights in the twentieth century.¹¹ I urge this focus not only to inspire those who battle against homelessness and poverty with the prospect of ultimate victory, but also because defining the relief one seeks is critically important to determining what relief one will achieve.¹²

As “impregnable,”¹³ ineradicable, and intractable¹⁴ as homelessness and poverty seem today,¹⁵ so impregnable, ineradicable, and intractable did slavery seem in the nineteenth century and segregation in the twentieth.¹⁶ As marginalized, powerless, and quixotic as seem those who fight against homelessness and poverty today, so marginalized, powerless, and quixotic did the abolitionists appear in the nineteenth century and the civil rights workers in the twentieth. Indeed, each of the statements that begins this article was made, not of homelessness or poverty or segregation, but of human chattel slavery in the United States.¹⁷ Just as the “powerless and marginal handful” of abolitionists witnessed the immediate, unconditional end of slavery, and the quixotic, idealistic reformers of the twentieth century saw the end of de jure segregation,¹⁸ so should success come to those who will battle now not simply to ameliorate but to eliminate homelessness and poverty in the United States.

I respect and honor any action taken by anyone to alleviate the suffering of a person who is homeless, hungry, or otherwise enduring the evil effects of poverty. Immense energy is devoted, by volunteers and paid workers, to feed, shelter, and clothe poor people, to provide health care and other essential services to them, to protect them from the ravages of the criminal “justice” system, and otherwise to succor them in various ways. All of this is admirable, but it is not enough. Time, thought, and energy also must be dedicated to reforming the economic, social, political, and cultural structures that allow homelessness and poverty to exist. And lawyers have skills that are especially useful for this work.¹⁹

This article presents some thoughts about that effort. Part I outlines ways in which the battle against homelessness and poverty is like the battles against slavery and segregation. Part II shows that solutions to the problems of homelessness and poverty are not more radical than solutions to slavery and segregation. Part III considers what special contributions lawyers might make to the abolition of homelessness and poverty.

I. THE BATTLE TO ABOLISH HOMELESSNESS AND POVERTY IS LIKE THE BATTLES TO ABOLISH SLAVERY AND SEGREGATION

If I may do so without being disrespectful, I want to suggest that homelessness and poverty are, for our era, the equivalent of slavery and segregation: institutions that blight and stunt human life, causing misery, illness, and death.²⁰ Indeed, the battle against homelessness and poverty is in several ways a continuation of the movements to abolish slavery and de jure and de facto segregation.

First, homelessness and poverty disproportionately affect the same kinds of people for whom the nineteenth and twentieth century abolitionists fought: people of color, predominantly African-Americans and Latinos.²¹ The problems that beset African-Americans were most obviously problems of political freedom, but also were economic problems, and the economic problems were not addressed effectively. The original abolitionists knew that their battle was incomplete unless the freed slaves were accorded economic redress—hence, the famous “40 acres and a mule,” recognized as necessary but never provided.²² The NAACP’s original “emphasis . . . on civil and political rights of Negroes to the exclusion of their economic problems was to set the tone of the new organization for many years to come.”²³ In 1966, Dr. King admonished that “America’s greatest problem and contradiction is that it harbors 35 million poor at a time when its resources are so vast that the existence of poverty is an anachronism.”²⁴ Dr. King’s movement for economic justice, symbolized by the Poor People’s March, was frustrated by his death in Memphis, where he had gone to support black sanitation workers.²⁵

That the battle against homelessness and poverty is part of the earlier struggles was acknowledged by the National Council of Churches and other religious leaders recently when they issued a “covenant to overcome poverty.” The covenant declares that “just as some of our religious forebears decided no longer to accept slavery or segregation, we decide to no longer accept poverty and its disproportionate impact on people of color.”²⁶

A second similarity is that each struggle challenges widely-held views about private property. Those who urged an end to holding human beings in chattel slavery were confronted by the argument that the property rights of slaveholders had to be respected.²⁷ Part of the opposition to the civil rights movement was the argument that the owners of restaurants, hotels, department stores, and housing had the right to serve, house, accommodate, employ, and do business with whomever they chose.²⁸

Efforts to ameliorate homelessness and poverty, too, often are met with arguments based on a broad conception of property rights. The arguments are that services for homeless people should not locate near homes and businesses whose owners fear reduced property values and, more generally, that money should not be redistributed from wealthier people to enable every human being to live decently. To challenge homelessness and poverty means to challenge a system of private property and distribution that makes many people, including many of those who read these words, quite comfortable.

A third element common to the three campaigns is that each is fundamentally a moral crusade. It may seem now that the immorality of slavery and segregation are evident, but there were powerful arguments when these issues were salient that slavery and de jure segregation were positive goods.²⁹ Even in this era of considerable indeterminacy about morality, a strong case can be made for the immorality of withholding available sustenance from at least children and other categories of people understood to be unable to care for themselves.³⁰ There is some consensus that it is morally unacceptable that millions of men, women, and children in the United States go to sleep hungry at night, and have no real bed on which to sleep; that people who need treatment for mental or physical health problems or substance abuse, or relief from domestic violence, or subsidized housing—all are met not by the needed services but by waiting lists; that physical and mental illnesses that we know how to treat are allowed to ravage and kill

people because the people cannot afford the treatments that are available; that we provide to the old, the blind, and the disabled, and to the needy parents of dependent children, stipends that are far below what the federal government has identified as a “poverty threshold”—stipends egregiously inadequate to enable the families to afford decent housing; that, in many parts of the United States, two people working full time at minimum wage jobs do not earn enough to afford what HUD says is a fair market rent for a two bedroom unit; that people who work full-time do not earn enough to take their families out of poverty.³¹

Today, we all condemn slavery and de jure segregation, and we are sure that we would have been among those fighting those obvious injustices. But in the nineteenth century, many lawyers and others defended slavery,³² or urged that gradualism mark its elimination, and the twentieth century laws against segregation had many defenders.³³ I often hear students and young colleagues express nostalgia for the civil rights struggle of the early 1960’s, regretting that they are not able to make their mark in the crusade for justice as the 1960’s civil rights workers did. But what these students and colleagues need to see is that the current challenge is as urgent and life-defining as the 1960’s civil rights battle was, and that the glory of those crusaders can be earned now by people who will make the same commitment to fighting the battle as it presents itself today—to conquer homelessness and poverty.³⁴

II. SOLUTIONS TO THE PROBLEMS OF HOMELESSNESS AND POVERTY ARE NOT MORE RADICAL THAN WERE SOLUTIONS TO THE PROBLEMS OF SLAVERY AND SEGREGATION

What must be done to end homelessness and poverty is not more dramatic or radical than what was required to end slavery and de jure segregation.

To end slavery required a civil war, a series of amendments to the federal constitution,³⁵ a succession of civil rights acts,³⁶ and a general reconstruction of the governance of the United States.³⁷ To end de jure segregation required extraordinary campaigns of direct action and great personal courage,³⁸ substantive new local, state, and federal legislation,³⁹ reinterpretation of the 1866 Civil Rights Act,⁴⁰ and countless law suits. The battle against de facto segregation still has not been concluded.

Ending homelessness and poverty could be accomplished much more easily.

Homelessness and poverty do not need to exist; we understand their nature and have the tools to prevent them. Homelessness, after all, was not a major problem in the United States until about 1980.⁴¹ As we were able to assure housing to most people before 1980, we could do so now.

Similarly, poverty can be substantially reduced, if not eliminated, and its effects can be greatly alleviated, by changes in laws and social policies.⁴² There is no lack of knowledge of how to do this—it has been done in other countries.⁴³ The need is to develop the political will to make this happen. This requires changing social understanding—making homelessness and poverty unacceptable, as slavery and de jure segregation were made unacceptable. It requires attention to the issues of race and gender that distort perceptions of homelessness and poverty.⁴⁴ There must be a “paradigm shift,” an “abnormal discourse that puts homelessness and poverty beyond the pale.”⁴⁵

We know that the two keys to ending homelessness and poverty are housing and income. “Every study that has looked has found that affordable, usually subsidized housing, prevents homelessness more effectively than anything else. This is true for all groups of poor people, including those with persistent and severe mental illness and/or substance abuse.”⁴⁶ We must establish that governments have an obligation to provide housing or subsidies for housing for very low income people. Just as we need universal health insurance, we need universal housing assurance. In the short term, we must prevent demolition without adequate replacement housing; restore the one-for-one replacement requirement;⁴⁷ and lobby for increased federal, state, and

local subsidies for very low income people, subsidies to match those provided for people who are rich.⁴⁸

With respect to income, there are at least “five branches of law [that] determine the social minimum wage and benefits package: employer mandates, government contracting and purchasing standards, government benefits programs, immigration and international trade rules,” and “the background regime of legal entitlements and prohibitions that structure power relations between employers and employees”⁴⁹ Workers’ pay should be keyed to living costs, so that one who works full-time earns enough to support a family decently. We need to increase the minimum wage⁵⁰ and mandated benefits. The Earned Income Tax Credit should be increased. Working conditions must be improved.⁵¹ Government agencies all should be required to pay a housing wage—that is, a wage that enables a full-time worker to afford appropriate housing, with not more than 30% of her or his income.⁵² Income maintenance programs must be improved so that they provide more money and reach more eligible people.⁵³ Increasing income is important not only so that homeless people themselves have more income, but also so that low-income families have enough to help to care for others who are destitute.⁵⁴

III. WHAT THEN SHOULD WE LAWYERS DO?

I do not think one ever knows with certainty what act will produce what result: one cannot predict with confidence which actions will make the greatest contribution to ending homelessness and poverty. Lawyers play many different roles, personally and professionally. We can function as counselors or as advocates, in judicial, administrative, legislative, or other forums, at the local, state, and federal levels. In some cases, effective attention to the discrete problems of an individual may lead to extensive societal consequences.⁵⁵ In other situations, working with or supporting a charismatic leader may have immense impact.⁵⁶ In yet other circumstances, lawyers may have the greatest impact by supporting groups of people who take direct action of various forms.⁵⁷

Part of what determines what we will do is each individual’s particular combination of temperament, inclination, and skill. Part is the mystery of chance or providence: being in a particular place at a particular time and having the courage to say “yes” to the unusual.⁵⁸ This requires creativity, flexibility,⁵⁹ perseverance, and communication with others.⁶⁰ We must be ready to support people and movements when they arise.⁶¹

While we cannot know with certainty what will have the greatest impact, we ought to be thinking about what will do so, and we ought to choose our activities, taking into account temperament and circumstance, based on our best judgments about what will do the most not only to treat symptoms of inequality and deprivation but to eliminate inequality and deprivation. We must be prepared to make hard choices. We have limited resources, and cannot do everything; we must be strategic, and focus our attention on advocacy that is likely to create the greatest improvement.⁶² Whatever we may choose to do, in all that we do we must keep in mind and work toward the ultimate objective of radically changing a system that tolerates (or requires) the existence of extreme deprivation and inequality with respect to the essentials of human existence.

We do well to ponder the relative values of reform and radicalism. Reformist measures may bring comfort to particular individuals, both needy beneficiaries and people who want to do good without undermining a system that has treated them well.⁶³ There always is a danger “that *ad hoc* alliances for partial ends may under certain circumstances strengthen the hegemony of the enemy by legitimizing the institutions, and the ideological justifications of those institutions, by means of which the enemy exercises his hegemony.”⁶⁴

In deciding how to abolish homelessness and poverty, we can take lessons from the abolitionists, original and new. We can be educated by their techniques, energized by their

moral fervor, and encouraged by their successes. For the twentieth century abolitionists, as for those of the nineteenth century, “the aim . . . was to fight the ‘new slavery’ by means which were then considered radical—non-violent agitation, well-publicized protest, propaganda, and legal action.”⁶⁵

Now, as in those eras, public education is a critical element of the campaign.⁶⁶ Lawyers are trained as wordsmiths: our skills at description and persuasion are well-employed with media and the public as well as with judges, administrators, and legislators.⁶⁷

Lawyers also, of course, can do conventional lawyer tasks, creating and creatively applying legislation,⁶⁸ the domestic use of international legal standards,⁶⁹ and reinterpretation of federal and state constitutions.

A variety of legislative actions would contribute to improving the housing and income situations. Housing subsidies should be increased and focused on those most in need; housing aid should be an entitlement for the poor as well as the rich; the minimum wage and Earned Income Tax Credit should be increased so that they bring workers above poverty – above *real* poverty, which is about twice the current “poverty level.”⁷⁰

With respect to international standards, the critical documents are the Universal Declaration of Human Rights, which provides that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services,”⁷¹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes “the right of everyone to an adequate standard of living . . . , including adequate food, clothing and housing, and to the continuous improvement of living conditions.”⁷² Abolition of homelessness and poverty would be advanced by United States ratification of the ICESCR and by application of the international law norms in domestic litigation.⁷³

We should not despair of reinterpreting the federal constitution.⁷⁴ We have absorbed some damaging legal norms: that poverty is not a suspect classification;⁷⁵ that housing is not a fundamental right;⁷⁶ that the federal constitution does not impose affirmative duties.⁷⁷ But we must challenge those legal principles; we must make fundamental, systemic, radical changes in constitutional interpretation.⁷⁸

These ideas are not more fixed than were the “separate but equal” and “state action” doctrines that had to be abandoned with slavery.⁷⁹ There is a rich legal literature pointing to theories of constitutional analysis that would support the recognition of affirmative obligations, as a matter of either minimum rights or equal rights.⁸⁰ Professor Black argues “that there is, ‘and of Right ought to be,’ a constitutional justice of livelihood.”⁸¹ He advocates “the derivation of a constitutional right to a decent material basis for life [] from the Declaration [of Independence], from the preamble, and from certain parts of the Constitution proper.”⁸²

There was a point when the Supreme Court seemed to be imposing special constraints on classifications that burdened poor people.⁸³ And the recent decision in *Saenz v. Roe*⁸⁴ indicates that such claims can be successful with the current court, at least if they are presented in structural terms.⁸⁵ The principle that underlies strict scrutiny is that a “more searching judicial inquiry” is appropriate when “prejudice” has “curtailed the operation of those political processes ordinarily to be relied upon to protect” people.⁸⁶ This principle classically is applied to “prejudice against discrete and insular minorities,”⁸⁷ but it applies with equal force to prejudice against poor people, for whom the operations of ordinary political processes also are curtailed.⁸⁸

State constitutional provisions hold great promise for attacking homelessness and poverty. The New York Court of Appeals extended a right to shelter to homeless women under equal protection principles after a lower court had entered a preliminary injunction requiring that overnight shelter be provided for homeless men under other standards.⁸⁹ Equal protection principles were applied to benefit homeless women and families in Indiana.⁹⁰ The intermediate appellate court in New York has held that the New York constitution includes a right to

overnight shelter.⁹¹ The Connecticut Supreme Court has come very close to recognizing a state constitutional right to minimal subsistence. In *Moore v. Ganim*,⁹² a four judge majority held that there was no such right; Chief Justice Ellen Peters concurred in the result, but filed a separate opinion explaining that she was “persuaded that the Connecticut constitution includes a governmental obligation to provide a minimal safety net to our poorest residents.”⁹³ Two other members of the court dissented, holding that such a right was embodied in the state constitution.⁹⁴

Similar claims have been presented to the New Jersey courts.⁹⁵ While those claims have not been ruled on by the New Jersey Supreme Court (or accepted by the intermediate appellate court), the New Jersey Supreme Court has held, in the famous Mount Laurel cases,⁹⁶ that the state constitution forbids zoning decisions that “favor rich over poor,”⁹⁷ and Professor John Payne has recently outlined an argument that Mount Laurel actually rests on a state constitutional right to have housing provided—a right that is affirmative though conditional.⁹⁸

These state constitutional arguments can be extended to other states. “[E]very state constitution in the United States addresses social and economic concerns, and provides the basis for a variety of positive claims against the government”⁹⁹; “more than a dozen state constitutions provide explicit protections for the poor.”¹⁰⁰ Those who seek to abolish homelessness and poverty may work to amend state constitutions to add such provisions¹⁰¹ or to implement such provisions as already exist.¹⁰²

What I urge is that antihomelessness advocates always keep our eyes “on the prize.” To produce major social change requires that individuals strive with determination to achieve that goal. Heeding the naysayers will produce nothing useful.¹⁰³ Professor Don Fehrenbacher explained that the 18th century anti-slavery movement “failed, . . . not because its supporters lacked *sincerity*, but rather because they lacked the *intensity* of conviction that inspires concentrated effort and carries revolutions through to success.”¹⁰⁴ “For slavery to be ended there had to be some individual human beings who did what they did. . . . there were some people—a very small number, on the margin of society, condemned and harassed—who nevertheless made it the first order of their life’s business to oppose American slavery, and to insist that it was a grotesque evil that should be eliminated, and . . . in a little over thirty years, it was.”¹⁰⁵ I urge that we do the same to end homelessness and poverty.

The battle is long, and requires constant vigilance, but not to fight would be unpardonable.

Notes

* Professor of Law, and Paul Beam Fellow, Indiana University School of Law-Indianapolis. For stimulating presentations and responses to this and other contributions to this volume, I thank the participants in the symposium sponsored by *The Saint Louis University Public Law Review* and the ABA Commission on Homelessness and Poverty. This article is very much a preliminary work, unworthy even to be called “notes toward” an agenda for continued reform; I hope that it will stimulate further thought, discussion, and exchange of views. I am grateful to Professor Sidney Watson, editor of this collection, for encouraging me to participate in this symposium and begin this assessment; to Mary Ellen Hombs, for making me see the connection between the abolitionists and the campaign of which she has been a leader; to Jonathan D. Asher, for very thoughtful criticism; to Terri Murry-Whalen for excellent research assistance; to the ABA Commission on Homelessness and Poverty, which provided support for that assistance; and to Mary R. Deer, for outstanding secretarial and other aid. All errors and inadequacies are, of course, mine.

This article is dedicated to the memory of Gary Bellow, who enabled and inspired thousands of lawyers to battle effectively for justice for poor people and constantly admonished us to fight for fundamental change.

1. JAMES RUSSELL LOWELL, *THE PRESENT CRISIS* (1844), *reprinted in* 1 *AMERICAN POETRY: THE NINETEENTH CENTURY* 683-84 (Library of America 1993). This poem furnished the title for *The Crisis*, the Journal of the National Association for the Advancement of Colored People (NAACP). See MARY WHITE OVINGTON, *BLACK AND WHITE SAT DOWN TOGETHER: THE REMINISCENCES OF AN NAACP FOUNDER* 67 (1995).

2. See *infra* note 17.

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3. *See id.*
 4. *See id.*
 5. *See id.*
 6. *See id.*
 7. *See infra* note 17.
 8. *See id.*
 9. *See id.*
 10. *See id.*

11. At its founding, the National Association for the Advancement of Colored People often was referred to as the “new abolitionist movement.” *See* CHARLES FLINT KELLOGG, *NAACP: A HISTORY OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE: 1909-1920*, at 90, 139 (1967) (referring to “the new abolition movement, which had as its goal the completion of emancipation”). There were in fact many connections between those who had advocated the immediate abolition of slavery and those involved in the early days of the NAACP. Among the principal founders and early leaders of the NAACP were Oswald Garrison Villard, grandson of William Lloyd Garrison, and Moorfield Storey, who had been secretary to abolitionist Senator Charles Sumner. *See id.* at 5-6 (regarding the Garrison and Villard families); WILLIAM B. HIXSON, JR., *MOORFIELD STOREY AND THE ABOLITIONIST TRADITION* 8-11, 99 (1972) (“Storey, as secretary to Sumner, absorbed the humanitarian concerns and the moralistic approach to politics that characterized the Conscience Whigs of Massachusetts.”). Others’ “lives embraced the two abolition movements.” *See* KELLOGG, *supra*, at 91 (discussing Fanny Garrison Villard, the second William Lloyd Garrison, Francis Jackson Garrison, and Albert E. Pillsbury). Joel Springarn, a crucial leader of the NAACP, deliberately “reached back in time to resurrect the spirit of nineteenth-century Abolitionism, the only major movement in American history which approximated the NAACP’s ideal of equal rights and fair treatment for black Americans Beginning with the first New Abolition campaign in 1913, Springarn embraced the courage and determination of the nineteenth-century Abolitionists with a fervor which rivaled that of Garrison and Phillips.” B. JOYCE ROSS, J.E. SPRINGARN AND THE RISE OF THE NAACP, 1911-1931, at 25-26 (1972). There were other, deliberate ties between the two movements. *See, e.g.*, KELLOGG, *supra*, at 120 (“To further the tie between abolitionism and the new movement, the Boston branch [of the NAACP] was organized with fifty-six members, including the majority of the sons and daughters of the most noted New England abolition leaders.”).

Later in the twentieth century, when students and others lent important new support to the civil rights movement in the 1960’s, they too were linked to the abolition movement. *See* HOWARD ZINN, *SNCC: THE NEW ABOLITIONISTS* (1965); Howard Zinn, *Abolitionists, Freedom-Riders, and the Tactics of Agitation*, in *THE ANTISLAVERY VANGUARD: NEW ESSAYS ON THE ABOLITIONISTS* 417, 446 (Martin Duberman ed., 1965) (“a successor to the abolitionist: the sit-in agitator, the boycotter, the Freedom Rider of the 1960’s”); *id.* at 450 (“The movement for desegregation today [before 1965] has all the elements of the abolition movement: its moral fervor and excitement, its small group of martyrs and mass of passive supporters, its occasional explosions in mob scenes and violence.”).

12. *See* Daniel M. Cress & David A. Snow, *The Outcomes of Homeless Mobilization: The Influence of Organization, Disruption, Political Mediation, and Framing*, 105 AM. J. SOC. 1063, 1100-01 (2000) (concluding that the success of organizations seeking relief for homeless people depends significantly upon “articulate and coherent diagnostic and prognostic framing”). “Diagnostic framing is important because it problematizes and focuses attention on an issue, helps shape how the issue is perceived, and identifies who or what is culpable, thereby identifying the targets or sources of the outcomes sought; prognostic framing is important because it stipulates specific remedies or goals for the [organization] to work toward and the means or tactics for achieving these objectives.” *Id.* at 1071.

13. *See infra* note 17.

14. *See id.*

15. *See* John O. Calmore, *A Call for Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 *FORDHAM L. REV.* 1927, 1950 (1999) (“We cannot eliminate poverty; we cannot really move very many out of poverty.”).

16. *See* WILLIAM LEE MILLER, *ARGUING ABOUT SLAVERY: THE GREAT BATTLE IN THE UNITED STATES CONGRESS* 15 (1996) (“Thinkers and statesmen and leaders and realistic politicians of all stripes and attachments believed that American slavery could not be ended – not by deliberate human action.”); JOHN EGERTON, *SPEAK NOW AGAINST THE DAY: THE GENERATION BEFORE THE CIVIL RIGHTS MOVEMENT IN THE SOUTH* 30-33 (1994) (describing the South’s “ironclad system of segregation” and the political power of those who maintained it).

17. *See* MILLER, *supra* note 16, at 9 (“Slavery had become, by the second quarter of the nineteenth century, an immense, rooted institution. American slavery, many believed . . . could *never* be abolished.”) (emphasis in original); *id.* at 502 (“formidable institution . . . never could be abolished”); *id.* at 454 (“impregnable”); *id.* at 9 (“apparently invincible,” “formidable . . . impossible to eliminate”); *id.* at 502 (“American slavery in 1835 was a formidable institution which appeared to be . . . invulnerable. It could never be abolished”); *id.* at 10 (“emancipation by government action was economically unfeasible”); *id.* at 36 (abolitionists were regarded as “fanatics”); *id.* at 352 (abolitionist leaders were “fringe figure[s]”); *id.* at 53 (“very remote from the mainstream”); *id.* at 65 (“powerless and marginal handful”); *id.* at 69 (“without influence or position,” their endeavor “seemed absurd”); *id.* at 76 (“very small minority that was despised, scorned, and actively opposed”).

Of course, in some places some abolitionists were respected members of the community even in the early years. *See, e.g.*, Richard L. Aynes, *The Antislavery and Abolitionist Background of John A. Bingham*, 37 *CATH. U. L. REV.* 881, 930 (1988) (In Cadiz,

Ohio, “there were active antislavery and abolitionist advocates who were not outcasts, but rather prominent members of society.”). In general, however, it was not until “after the outbreak of the Civil War [that] abolitionists were transformed almost overnight from despised fanatics to influential and respected spokesmen for the radical wing of the Republican party.” JAMES M. MCPHERSON, *THE STRUGGLE FOR EQUALITY* vii (1964).

See also 1 JAMES FORD RHODES, *HISTORY OF THE UNITED STATES FROM THE COMPROMISE OF 1850 TO THE FINAL RESTORATION OF HOME RULE AT THE SOUTH IN 1877*, at 58 (1906) (“Good society turned the back upon the abolitionists . . . The churches were bitterly opposed to the movement”); Charles Sumner’s Eulogy for Thaddeus Stevens, delivered in the U.S. Senate (December 18, 1868), in EDWARD BELCHER CALLENDER, *THADDEUS STEVENS: COMMONER 200, 201* (1882) (speaking of Josiah Quincy, Joshua Giddings, John Quincy Adams, and Stevens, Sumner said: “All of these hated slavery, and labored for its overthrow. On this account they were a mark for obloquy, and were generally in a minority.”).

18. See, e.g., MILLER, *supra* note 16, at 29 (“the new abolitionists . . . were not powerful . . .”). In 1834, a mob attacked the home of abolitionist Lewis Tappan and gutted homes, churches, and businesses owned by blacks; in 1835, a “respectable” mob in Boston seized and bound William Lloyd Garrison “and paraded him through the streets,” and a mob in Utica, New York, prevented the “disgrace” of having an abolitionist meeting in that city; in 1837, abolitionist preacher-editor Elijah Lovejoy was killed by a mob in Alton, Illinois. *Id.* at 17, 77-78. In 1836, “the support for abolition was miniscule; the abolitionist orators were being stoned and mobbed even in the North; the poll results (if polls had existed in those days) would have shown very meager support for trying to abolish slavery even in the District of Columbia, and overwhelming detestation personally for those obnoxious abolitionists, who tried to force people to think about subjects they did not want to think about. They didn’t have any support.” *Id.* at 120-21. In 1836, “[a]lmost everybody denounced the abolitionists; it was a politically safe position.” *Id.* at 143. “Certainly the abolitionists after 1831 would be subjected to the most severe and insistent and constant derogation, of every kind, which to some extent continued into history-writing in the twentieth century.” *Id.* at 182.

With respect to the twentieth century civil rights workers, see, e.g., David Benjamin Oppenheimer, *Kennedy, King, Shuttlesworth and Walker: The Events Leading to the Introduction of the Civil Rights Act of 1964*, 29 U.S.F. L. REV. 645 (1995).

19. I do not at all mean to suggest that lawyers should control such work, or that their contributions are the most important. I suggest only that lawyers have important roles to play in such efforts. For discussions of ways in which lawyers may participate in such movements, see Lucie E. White, *To Learn and Teach: Lessons From Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699 (1988) [hereinafter *To Learn and Teach*]; Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157 (1994) [hereinafter *Collaborative Lawyering in the Field*]; GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (1992); William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era*, 48 U. MIAMI L. REV. 1099 (1996) and material therein cited, particularly at 1100 n.3.

20. See, e.g., JONATHAN KOZOL, *RACHEL AND HER CHILDREN: HOMELESS FAMILIES IN AMERICA* (1988) (describing the lives of homeless families); ELLIOT LIEBOW, *TELL THEM WHO I AM: THE LIVES OF HOMELESS WOMEN* (1993) (describing the lives of homeless women). For the health implications, see J.R. Hibbs et al., *Mortality in a Cohort of Homeless Adults in Philadelphia*, 331 NEW ENG. J. MED. 304, 306 (1994) (homeless people are sicker and have an age-adjusted mortality rate almost four times higher than that of the general population); S.W. Hwang et al., *Causes of Death in Homeless Adults in Boston*, 126 ANNALS INTERNAL MED. 625, 626 (1997) (average age at death among a cohort of homeless people in Boston was forty-seven years); Jon V. Martel et al., *Hospitalization in an Urban Homeless Population: The Honolulu Urban Homeless Project*, 116 ANNALS INTERNAL MED. 299, 300 (1992) (homeless people utilize more health care resources and require more acute care than do non-homeless people); Thomas P. O’Toole et al., *Utilization of Health Care Services Among Subgroups of Urban Homeless and Housed Poor*, 24 J. HEALTH POL’Y & L. 91 (1999) (summarizing these studies); COMMITTEE ON HEALTH CARE FOR HOMELESS PEOPLE, INSTITUTE OF MEDICINE, *HOMELESSNESS, HEALTH, AND HUMAN NEEDS* 141 (1988) (concluding that “the fundamental problem encountered by homeless people—lack of a stable residence—has a direct and deleterious impact on health”).

21. See INTERAGENCY COUNCIL ON THE HOMELESS, *HOMELESSNESS PROGRAMS AND THE PEOPLE THEY SERVE: Summary*, at 15 (1999) (40% of homeless clients are black, 11% “Hispanic,” 8% Native American, 41% non-Hispanic whites). For variations in different studies, with percent non-Hispanic white ranging from 85% to 17%, see Martha R. Burt, *Demographics and Geography: Estimating Needs*, in PRACTICAL LESSONS: THE 1998 NATIONAL SYMPOSIUM ON HOMELESSNESS RESEARCH 1-4, 1-5 (Linda B. Fusburg & Deborah L. Dennis eds., 1999) (concluding that “African-Americans are significantly overrepresented among homeless people compared to the general population”).

See also Karl E. Klare, *Toward New Strategies For Low-Wage Workers*, 4 B.U. PUB. INT. L.J. 245, 259 (1995) (“The demographic composition of low-wage work is neither gender nor race neutral. Women and minority group members of both sexes are considerably more likely to be low-wage earners than [are] white males.”).

22. See ERIC FONER, *RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION, 1863-1877*, at 70-71 (1988) (In 1865, General Sherman issued Special Field Order No. 15, granting black families 40 acres of land in parts of South Carolina, and offering to lend Army mules); *id.* at 159-63 (lands restored to former owners); *id.* at 245-46 (legislative attempt to restore land to blacks rejected); see also CLAUDE F. OUBRE, *FORTY ACRES AND A MULE* (1968); and EDWARD L. JONES, *FORTY ACRES AND A MULE: THE RAPE OF COLORED AMERICANS* 28-53 (1994).

23. KELLOGG, *supra* note 11, at 15; *but see id.* at 35 (“Throughout its existence the Association made repeated attempts . . . to secure admission of Negroes to unions on a basis of equality with white workers, but without much success.”); *id.* at 131 (members “were not so interested in legal disabilities as in economic opportunities.”); DAVID LEVERING LEWIS, W.E.B. DUBOIS: BIOGRAPHY OF A RACE 393, 419, 423 (1993) (regarding Dr. DuBois’ concern with “economic aspects of race prejudice”).

24. DAVID J. GARROW, BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE 533 (1986).

25. *Id.* at 536 (“King’s most pressing concern was how he and the movement could pursue the economic justice issues which increasingly preoccupied him.”).

26. Gustav Niebuhr, *Christians Ask Renewed Attack on Poverty*, N.Y. TIMES, Feb. 17, 2000, at A14; Call to Renewal, Covenant to Overcome Poverty, available at <http://www.calltorenewal.com/covenant.html> (last visited May 31, 2000).

27. *See* MILLER, *supra* note 16, at 10 (quoting Abraham Lincoln in 1854, referring to “two thousand million of dollars, invested in this species of property, . . . this immense pecuniary interest”); *id.* at 11 (pointing out the financial interest in slavery of the northern textile industry as well as the south, and that slavery “had fundamental ties to other industries—cotton, rice, indigo, and tobacco,” among others).

28. *See, e.g.*, MARK V. TUSHNET, MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936-1961, at 310 (1994) (stating that when the NAACP Legal Defense Fund “was first asked to defend the participants [in the 1960 sit-ins], [Thurgood] Marshall ‘stormed around the room proclaiming . . . [that] he was not going to represent. . . students who violated the sacred property rights of white folks . . .’”). One may infer a touch of irony here.

29. *See, e.g.*, Paul Finkelman, *Thomas R.R. Cobb and the Law of Negro Slavery*, 5 ROGER WILLIAMS U. L. REV. 75 (1999) (discussing Thomas R.R. Cobb, Georgia attorney, law professor, scholar, and one-time reporter for the Georgia Supreme Court, who “insisted on the justice and morality—the essential rightness—of slavery”); *id.* at 76 (Cobb’s treatise, THE LAW OF NEGRO SLAVERY IN THE UNITED STATES OF AMERICA, argued “that slavery was consistent with American law, good public policy, Christian morality, and the natural order of things.”); *see also* RHODES, *supra* note 17, at 81 (describing the argument of Secretary of State John Calhoun to the United States Senate, “showing the wisdom and humanity of African slavery”).

With respect to defenders of segregation, *see, e.g.*, JOHN DITTMER, LOCAL PEOPLE: THE STRUGGLE FOR CIVIL RIGHTS IN MISSISSIPPI 66-67 (1994) (discussing the “crusading” newspaper editor, Hodding Carter II, winner of a Pulitzer Prize in 1946 for “distinguished editorial writing against racial and religious intolerance,” who “publicly opposed the desegregation of Mississippi schools”). He was, Dittmer reports, a “fair play segregationist.” *Id.*

30. *See* Martha Minow, *Interpreting Rights: An Essay for Robert Cover*, 96 YALE L. J. 1860, 1915 n.1 (1987) (quoting Gloria Anzaldua, *La Prieta*, in THIS BRIDGE CALLED MY BACK 198, 208 (C. Moraga & G. Anzaldua eds., 1981) (“I can’t reconcile the sight of a battered child with the belief that we choose what happens to us, that we create our own world.”)).

31. *See* National Low Income Housing Coalition/Low Income Housing Information Service (NLIHC/LIHIS), *Out of Reach: The Growing Gap Between Housing Costs and Income of Poor People in the United States*, at <http://www.nlihc.org/oor2000/introduction.htm> (last visited Feb. 22, 2001); LAWRENCE MISHLE ET AL., THE STATE OF WORKING AMERICA 1998-99, at 309 (1999) (hourly wage required to bring a family of four to the 1997 poverty line was \$7.89 per hour).

32. *See* Finkleman, *supra* note 29, at 93 (Thomas R.R. Cobb was in what was regarded as good company: “Harvard Law School [was not] a hot-bed of antislavery. On the contrary, the faculty supported the enforcement of the Fugitive Slave Law of 1850, as did many of the students.”); Paul Finkelman, *Legal Ethics and Fugitive Slaves: The Anthony Burns Case, Judge Loring, and Abolitionist Attorneys*, 17 CARDOZO L. REV. 1793, 1838-1840 (1996) (Harvard “law school professors . . . cheered the passage of the Fugitive Slave Law of 1850 and defended it in their lectures.”).

33. *See, e.g.*, Alfred Avins, *Freedom of Choice in Personal Service Occupations: Thirteenth Amendment Limitations on Antidiscrimination Legislation*, 49 CORNELL L. Q. 228 (1964) (arguing that the Civil Rights Act of 1964 violates the Thirteenth Amendment); Robert J. Kaczorowski, *Emancipation and the New Conception of Freedom: Comment on Nieman: Reflections on “From Slaves to Citizens,”* 17 CARDOZO L. REV. 2141, 2144 (1996) (discussing and citing some of this scholarship).

34. *See* MILLER, *supra* note 16, at 513 (“For slavery to be ended there had to be some individual human beings who did what they did [T]here were some people—a very small number, on the margin of society, condemned and harassed—who nevertheless made it the first order of their life’s business to oppose American slavery, and to insist that it was a grotesque evil that should be eliminated, and . . . in a little over thirty years, it was.”).

35. U.S. CONST. amend. XIII; U.S. CONST. amend. XIV; and U.S. CONST. amend. XV.

36. Civil Rights Act of 1866, 42 U.S.C. §1981 et seq.; Civil Rights Act of 1870, 42 U.S.C. §1981; Civil Rights Act of 1875, 42 U.S.C. §1984.

37. *See, e.g.*, FONER, *supra* note 22; W.E.B. DUBOIS, BLACK RECONSTRUCTION IN AMERICA (1935).

38. *See, e.g.*, Egerton, *supra* note 16; JOANN GIBSON ROBINSON, THE MONTGOMERY BUS BOYCOTT AND THE WOMEN WHO STARTED IT (1987); CLAYBORNE CARSON, IN STRUGGLE: SNCC AND THE BLACK AWAKENING OF THE 1960’S (1981); TAYLOR BRANCH, PARTING THE WATERS: AMERICA IN THE KING YEARS 1954-63 (1988); TAYLOR BRANCH, PILLAR OF FIRE: AMERICA IN THE KING YEARS 1963-65 (1998); WILLIAM BRADFORD HUIE, THREE LIVES FOR MISSISSIPPI (1965); JOHN LEWIS WITH MICHAEL D’ORSO, WALKING WITH THE WIND: A MEMOIR OF THE MOVEMENT (1998); ERIC R. BURNER, AND GENTLY HE SHALL LEAD THEM: ROBERT PARRIS MOSES AND CIVIL RIGHTS IN MISSISSIPPI (1994).

39. See Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964); Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (1968); Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965).

40. See *Jones v. Mayer*, 392 U.S. 409 (1968); see also *Runyon v. McCrary*, 427 U.S. 160 (1976).

41. See MARTHA R. BURT, *OVER THE EDGE: THE GROWTH OF HOMELESSNESS IN THE 1980's*, at viii (1992); Lucie E. White, *Representing "The Real Deal"*, 45 U. MIAMI L. REV. 271, 271-72 (1990).

42. But see White, *supra* note 41, at 279 n.25. The Biblical statement is not about the future; it is: "ye have the poor always with you. . ." *Matthew* 26:11 (emphasis added).

43. See Robert M. Solow, *Welfare: The Cheapest Country*, N.Y. REV. BOOKS, Mar. 23, 2000, at 20 (reviewing ROBERT E. GOODIN ET AL., *THE REAL WORLDS OF CAPITALISM* (1999)); Klare, *supra* note 21, at 259 ("When other countries have made significant progress in ameliorating poverty, reducing wage inequality, and lifting the wage floor, low-wage employment has been perpetuated in the United States by our laws and social policies.").

44. See Calmore, *supra* note 15, at 1955 ("When race and space are synergistically involved with poverty, race-neutral or color-blind poverty practice is naively wrong-headed.").

45. See White, *To Learn and Teach*, *supra* note 19, at 750 n.185 (citing THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (1962) (regarding paradigm shifts); and RICHARD RORTY, *PHILOSOPHY AND THE MIRROR OF NATURE* (1979) (regarding "abnormal discourse")). See also *id.* at 755 n.199 (NAACP/LDF campaign against school segregation required "expanding the legal norm of equality. . .").

Michael Harrington's 1962 book, *THE OTHER AMERICA: POVERTY IN THE UNITED STATES*, often is credited with "rekindl[ing], spark[ing]" this kind of new debate. See John Charles Boger, *Race and the American City: The Kerner Commission in Retrospect—An Introduction*, 71 N.C. L. REV. 1289 (1993); MICHAEL B. KATZ, *THE UNDESERVING POOR: FROM THE WAR ON POVERTY TO THE WAR ON WELFARE* 20 (1989) (saying that Harrington's was "a pivotal book" designed "to arouse the conscience of the nation"); Victor Navasky, *The Left Wing of the Possible*, N.Y. TIMES BOOK REV., May 28, 2000, at 9 (reviewing MAURICE ISSERMAN, *THE OTHER AMERICAN: THE LIFE OF MICHAEL HARRINGTON* (2000)), and stating that "Harrington's book supplied the organizing concept, the target, the word, and thus was the idea for the War on Poverty born. It can indeed be argued that what Betty Friedan's 'Feminist Mystique' did for feminism, Rachel Carson's 'Silent Spring' for the environment, and Ralph Nader's 'Unsafe at any Speed' for the public interest movement, *The Other America* did for the poor.").

46. Marybeth Shinn & Jim Baumohl, U.S. Department of Housing and Urban Development & U.S. Department of Health and Human Services, *Rethinking the Prevention of Homelessness*, in PRACTICAL LESSONS, *supra* note 21, at 13-1. See also White, *Collaborative Lawyering in the Field*, *supra* note 19, at 280-91. Homelessness is caused by poverty, not by "substance abuse" or mental illness. Many people who abuse alcohol or drugs or suffer from mental illness nonetheless are perfectly well-housed.

47. See Florence Wagman Roisman, *Intentional Racial Discrimination and Segregation by the Federal Government as a Principal Cause of Concentrated Poverty: A Response to Schill and Wachter*, 143 U. PENN. L. REV. 1351, 1369-72 (1995) (discussing the "one for one replacement" requirement); Michael S. Fitzpatrick, *Note: A Disaster in Every Generation: An Analysis of HOPE VI: HUD's Newest Big Budget Development Plan*, 7 GEO. J. POVERTY LAW & POL'Y 421, 444 (2000) (the requirement was repealed in 1997).

48. The largest federal housing subsidy by far is the homeowner deduction for mortgage interest and real estate taxes. See John Charles Boger, *Toward Ending Residential Segregation: A Fair Share Proposal for the Next Reconstruction*, 71 N.C. L. REV. 1573, 1608 (1993).

49. Klare, *supra* note 21, at 260 n.53 (identifying these five branches of law).

50. See MISHLE ET AL., *supra* note 31, at 189-95 (documenting the fall of the real value of the minimum wage since the 1960's and the impact on non-teenage, full-time workers, of whom most are women and a disproportionate percentage minorities. The current minimum wage is less than the federal poverty level).

51. For a powerful, personal indictment of working conditions, see Lucie E. White, *No Exit: Rethinking "Welfare Dependency" from a Different Ground*, 81 GEO. L.J. 1961, 1979-85 (1993).

52. See Call to Renewal, *supra* note 26 (a summary of those goals).

53. Federal benefit programs do not provide enough in stipends to enable people to afford what HUD says are fair market rents. See NLIHC/LIHIS, *supra* note 31, at <http://www.nlihc.org/oor2000/introduction.htm>. A recent study reports that only 37% of the people who use homeless assistance programs received food stamps; only 52% of homeless households with children received Aid to Families with Dependent Children (AFDC); and only 6% of homeless veterans received veteran-related disability payments and 2% received veteran-related pensions. INTERAGENCY COUNCIL ON THE HOMELESS, HOMELESSNESS PROGRAMS AND THE PEOPLE THEY SERVE: FINDINGS OF THE NATIONAL SURVEY OF HOMELESS ASSISTANCE PROVIDERS AND CLIENTS, Summary, at xix-xx (1999). See also Shinn & Baumohl, *supra* note 46, at 13-1 ("Income supports are also related to housing stability, probably because the affordability of housing is a joint function of income and housing costs. Advocacy for entitlement income may be a key ingredient in case management."). The replacement of AFDC by TANF (Temporary Assistance to Needy Families) with its time limit on benefits may well increase dramatically the number of homeless people. See Martin Guggenheim, *Somebody's Children: Sustaining the Family's Place in Child Welfare Policy*, 113 HARV. L. REV. 1716, 1740 (2000) (book review) (reporting that in one Wisconsin county, the number of homeless children increased by 50% after the implementation of welfare reform).

54. See PETER H. ROSSI, *DOWN AND OUT IN AMERICA: THE ORIGINS OF HOMELESSNESS 188-90* (1989) (discussing the extent and burden of poor families' caring for others).

55. I think here of the defenses of individual landlord-tenant cases, which led to the widespread adoption of the doctrines of implied warranty of habitability and retaliatory eviction. *See, e.g.,* *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970), *cert. denied*, 400 U.S. 925 (1970); *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969); *Brown v. Southall Realty Co.*, 237 A.2d 834 (D.C. 1968), *cert. Denied*, 393 U.S. 1018 (1969). *Javins* was part of a building-wide rent strike and tenant organization, but *Brown* and *Edwards* were defenses of discrete landlord-tenant cases, as were other seminal cases. *See also*, *Marini v. Ireland*, 265 A.2d 526 (N.J. 1970); *Green v. Superior Court*, 517 P.2d 1168 (Cal. 1974); *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965) (individual consumer case); *see generally*, JOHN A. DOOLEY & ALAN W. HOUSEMAN, *LEGAL SERVICES HISTORY* (1984); Alan W. Houseman, *Political Lessons, Legal Services for the Poor—A Commentary*, 83 GEO. L.J. 1669 (1995); EARL JOHNSON, JR., *JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE OEO LEGAL SERVICES PROGRAM* (1974).

56. The legal assistance provided to Dr. Martin Luther King, Jr. is an example of this kind of legal work, as is the legal support for Cesar Chavez and Mitch Snyder. *See, e.g.,* *Oppenheimer*, *supra* note 18; Randall Kennedy, *Martin Luther King's Constitution: A Legal History of the Montgomery Bus Boycott*, 98 Yale L.J. 999 (1989); Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 309 n.3 (1996) (describing legal work for Cesar Chavez); VICTORIA RADER, *SIGNAL THROUGH THE FLAMES: MITCH SNYDER AND AMERICA'S HOMELESS* 235-36 (1986) (regarding the events addressed in *Robbins v. Reagan*, 780 F.2d 37 (D.C. Cir. 1985)). Other litigation supporting Snyder's activities includes: *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989) (copyright issue regarding statue of homeless family); *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984) (sleeping in Lafayette Park to protest homelessness); *Community for Creative Non-Violence v. Kerrigan*, 865 F.2d 382 (D.C. Cir. 1989) (vigil on the grounds of the United States Capitol); *Community for Creative Non-Violence v. Pierce*, 814 F.2d 663 (D.C. Cir. 1987) (challenge to HUD report on homelessness); *Williams v. Barry*, 708 F.2d 789 (D.C. Cir. 1983) (closing shelters for homeless men); *Caton v. Barry*, 500 F. Supp. 45 (D.D.C. 1980) (shelters for families); *Atchison v. District of Columbia*, 585 A.2d 150 (D.C. 1991) (provision of overnight shelter).

57. The legal support for the Montgomery Bus Boycott is a good illustration. *See* BRANCH, *PARTING THE WATERS*, *supra* note 38, at 158-59 (1988) (describing the lawyers' initial efforts); TUSHNET, *supra* note 28, at 302-06 (describing the role of the NAACP/LDF); Kennedy, *supra* note 56. *See also* Francesca Polletta, *The Structural Context of Novel Rights Claims: Southern Civil Rights Organizing, 1961-1966*, 34 LAW & SOCIETY REV. 367 (2000) (discussing the relationship between political organizing and "rights claims").

58. *See* MARK V. TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950*, at xii (1987) ("Sensitivity to the actual events requires attention to the roles of chance – unexpected events or decisions by individuals outside of the movement – and choice – decisions by insiders to pursue one path rather than another ... ") [hereinafter NAACP'S LEGAL STRATEGY]. My own experience has been that when a moment of decision presents itself, taking the risk is worthwhile.

59. *See* TUSHNET, *NAACP'S LEGAL STRATEGY*, *supra* note 58, at 144-45 (emphasizing that "the NAACP's efforts were not systematic or strategic. Instead, the organization attacked . . . targets of opportunity.").

60. *See* AILEEN S. KRADITOR, *MEANS AND ENDS IN AMERICAN ABOLITIONISM: GARRISON AND HIS CRITICS ON STRATEGY AND TACTICS, 1834-1850*, at 236 (1967) ("The frequent meetings and intragroup journals of any movement for change serve an indispensable function even when they repeatedly pass the same resolutions and proclaim familiar truths to the already committed. These activities help to assure members that they are part of a group with a historic mission, are not fighting alone, and have somewhere to go and others to turn to when public opprobrium weakens their dedication."); TUSHNET, *supra* note 28, at 124-25 (importance of NAACP meetings of lawyers to discuss segregation in education); Bellow, *supra* note 56, at 308 (deploring "the lack of funds for meetings, conferences, and other forms of networking that formerly enabled political lawyers to recruit and teach those who might follow."); Michael H. Shuman, *Why Do Progressive Foundations Give Too Little to Too Many?*, 266 THE NATION, Jan. 12, 1998, at 11-12 (describing the effectiveness of conservative foundations and the relative ineffectiveness of progressive foundations); Klare, *supra* note 21, at 267 ("revitalizing labor/poor peoples' alliances today requires hard work: establishing connections, fostering dialogue, promoting education and mutual concern, and learning creative ways to engage in joint action around common issues."); White, *To Learn and Teach*, *supra* note 19, at 725 n.110 ("the technique of 'brainstorming,' or generating ideas through a process of group discussion, is an essential step in developing innovative sources of leverage and solutions to problems.").

A hopeful sign was the establishment of the Task Force on Legal Strategies for Low-Wage Workers. *See* Klare, *supra* note 22, at 248-9. As Professor Klare indicates, "low-wage workers" is a category that includes public assistance recipients, immigrants, and people who are elderly or disabled. *See id.* at 250; and, as to public assistance recipients, KATHRYN EDIN & LAURA LEIN, *MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW-WAGE WORK* 220 (1997) ("Welfare- and work-reliant mothers should be seen as two overlapping populations on a single continuum."). Similarly, people who are homeless—often dehumanized as "the homeless"—are workers. A recent study shows that 44% of homeless clients worked for pay. *See* HOMELESSNESS PROGRAMS AND THE PEOPLE THEY SERVE, *supra* note 21, at 52-54.

61. *See, e.g.,* New Party, *The New Party Living Wage Campaign*, at <http://www.newparty.org/livwag/livwag.html>; National Jobs for All Coalition, *Living Wage Campaign*, at <http://www.njfac.org/resources/html>; Justice for Janitors, *Janitors are Fighting for the American Dream*, at <http://seiu.org/j4j/j4j2000.cfm>. (last visited on Feb. 22, 2001).

62. *See, e.g.,* TUSHNET, *NAACP'S LEGAL STRATEGY*, *supra* note 58 (describing the NAACP's campaign against segregated public schools, when Thurgood Marshall, Spottswood Robinson, Louis Redding, and other lawyers responded to requests for assistance with other kinds of lawsuits by insisting that they would support only comprehensive desegregation cases). *See also*, ROBERT M. COVER, *JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS* 56 (1975) (explaining that "advocacy in these [anti-slavery] cases was

highly ideological. It was undertaken for purposes of the movement – to dramatize the inconsistency of slavery with underlying principles of a democratic state”).

63. See Zinn, *Abolitionists, Freedom-Riders, and the Tactics of Agitation*, *supra* note 11, at 424 (“it is easy and comfortable – especially for intellectuals who do not share the piercing problems of the hungry or helplessly diseased of the world (who, in other words, face no *extreme* problems) – to presume always that the ‘moderate’ solution is the best.); Rev. Dr. Martin Luther King, Jr., *Letter from Birmingham City Jail* (1963), reprinted in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR.*, at 289 (James Melvin Washington ed., 1986).

64. KRADITOR, *supra* note 60, at 165.

65. KELLOGG, *supra* note 11, at x, 42 (mass meetings, investigations, publicity, and legal aid). A petition drive, like that undertaken to end slavery and the slave trade in the District of Columbia, might be particularly effective in this internet age. Petitions might address such subjects as increases in housing subsidies, the minimum wage, and the Earned Income Tax Credit.

66. See MILLER, *supra* note 16, at 304 (The mantra of the nineteenth century abolitionists was “Explain, discuss, argue, persuade.”). See also Lucy A. Williams, *Race, Rat Bites and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate*, 22 *FORDHAM URB. L.J.* 1159 (1995); White, *To Learn and Teach*, *supra* note 19, at 763 (Oppressed people “learn how to design context-specific acts of public resistance, which work, not by overpowering the oppressor, but by revealing the wrongness and vulnerability of its positions to itself and to a wider public.”); MILLER, *supra* note 16, at 507-08 (“if there is a constant drumbeat of moral argument, Calhoun said, eventually it begins to have its effect, even upon those who initially reject the argument A group of people, a culture, certainly has many ideas on the same topic, diverse and contradictory, simultaneously present. Argument and persuasion, and the changing of the cultural atmosphere, can elevate one idea and subordinate another.”).

67. See Bellow, *supra* note 56, at 297 (describing efforts “to educate the appellate judges of the D.C. Circuit about the widespread lawlessness that pervaded the administration of criminal justice”); Martha Minow, *Political Lawyering: An Introduction*, 31 *HARV. C.R.-C.L. L. REV.* 287, 294 (1996) (“Because lawyers work with words, they can tell stories not only to courts and legislatures, but also to broader publics. . . . Preserving and strengthening settings for face-to-face telling of stories, demanding justifications, and negotiating constructively . . . remain crucial lawyering tasks”); Gary Bellow & Martha Minow, *Afterword: Constancies and Commonalities in This Volume’s Law Stories*, in *LAW STORIES: LAW, MEANING AND VIOLENCE* 219, 224-25 (Gary Bellow & Martha Minow, eds. 1996) (“Lawyers’ tools are words”; “law talk works to define both speaker and audience, altering and creating identities and self-understanding”).

One of the most effective weapons against human slavery was Theodore Weld’s book, *AMERICAN SLAVERY AS IT IS*, a compilation of descriptions of slavery. Weld’s book had immense impact on people generally, and a particularly fruitful impact on what Lincoln is said to have called the book that started the Civil War. “While she was writing [Uncle Tom’s Cabin], [Harriet Beecher Stowe] kept Weld’s *AMERICAN SLAVERY AS IT IS* with her, carrying it in her purse and even sleeping with it under her pillow.” MILLER, *supra* note 16, at 334. Movies may be at least as effective as books. D.W. Griffith’s film, *The Birth of a Nation*, had a great impact, leading the NAACP to attempt to make a counter-movie. See KELLOGG, *supra* note 11, at 142-145.

68. A Legal Services Homelessness Task Force was created by a group of legal services back-up centers in the early 1980’s. It produced a Litigation Memorandum which ultimately was published. See *HOMELESSNESS IN AMERICA: A LITIGATION MEMORANDUM FOR LEGAL SERVICES ADVOCATES* (July 1986) (National Clearinghouse for Legal Services, CN 49,999). This built on the National Housing Law Project’s Annotated Case Docket re: Homelessness Litigation (Sept. 1989) (CN 45,055). See also National Housing Law Project, Annotated Docket of Selected Cases and Other Material Involving Homelessness (Draft No. 7, Sept. 1992). The Legal Services Homelessness Task Force also was instrumental in developing the legislation that became the Homeless Persons Survival Act of 1986. See 132 *CONG. REC.* E2 363-01, 99th Cong., 2d Sess. (June 26, 1986) (introduction of the legislation by Hon. Mickey Leland on behalf of himself and more than 30 co-sponsors); 133 *CONG. REC.* E82-03, 100th Cong., 1st Sess. (June 7, 1987) (Mr. Leland’s introduction of the Homeless Person’s Survival Act of 1987, noting that five portions of the 1986 act had been enacted). The National Coalition for the Homeless was a participant in this effort. *But see*, White, *supra* note 41, at 294 (referring to “its” – the Coalition’s – Homeless Person’s Survival Act). See also Florence Wagman Roisman, *Establishing a Right to Housing: A General Guide*, 25 *CLEARINGHOUSE REV.* 203 (1991) (discussing statutory claims); FLORENCE WAGMAN ROISMAN, *ESTABLISHING A RIGHT TO HOUSING: AN ADVOCATE’S GUIDE* 25 (1991) (same); and *supra* notes 55-57 and accompanying text.

69. See Maria Foscarinis, *Homelessness and Human Rights: Towards an Integrated Strategy*, 20 *ST. LOUIS PUB. L. REV.* 327 (2000); Martha F. Davis, *International Human Rights and United States Law: Predictions of a Courtwatcher*, 64 *ALB. L. REV.* 417 (2000); Bert B. Lockwood, Jr., *The United Nations Charter and United States Civil Rights Litigation: 1946-1955*, 69 *IOWA L. REV.* 901 (1984); Marc-Olivier Herman, *Fighting Homelessness: Can International Human Rights Law Make a Difference?* 2 *GEO. J. ON POVERTY L. & POL’Y* 59 (1994).

70. With regard to housing, see Chester Hartman, *The Case for a Right to Housing*, 9 *HOUSING POL’Y DEBATE* 223 (1998); Curtis Berger, *Beyond Homelessness: An Entitlement to Housing*, 45 *U. MIAMI L. REV.* 315, 326 (1996) (urging a four-pronged statutory strategy, involving preserving and increasing the supply of subsidized units, strengthening effective demand, and attending to the specialized needs of particular groups); NATIONAL HOUSING LAW PROJECT, *HOUSING FOR ALL: KEEPING THE PROMISE* (1995). With regard to income, see *supra* notes 49 to 54 and accompanying text.

71. Universal Declaration of Human Rights, G.A. Res. 71, U.N. GABOR, 3d Sess., U.N. Doc. A/810 (1948), art. 25.

72. International Covenant on Economic, Social and Cultural Rights, U.N. G.A. Res. 2200(A) (1966), Jan. 3, 1976, 993 U.N.T.S. 3. Art. 11(1) also provides that “The States Parties will take appropriate steps to ensure the realization of this right. . . .” The United States has signed but not ratified this Covenant. See also UNITED NATIONS, INTERNATIONAL HUMAN RIGHTS INSTRUMENTS: COMPILATION OF GENERAL COMMENTS AND GENERAL RECOMMENDATIONS ADOPTED BY HUMAN RIGHTS TREATY BODIES 57 (1997) (calling on member states “to realize progressively the full range of economic, social and cultural rights). I would not have known of the reference to the General Comments but for the citation in Helen Hershkoff, *Positive Rights and State Constitutions: The Limits of Federal Rationality Review*, 112 HARV. L. REV. 1131, 1142 n.55 (1999).

73. See Foscarinis, *supra* note 69; Barbara Stark, *Economic Rights in the United States and International Human Rights Law: Toward An “Entirely New Strategy,”* 44 HASTINGS L.J. (1992); Herman, *supra* note 69.

74. For a contrary view, see Peter Edelman, *Responding to the Wake-Up Call: A New Agenda for Poverty Lawyers*, 24 N.Y.U. REV. L. & SOC. CHANGE 547, 549 (1998) (“Going to court and invoking the Constitution to bring about basic change for the poor is a nonstarter.”). Professor Edelman does offer a wealth of suggestions for legislative activity.

75. See *San Antonio Pub. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

76. See *Lindsey v. Normet*, 405 U.S. 56 (1972); but see Roisman, 25 CLEARINGHOUSE REV., *supra* note 68, at 209 (arguing that the case does not so hold).

77. See *DeShaney v. Winnebago County Dep’t of Soc. Servs.*, 489 U.S. 189 (1989).

78. See Mark A. Graber, *The Clintonification of American Law: Abortion, Welfare, and Liberal Constitutional Theory*, 58 OHIO ST. L.J. 731, 801 et seq. (1997) (arguing refocus on rooting welfare rights in the Constitution); Edward A. Hartnett, *Review Essay: The Akhil Reed Amar Bill of Rights*, 16 CONSTITUTIONAL COMMENTARY 373, 400-01 (1999) (reviewing AKHIL REED AMAR, *THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION* (1998), and characterizing Professor Amar’s discussion of “Barron contrarians and Reconstruction Republicans”) (“Through legal imagination, political organizing, and personal courage, they changed the constitution and gave us a new birth of freedom. If they could do it, Amar seems to be saying, so can we.”).

79. See Hixson, *supra* note 11, at 135.

80. See e.g., CHARLES L. BLACK JR., *A NEW BIRTH OF FREEDOM: HUMAN RIGHTS, NAMED AND UNNAMED* 131-39 (1997) [hereinafter *A NEW BIRTH OF FREEDOM*]; Charles L. Black, Jr., *Further Reflections on the Constitutional Justice of Livelihood*, 86 COLUM. L. REV. 1103 (1986) (hereinafter *Further Reflections*); Frank I. Michelman, *The Supreme Court 1968 Term—Foreword: On Protecting the Poor Through the Fourteenth Amendment*, 83 HARV. L. REV. 7, 33 (1969) (drawing the minimum protection/equal protection distinction); Frank I. Michelman, *Welfare Rights in a Constitutional Democracy*, 1979 WASH. U. L.Q. 659 (1979); William E. Forbath, *Caste, Class, and Equal Citizenship*, 98 MICH. L. REV. 1 (1999); Akhil Reed Amar, *Forty Acres and a Mule: A Republican Theory of Minimal Entitlements*, 13 HARV. J.L. & PUB. POL’Y 37 (1996); Sarah Ramsey & Daan Braveman, “*Let Them Starve*”: *Government’s Obligation to Children in Poverty*, 68 TEMP. L. REV. 1607 (1995) (considering government obligation to provide a minimum level of benefits to children); Stephen R. Munzer, *Ellickson on “Chronic Misconduct” in Urban Spaces: Of Panhandlers, Bench Squatters, and Day Laborers*, 32 HARV. C.R.-C.L. L. REV. 1, 38-45 (1997); Peter B. Edelman, *The Next Century of our Constitution: Rethinking Our Duty to the Poor*, 39 HASTINGS L.J. 1 (1987); Frank E.L. Deale, *The Unhappy History of Economic Rights in the United States and Prospects for Their Creation and Renewal*, 43 HOW. L.J. 281 (2000); Amy L. Wax, *The Constitution Under Clinton: A Critical Assessment: Rethinking Welfare Rights: Reciprocity Norms, Reactive Attitudes, and the Political Economy of Welfare Reform*, 63 LAW & CONTEMP. PROB. 257 (2000). For a list of articles and books advocating the recognition of affirmative “welfare” rights under the federal constitution, see Hershkoff, *supra* note 72, at 1133 n.9.

81. BLACK, *A NEW BIRTH OF FREEDOM*, *supra* note 80, at 133.

82. Black, *Further Reflections*, *supra* note 80, at 1105. Professor Black is not alone in treating the Declaration of Independence as a discrete source of legal authority: “[f]rom the adoption of the Pennsylvania Gradual Emancipation statute, until the eve of the Civil War, opponents of slavery would turn to the Declaration of Independence to support their cause.” Finkelman, *supra* note 29, at 82; see also WILLIAM E. NELSON, *THE FOURTEENTH AMENDMENT: FROM POLITICAL PRINCIPLE TO JUDICIAL DOCTRINE* 18 (1988) (“The favorite document of these antislavery advocates was the Declaration of Independence. . .”).

83. See Laurence H. Tribe, *Comment: Saenz Sans Prophecy: Does the Privileges or Immunities Revival Portend the Future—or Reveal the Structure of the Present?*, 113 HARV. L. REV. 110, 121 n.53 (1999) (discussing *Boddie v. Connecticut*, 401 U.S. 371 (1971); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966); *Douglas v. California*, 372 U.S. 353 (1963); *Griffin v. Illinois* 351 U.S. 12 (1956)); see also *Shapiro v. Thompson*, 394 U.S. 618 (1968); and *Little v. Streater*, 452 U.S. 1 (1981) (Due Process Clause requires that state pay for blood testing for determining paternity).

84. 526 U.S. 489 (1999).

85. See Tribe, *supra* note 83, at 140 (arguing that “claims of individual rights are most likely to have power and ultimately to prevail if they can be convincingly expressed through the language, and clearly understood through the logic, of such concretely architectural features of the Constitution as the separation of powers or . . . the federal system of separate, equal, and semi-autonomous states”). The more usual view of Saenz is that it “might be the harbinger of a revival of the privileges and immunities clause.” See Hartnett, *supra* note 78, at 393 n.29. See also *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996) (appeal of termination of parental rights cannot be conditioned on payment for preparation of record). Professor Tribe considers that *Little v. Streater* and *M.L.B. v. S.L.J.* “are best understood” as based not on concerns about poverty but on “special solicitude for rights related to marriage, parenting or reproduction.” Tribe, *supra* note 83, at 118.

86. *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938).

87. *Id.*

88. There is a substantial literature about the influence of money on political processes. *See e.g.*, Jamin B. Raskin & Burton D. Wechsler, *Constitutional Implications of Campaign Finance Reform*, 8 ADMIN. L.J. 161 (1994); Jamin B. Raskin & John Bonifaz, *The Constitutional Imperative and Practical Superiority of Democratically Financed Elections*, 94 COLUM. L. REV. 1160 (1994); Jamin B. Raskin & John Bonifaz, *Focus on: Restoring Faith in Government: Equal Protection and the Wealth Primary*, 11 YALE L. & POL'Y REV. 273 (1993). Prejudice against people because of the amount or source of their income is substantial. The history of the Fourteenth Amendment provides some support for devoting special concern to discrimination on the basis of poverty. *See NELSON, supra* note 82, at 117 (quoting language to this effect from the ratification debates); *see id.* at 129 (quoting such language used by the floor manager of the amendment in the Senate).

Similarly, Professor Tribe emphasizes the significance of Justice Kennedy's having begun his opinion in *Romer v. Evans* with a quotation from Justice Harlan's dissent in *Plessy v. Ferguson*. *See Tribe, supra* note 83, at 179 (citing *Romer v. Evans*, 517 U.S. 620, 623 (1996) (quoting *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896))). Professor Tribe sees in this "a strong signal that, to Justice Kennedy, Amendment 2 was of a piece with government classification of persons in terms of race, national ancestry, or whatever other criteria have long struck the Justice as despicable precisely because they reflect and reinforce the deepest and most destabilizing divisions that have marked our nation's history." It cannot be impossible to convince five justices that the distinction of wealth from poverty is one of "the deepest and most destabilizing. . . that have marked our nation's history." *See also Tribe, supra* note 83, at 168-69 (describing a structural argument for rights of "life-shaping autonomy," an argument that would apply as well to rights to subsistence. The argument is that a nation cannot have effective self-government when its citizens lack food, shelter, and other basic necessities). *See also Edelman, supra* note 80, at 61 ("Anyone who argues that the poor are now fully heard in Congress and the state legislatures has not examined the history of their situation since 1978.").

89. *See Callahan v. Carey*, N.Y. L.J. Dec. 11, 1979, at 10 (N.Y. Sup. Ct., Dec. 5, 1979) (preliminary injunction requiring City of New York to develop a plan to provide shelter for homeless men); *Eldredge v. Koch*, 98 A.D.2d 675 (N.Y. App. Div. 1983) (right to shelter extended to homeless women under equal protection standard).

90. *See Center Township of Marion County, Indiana v. Coe*, 572 N.E.2d 1350, 1361-62 (Ind. Ct.App. 1991) ("We agree with the courts of New York that unequal treatment of homeless women and families denies those women and families the equal protection guarantees of the State and Federal Constitutions."). *See also Roisman, Establishing a Right to Housing: A General Guide, supra* note 68, at 209-10 (discussing a similar case in Maryland and theories under which state equal protection claims might prevail).

91. *McCain v. Koch*, 117 A.D.2d 198 (N.Y. App. Div. 1986), *rev'd on other grounds*, 70 N.Y.2d 109 (N.Y. 1987) (Appellate Division holds that the state constitution extends a right to shelter to homeless families; the state constitutional argument is not presented to the Court of Appeals). The state courts continue to enforce this right. *See McCain v. Giuliani*, 236 A.D.2d 256 (N.Y. App. Div. 1997), *appeal denied*, 1997 N.Y. App. Div. LEXIS 4993 (N.Y. App. Div. 1997) (enforcing trial court orders).

92. *Moore v. Ganim*, 660 A.2d 742 (Conn. 1995); *see also Hilton v. City of New Haven*, 661 A.2d 973 (Conn. 1995) (companion case involving the right to shelter; relying on *Moore v. Ganim*, the judges divide as they did in that case).

93. *Moore*, 660 A.2d at 771 (Peters, J., concurring).

94. *Id.* at 783 (Berdon, J., dissenting, with whom Katz, J. joined).

95. *See Franklin v. Dep't of Human Servs.*, 543 A.2d 56 (N.J. Super. Ct. App. Div. 1988), *aff'd on other grounds*, 543 A.2d 1 (1988) (N.J. 1988). The constitutional and statutory claims were being developed in a concerted campaign in New Jersey, but the campaign essentially ended with the dismantling of the New Jersey Office of Public Advocate and the imposition of restrictions on the federally-funded legal services program. *See Roisman, ESTABLISHING A RIGHT TO HOUSING: AN ADVOCATE'S GUIDE, supra* note 68, at 32-33, 42 (discussing the New Jersey campaign); Roisman, *Establishing a Right to Housing: A General Guide, supra* note 68, at 221-22 (same). The New Jersey Office of Public Advocate was created in 1974 and eliminated in 1994. *See Department of the Public Advocate Act of 1974, ch. 27, 2, 1974 N.J. Laws 67, 67 (N.J. STAT. ANN. §52:27E-51)*; Mark Green & Laurel W. Eisner, *The Public Advocate for New York City: An Analysis of the Country's Only Elected Ombudsman*, 42 N.Y.L. SCH. L. REV. 1093, 1153 (1998) (The Office of the New Jersey Public Advocate "was eliminated entirely in January 1994, when the Republicans won control of both the statehouse and the legislature."); Geoffrey R. Scott, *The Expanding Public Trust Doctrine: A Warning to Environmentalists and Policy Makers*, 10 FORDHAM ENVTL. L.J. 1, 45 n.129 (1998) (The Office was dismantled in 1994 by Governor Whitman "as a cost-saving measure."). With respect to the restrictions on the legal services program, *see Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, §504, 110 Stat. 1321, 1321-53-56* (reenacted in the Omnibus Consolidated Rescissions and Appropriations Act of 1997, Pub. L. No. 104-208, §502, 110 Stat. 3009 (1997)); *Velazquez v. Legal Services Corp.*, 531 U.S. 533 (2001) (invalidating only a restriction on challenging welfare laws); *Velazquez v. Legal Services Corp.*, 164 F.3d 757 (2d Cir. 1999), cert. Denied, 121 S.Ct. 1224 (2001) (upholding other restrictions).

96. *Southern Burlington County NAACP v. Township of Mt. Laurel*, 336 A.2d 713 (1975), *cert. denied and app. dis.*, 423 U.S. 808 [Mt. Laurel I]; *Southern Burlington County NAACP v. Township of Mt. Laurel*, 456 A.2d 390 (1983) [Mt. Laurel II].

97. *Mt. Laurel II*, 456 A.2d at 415 (because "the State controls the use of land, all of the land. . . it cannot favor rich over poor").

98. *See John M. Payne, Reconstructing the Constitutional Theory of Mount Laurel II*, 3 WASH. U. J.L. & POL'Y 555 (2000).

99. Hershkoff, *supra* note 72, at 1135.

100. *Id.* at 1135, 1140 n.44 (identifying some such states). *See also* Adam S. Cohen, *After the War: Poverty Law in the 1980s: More Myths of Parity: State Court Forums and Constitutional Actions for the Right to Shelter*, 38 EMORY L.J. 615 (1989).

101. *See, e.g.*, Frank M. Smizik & Michael Stone, *Single Parent Families and a Right to Housing*, in *WOMEN AS SINGLE PARENTS: CONFRONTING INSTITUTIONAL BARRIERS IN THE COURTS, THE WORKPLACE, AND THE HOUSING MARKET* 227-66 (Elizabeth A. Mulroy ed., 1988) (discussing an effort to amend the Massachusetts constitution to add a right to shelter).

102. *See* Roisman, *Establishing a Right to Housing: A General Guide*, *supra* note 68, at 209-10 (discussing constitutional claims). These advocates will find substantial assistance in Professor Hershkoff's "project about state courts and state constitutions." Hershkoff, *supra* note 72, at 1137; *see also* Helen Hershkoff, *Welfare Devolution and State Constitutions*, 67 FORDHAM L. REV. 1403 (1999); Helen Hershkoff, *State Courts and the "Passive Virtues": Rethinking the Judicial Function*, 114 Harv.L.Rev. 1833 (2001).

103. *See* Zinn, *Abolitionists, Freedom-Riders, and the Tactics of Agitation*, *supra* note 11, at 432 (quoting Wendell Phillips, "speaking affectionately of the abolitionist leader Angelina Grimke: 'Were I to single out the moral and intellectual trait which won me, it was her serene indifference to the judgement of those about her.'").

104. DON E. FEHRENBACHER, *SLAVERY, LAW, AND POLITICS: THE DRED SCOTT CASE IN HISTORICAL PERSPECTIVE* 9 (1981) (emphasis in original).

105. MILLER, *supra* note 16, at 513.

REPRESENTING THE POOR AND HOMELESS: A COMMUNITY-BASED APPROACH

ROBERT A. SOLOMON*

Several years ago, at a conference on representing the homeless, advocates were discussing developing suitable housing for single homeless people. Several people argued against single room occupancy (SRO) units without bathrooms and cooking facilities. The question was posed as one of human dignity; our clients should not be subjected to the lowest possible form of housing. I was fully persuaded by the argument, but for one problem. In New Haven, Connecticut, in seeking to redevelop Connecticut's largest SRO, we had interviewed 150 of the 218 occupants. Our clients, a large majority, told us that they did not want bathrooms or, to a lesser extent, cooking facilities in their rooms. When I mentioned this, an advocate from Wisconsin stated that his program had had the same experience.

It is possible that our results were flawed or that we did not go far enough. Shared bathroom and cooking facilities may be the only available sites for social interaction in a building. Further questioning may have resulted in a preference for individual bathrooms and alternative meeting rooms. Or, it may be that our clients felt the added responsibility of cleaning a private bathroom or kitchen was not worth the added benefits. Not being a resident of the SRO in question, I am not competent to answer the question. Any answer I give is based on my own life and my own preferences. Because most of us have always lived in residences with bathrooms and kitchens, we assume that everyone wants the same, and yet not everyone does.

The second story is from a different perspective. We represented the tenants of a severely blighted housing project containing 1,063 units. The site was pretty depressing, with a vista of cracked and broken concrete between buildings, with no grass or trees. We had filed suit concerning the conditions at the project. At a tenants' meeting, we asked the tenants to list their demands. When the tenants asked what kinds of demands they could make, I suggested that they make a wish list, with anything they could think of to improve the project. Then, as an afterthought, I added, "for example, how about some grass? You could ask that they rip up some of this concrete and have a nice grassy area." The result was immediate and dramatic. People literally left their seats, slapped their heads and made comments to the effect of "Oh, no, anything but that. Anything but more grass."

It was quite clear that the tenants and I viewed grass from a very different perspective. They had experienced grass as an abandoned lot, filled with weeds, broken glass, tires and other junk. They viewed the concrete as an improvement, for which they had fought. Based on my suburban childhood, when I thought of grass, I saw an attractive, well-tended place to play, much more suitable than the existing concrete.

I do not suggest that the inquiry ends at accepting the tenants' definition of "grass." We all knew that there were places where grassy areas were maintained and might be preferable to concrete. The tenants, however, did not believe that the local housing authority would maintain the grass at this particular project. This is not an uncommon view in low-income neighborhoods, where green space is often seen as attracting crime, drugs, and dumping. In order to change this perception, we would need to provide a more positive experience. We might suggest ways to ensure adequate maintenance. The decision, however, is for the clients. Our duty as lawyers is to give the clients a full menu of choices, so that they can make an educated decision. An assumption that grass will be mowed is useful only if we are willing to do the mowing or are somehow confident that someone else will.

That brings me to my third example. A local community development corporation had funds to complete three neighborhood projects. The members of the CDC were particularly concerned with the physical state of their neighborhood school. The local board of education had announced an ambitious building project, which did not include this particular school. As a result, the CDC decided to use its own funds for school improvement. That is when things started to get confusing.

The Yale School of Architecture has a “First Year Building Project.” The project is a wonderful example of clinical education, which teaches through experiential learning while providing a substantial community benefit. Prior to the fall term, the faculty identifies a project, with the caveat that the project must be fully funded, with a design and construction within the capabilities of architecture students. Over the past twenty-five years, projects have included a two family house for a local non-profit, a bandstand for the New Haven Green, and a host of others. The architecture students, working in teams, spend the fall semester in a design competition. Students spend the spring semester and the summer constructing the winning design. The client pays for materials and expertise beyond that of the students (plumbers, electricians, etc.), but receives over \$100,000 in free services. The school project seemed perfect for the School of Architecture’s First Year Building Project.

In order to make a presentation to the Superintendent of Schools, faculty and students began preliminary drawings for a 2000 square foot addition to the school. At a meeting with the Superintendent attended by school officials, CDC officers, architecture and law school faculty, and students, everyone “agreed” that the space would be used for a Head Start classroom, a second classroom, a parent resource room, and an office for the CDC. However, as time went by, the school principal and the Superintendent expressed doubts as to the value of this added space. CDC members began questioning whether the result was worth the expense. Discontent seemed to be boiling below the surface. Finally, the real problem surfaced.

The Building Project had carefully set forth its own capability and requirements. For pedagogic reasons, the architecture faculty did not believe the Building Project could design and develop a structure substantially larger than 2,000 square feet. The CDC, focusing on the savings offered by the Building Project, saw the First Year Building Project as its only option. Thus, the CDC saw itself as having a choice of the 2,000 square foot building or nothing. No one had told the CDC that it could build something else if it was willing to forego the savings.

When presented with that option, the CDC went back to the starting point to consider all of its options, beginning with asking the principal and teachers what they wanted. The response was immediate and definitive: the teachers wanted a room big enough to hold all the children at one time, to serve as a gymnasium/cafeteria/assembly. That required a minimum of 4,000 square feet. The CDC decided to spend the additional funds. Ironically, the School of Architecture was still able to participate in a different manner and bring about substantial savings. In the end, the issue had nothing to do with the cost and everything to do with a client who was not shown the entire menu. Although the client grumbled at the cost of a hamburger, the client was delighted to pay for a lobster once that choice was made available.

One more story. In August 1999, I was appointed the Acting Executive Director of the Housing Authority of the City of New Haven. The Housing Authority owns several high rise buildings, which are generally referred to as “elderly housing,” although, in reality, the tenants are a mix of elderly and disabled people. Most of the units are efficiency apartments with bathrooms. When I go to tenant meetings at these buildings, the most vocal tenants are elderly and their most common complaint is a lack of security, for which they blame the younger residents. Elderly residents complain that younger residents have more guests, are rowdier, make more noise, and stay up later at night. The guests, the complaint goes, are disruptive, are likely to stay for long periods of time (months, sometimes), sell drugs, and steal from other tenants. Since HUD now permits housing authorities to designate “elderly only” buildings, we

could respond to the elderly constituency by complying with their request by designating certain buildings.

There is, however, another side of this story. I recently testified at a hearing of the local Commission on Disabilities, which wanted to know the effect of “elderly only” buildings on the disabled. One effect would be a reduction in the number of efficiency apartments available for disabled people, many of whom are single men who would likely be homeless but for the existence of those units.

If our goal was to house the homeless, we would not designate any buildings as elderly. In fact, this would be a wise marketing decision, since we have a long waiting list for single people under the age of 50, but virtually no waiting list for the elderly. The question is “who is our clientele?” If we want to meet the needs of the elderly poor, we would use our modernization funds to convert efficiencies to one-bedroom apartments, which would meet a market preference. At a cost of \$30,000 - \$40,000 per unit, this would cost millions of dollars. If we market to homeless single people, we would not have to convert the efficiencies, although management would be more difficult and more costly. While it is easy to conclude we should do both, we are talking about allocating scarce resources, both in the form of the existing units and in the form of our available capital. Nor are the elderly and the disabled the only groups competing for these resources. If we improve units for the elderly we will be foreclosed from spending the same funds to improve (or even maintain) family units.

I offer these stories to raise three points: (1) While it is easy to define a client group broadly, e.g. “the homeless,” broad definitions are usually meaningless once we ask “who is the client” and “what does the client want?” Since the group known as “the homeless” consists of individuals and subgroups with competing interests, we need a more sophisticated analysis of who it is we are representing; (2) The unintended consequences of any social policy usually exceeds the intended consequences. If you squeeze the balloon in one place, it will expand somewhere else. If we were physicists, we might recognize more quickly that the laws of motion apply to social policy as well as the physical world and that for each action there is a corresponding and equal reaction. Most housing markets are relatively static. Subsidizing one group is often at the expense of another; (3) People with particularized problems have particularized needs. As Bob Hayes said many years ago, for some homeless people, the answer is “homes, homes, homes.”¹ As Robert Ellickson noted in response to Hayes, other people require special services including, mental health, day care, medical, substance abuse, and other services.²

When we talk about solving the problems of the homeless, we include collateral problems. Supportive housing often recognizes the need for flexibility and movement in living arrangements, from a totally structured SRO and communal kitchen environment to more independent living. Even within supportive housing, however, mental illness, mental retardation, AIDS, physical frailty, substance abuse and accessibility all present different problems for individuals. Each of these problems is indicative of a different subgroup of the homeless population. Each subgroup has a stake in pushing its own agenda, often at the expense of other subgroups. We are talking, after all, not only about the expenditure of limited resources, but about a pot that is inadequate by any standards.

Years ago, I was mystified by the intensity of two legal services attorneys debating whether homelessness was an “entitlements problem” or a “housing problem.” I asked a friend about the debate and he looked at me like I was from another planet. The real debate, he explained, was about which department would control funds for providing legal services to the homeless. Since the entitlements and housing units provided different services, often to different populations, this was not an academic question. Whoever won the argument and controlled the funds would get to answer two critical questions: (1) who are the homeless and (2) what are their legal needs.

All of this is complicated (or made easier) by the locations and ways in which we meet our clients. Sometimes we stumble into decisions that have serious ramifications for our clients. When the Yale Law School clinic started an HIV project, we negotiated with a local HIV medical clinic to offer free legal services at their offices. We thought this would be an ideal setting in which to make our services available. It did not take long, however, before a colleague who worked on HIV issues on both a local and national level asked why we had chosen to represent a white, middle-classed clientele instead of a minority, low-income clientele. The short answer to the question is that we did not know we were making that choice. In arranging to see clients at a well-known hospital location, we incorrectly assumed that we would see a cross-section of the client population. Our colleague's description was all too accurate, as the medical clinic's patients were largely people whose treatment was covered by medical insurance. Other organizations in our community served uninsured or underinsured populations. As in many communities, in New Haven this broke down along race and income lines.

While our choice had particularly dramatic consequences, almost any intake site or delivery system has the potential to predetermine case selection. When we did outreach at New Haven's first homeless shelter, we saw single men. When Connecticut instituted a "welfare motel" system for homeless families during the late 1980s, we did outreach at the motels, where we saw single-parent families, almost exclusively headed by women. Telephone intake requires access to a telephone (and, these days, the ability to negotiate an automated system); central office locations require transportation and often exclude the elderly and the disabled; neighborhood offices may, for all practical purposes, be limited to clients from a particular neighborhood, especially in those communities where neighborhood boundaries are strong and public transportation into neighborhoods is weak. How we make these decisions may predetermine who our clients are, and who our clients are may predetermine the issues we address.

What does all of this mean? Basically, the notion of serving a class as broad as "the homeless" involves defining the class. At some level this is not a very fruitful task. It may be more useful to think in terms of the community we choose to represent. With the homeless, the problem is complicated in that homeless people do not constitute a community in the traditional sense or, for that matter, even an interest group with a common theme.

To work toward an effective definition of community, we need to start with a few assumptions about our own community, i.e. the legal community. First, there are no real generalists. I assume that there is no lawyer who can competently represent clients in cases or projects including the Low Income Housing Tax Credit, mixed-income housing financing, supportive housing, public housing, social security disability, SSI, veterans rights, relocation benefits, mental health issues, evictions, welfare, worker's compensation, unemployment compensation, medical benefits, civil commitment, dependent and neglected children, criminal law, torts, probate law, and the various other areas in which homeless people need representation. No one does everything.

That said, it is useful (and perhaps critical) to develop a framework within which we expect to provide services. One place to start is to ask whether we see homelessness as a supply side or demand side problem. Do we perceive the solution to homelessness (or at least our own goals) as providing more housing or providing services directly to homeless people? I start with this distinction because I believe there is a fundamental difference between developing housing and providing individualized legal services. Housing development is usually on behalf of an institution or corporation and includes an aspect of community support (or, more frequently, community opposition), as well as market issues. Is your community more like Detroit (a city government supportive of housing development, with available subsidies and cheap space), New Haven (over 33% of current housing is currently subsidized, with little available space for development and a strong consensus for increasing home ownership), or suburban and exurban

communities (available green space, but strong community opposition to any affordable housing)?

This initial assessment will inform the type of service we provide by limiting the type or amount of housing that can be developed. In making this assessment, it is critical that we inform ourselves as to community partners. Are there groups in the community seeking to build supportive housing, transitional housing, efficiencies, affordable housing, group homes, congregate housing or any other possible combinations to meet the needs of the homeless population? What kind of assistance do these groups need? Are there people who want to form groups but need assistance with incorporation or tax exemption? Unless we understand the needs of our communities, we cannot begin to make community-based decisions in developing housing.

The analysis is no less exacting for those providing individualized services, sometimes referred to as the “service model.” As Gerald Lopez noted in *Rebellious Lawyering*, too many lawyers equate what they do best with what is best for the community.³ When dealing with scarce resources, this approach, at best, risks a misallocation of resources. There is a risk, however, of doing real harm. When the only available tool is a hammer, we think that everything can be solved by hitting. While hitting a nail may give the desired result, hitting a computer is not likely to be as effective. The same is true with complex community relationships. An attorney with expertise in defending evictions may offer an individualized service that keeps an individual or a family in a housing unit for a longer period of time, thus preventing imminent homelessness. That “success” may be on behalf of someone committing a serious nuisance, drug dealing or violence. The successful intervention on behalf of the individual can damage the larger community. We can justify the representation on a theory of defending individual rights, but not on a community-based approach.

We often note all of the things that are not rocket science or brain surgery. There is a corollary. Some things are rocket science and others are brain surgery. The workings of a community are complicated. We are only starting to understand the many factors that can tip a neighborhood in regards to race, crime and home ownership. We cite the “broken window syndrome” for the proposition that broken windows, uncut grass or other signs of blight can spread, causing neighborhood deterioration. However, we have little knowledge as to how many broken windows we need to fix before localized improvements begin to spread outward.

Evicting a problem tenant is an attempt to fix a window. The eviction defense is often like breaking another window. When we justify the eviction defense based on an individual rights commitment, we should understand that our representation affects a larger community. In some cases we will be hitting the community with a hammer. Like the computer, the community will not always react well.

Let me tell one more story about priorities in representing community interests. As Executive Director of a public housing authority, I received a notice of a zoning board hearing concerning an application for a variance to sell beer in a convenience store adjacent to 175 public housing units. I planned to testify in opposition to the application, as the owner of the adjacent property. I made sure that tenants and other governmental officials knew about the application and my plans. In preparation, I reviewed studies that showed a strong correlation between the existence of alcohol outlets and violent assaults, particularly the association between youthful violence and the geographic availability of alcohol.

At the hearing, however, my approach changed. The chairman of the zoning board, noting that variances were based on hardship and impediment to land use, inquired as to the applicant’s hardship. The applicant’s attorney answered in terms of the inconvenience to neighborhood consumers, who would have to travel further (although not that far) in order to buy beer. He presented a petition with over 100 signatures.

This seemed like a golden opportunity to attack the sufficiency of the application and I did so, arguing that, given the lack of a prima facie showing of hardship, the zoning board had no authority to grant the application. As I was making the legal argument, however, I found myself saying, “by the way, I should note that I am a member of the Connecticut Bar.” In short, I realized that what I was doing was lawyering, which was different than stating my view as a public official. The local alderwoman, a police officer and a tenant leader, also testified against the variance.

Afterwards, I thought about the fact that the tenant leader was not represented in what was an important legal proceeding. Ironically, two days earlier I had received a request for information from the local legal services program, noting that they represent many public housing tenants, as well as the city-wide public housing tenant organization. While this may be true, I have seen no evidence in support of this claim. Although the Housing Authority is the largest landlord in my community, we would rarely know that legal services exists if it were not for eviction defenses which, in the overall scheme of things, has little institutional effect, other than to delay (but not prevent) a few evictions. This is not a question of bad priorities; it is a question of no priorities. This is not community-based representation and is, in my view, a terrible waste of a valuable community resource.

The failure to set real community-based priorities has a dramatic effect on the homeless population. The Housing Authority has completed its Comprehensive Plan, as required by HUD. Our housing stock includes several hundred efficiency units, which cannot be effectively marketed to the elderly. As I write this, we have more vacant efficiencies than we have elderly people on our waiting list. As we wrestle with issues of allocation of units, not to mention demolition or disposition, we are lobbied by advocates for the elderly, disabled, and those needing supportive housing, not to mention legislators and other governmental officials. Because of the lack of any community-based outreach, the homeless go unrepresented, except to the extent that they are included in a particular supportive housing proposal. As we concluded eight months of planning, with the final report ready for submission to HUD, after months of meeting with unrepresented tenants, we did not receive any inquiries or demands from any lawyer, other than requests for information from legal services.

Elsewhere, Raymond Brecia, Robin Golden, and I discussed the importance of identifying a “community voice” through developing relationships with community leaders and legitimate neighborhood based institutions.⁴ Community institutions are critical in helping to inform us of community needs, including the legal needs of individuals within the community. Of course, it is one thing to define a “legitimate community-based organization” and another to find one, particularly when there are competing organizations claiming legitimacy. Still, homeless resource centers, shelters, and the streets are excellent places to meet with homeless people and identify their needs. Non-profit service providers and unincorporated groups are often desperate for representation.

In addition to meeting specific legal needs of the groups, however, members of the groups will identify individual needs (whether you want them to or not). That is the nature of working with groups whose individual members cannot afford private attorneys. Structuring individual representation within group goals also fosters a fuller discussion of how individual problems support or conflict with those goals. Conflicts between individual problems and group goals may lead to a reassessment of group interests or, at least, a clearer enunciation. That is not to say that the group should influence the lawyer’s actions concerning an individual client once the lawyer has agreed to represent that client. Such influence would raise ethical problems.⁵ Nothing prevents an attorney, however, from refusing to accept an individual case because it conflicts with group goals.

Ultimately, a community-based process requires identifying the community and setting priorities. If those priorities are set in a law office by lawyers, informed predominantly by those

who manage to get to the law office, the priorities are unlikely to be representative of the community at large. Real priority setting must involve a client base and must occur on the clients' turf.

Notes

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1. For discussion of the supply side argument, see S. Wizner, *Homelessness: Advocacy and Social Policy*. 45 MIAMI L. REV. 387, 398-404 (1990-91).

2. R. Ellickson, *The Homelessness Muddle*, 99 PUBLIC INTEREST 45 (Spring 1990).

3. GERALD LOPEZ, *REBELLIOUS LAWYERING; ONE CHICANO'S EXPERIENCE* 3 (1992).

4. R. Brecia, R. Golden & R. Solomon, *Who's In Charge, Anyway? A Proposal for Community-Based Legal Services*, 25 FORDHAM URB. L.J. 831, 856-860 (1998).

5. See, e.g., Connecticut Rule of Professional Conduct, Rule 1.13, Organization as a Client, which permits representing an organization and its constituents, subject to Rule 1.7, Conflict of Interest. See also Rule 5.4, Professional Independence of a Lawyer, particularly Rule 5.4(c). The Connecticut Rules are virtually identical to the Model Rules.

PART II:

Place and Space

HOUSING OUT THE POOR

JOHN J. AMMANN*

I. INTRODUCTION

Whatever the current national housing policy is in America, it is not a policy that makes housing the poorest of the poor a priority. Housing policymakers at all levels of government have pursued, or at least acquiesced in, a scheme that has directed our nation's limited housing resources toward families with incomes above the incomes of families who are on the public housing waiting lists across this country. Many of the families on these lists are not eligible for, or can't make use of, other housing subsidies such as the mortgage interest deduction. At the same time, we are closing many doors previously open to the poor just as they are led to the threshold of "self-sufficiency." The supply of affordable housing is decreasing while we make it harder for the poor to access the limited supply that remains.

While there are many roles for the lawyer as advocate for the poor and homeless, the current climate requires attorneys in this arena to speak publicly against the recent broad shift of limited resources to higher income households. Attorneys must also muster an effort to represent those at the lowest end of the economic scale to ensure they hold onto or become eligible for the limited assistance which is available to them. Ultimately, advocates will also need to use all the tools available to them, from lobbying to litigation, to convince government at all levels that the only sure way to address the housing needs of very low-income families is through construction of new units of housing, and in particular, public housing.

This article will begin by exploring the many ways in which federal and local housing policies have limited the availability of affordable housing for the poor. First, it explores the decreasing supply of housing stock for the poorest of the poor. Next, it looks at the ways in which Congress, the Department of Housing and Urban Development, and local housing authorities have made it harder for the poor to be admitted to the supply of public housing and other assisted housing that does remain. The discussion then moves to changes in eviction policies which make it easier to evict the poor even if they manage to obtain a unit.

The analysis then turns to a review of the HOPE VI program, which is currently the primary HUD program for constructing new public housing units. HOPE VI projects are springing up around the country, but there is a debate over the extent to which these projects benefit those most in need of housing, since these projects usually result in a net loss of public housing units. A major component of these projects is the use of Section 8 vouchers to disperse current residents of public housing, so this essay scrutinizes the efficacy of the use of vouchers as a tool for housing those who formerly resided in public housing. Fair housing concerns are also discussed in this context.

Finally, this article argues that any policy other than a massive program of construction of new public housing units will not serve the interests of the lowest income families who should be the primary intended beneficiaries of any housing policy.

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II. Demolishing Out the Poor: The Dwindling Supply of Affordable Housing

HUD recently surveyed 40 public housing authorities and found almost one million families on their waiting lists for public housing and Section 8 assistance.¹ This figure fails to give a complete picture of demand, since in many cities the waiting lists for assisted housing are closed. Instead of building units to meet this need for decent and affordable housing, public housing authorities across the country, with HUD's blessing, have demolished tens of thousands of public housing units over the last several years. A lack of commitment at the federal level has meant that the number of HUD assisted households, which includes public housing and Section 8, has dropped by 65,000 from 1994 to 1998.² Missouri alone lost almost fourteen hundred public housing units to demolition in the last five years.³ The number of occupied public housing units in this country now stands at 1.3 million units,⁴ with 1.5 million families holding Section 8 vouchers and another 1.5 families in project-based properties.⁵

While public housing is dwindling, other affordable units are also decreasing in supply. Overall, the number of housing units affordable to households with extremely low incomes, defined as below 30 percent of median income, has decreased by more than 370,000 units since 1991.⁶ HUD has found that there are 5.4 million families who have worst case housing needs. This is defined as renters receiving no rent assistance who have incomes below 50 percent of the area median and pay more than half of their income for rent or live in severely substandard housing. More than three-fourths of those with worst case housing needs had incomes below 30 percent of area median income.⁷

Perhaps the most significant finding in recent HUD studies is that "a large number of 'affordable' units are not in fact available for rent by families who most need them, but are instead occupied by higher-income households."⁸ So while there were 76 units with rents that were possibly affordable to every 100 extremely low-income renters, only 36 of those units were actually available for rent to such families. Meanwhile, HUD found 8.87 million families with incomes below 30 percent of median income.⁹

The need is clearly greatest in urban areas such as St. Louis, where the retiring director of the St. Louis regional HUD office recently stated the area needs an additional 50,000 units of affordable housing to meet the needs of low-income families.¹⁰

It is no surprise then that the waiting lists for both public housing and Section 8 are growing dramatically in not just size but in the length of time a family stays on the list. The average waiting time for a family to get public housing across the country rose from ten months to eleven months from 1996 to 1998.¹¹ In our largest cities, the average wait for public housing went from 22 to 33 months in the same period, a 50 percent jump.¹² In New York, it's hardly worth the wait for public housing – eight years is the average time a poor family waits to get to the top of the list there. Families wait six years in Oakland and five years in Washington, D.C.¹³ For Section 8 vouchers, the average wait in the large cities is 28 months, up from 26 months in 1996. The wait for a Section 8 voucher in Los Angeles and Newark is ten years.¹⁴ In many cities, waiting lists are closed frequently, masking true demand.

The surging economy has done nothing to alleviate the housing crisis for the poor. With units harder to find as demand increases and supplies dwindle, rents are rising at twice the level of inflation.¹⁵ In a candid admission, HUD has stated that "rather than benefiting from the surging economy, low-income renters are left to compete for the dwindling supply of affordable rental housing available on the private market. Many of the most vulnerable low-income renters spend years waiting in vain to obtain needed rental housing assistance in the form of housing vouchers or public housing units."¹⁶ The National Low Income Housing Coalition has studied

the ability of low-income working families to afford housing, and found that the average wage required to afford housing at fair market rent, without paying more than 30 percent of a family's income for housing, would be \$12.47 an hour, which is more than twice the current federal minimum wage.¹⁷ A family in New York would have to work 123 hours a week at the current minimum wage to be able to afford market rate housing in that state. These figures nationally are up from the previous year, indicating a need for a long-awaited increase in the federal minimum wage.

Despite numerous reports about the decreasing supply of affordable housing, HUD to date has not addressed this loss of housing stock for the poor in a positive manner. Instead, HUD has adopted programs allowing for large-scale demolition of public housing. This has come under two separate programs: a straight demolition program, and under the HOPE VI program, discussed later, where public housing units are demolished in the name of creating mixed-income neighborhoods.

No one argues that the high rise public housing projects built in the middle of the 20th century should be preserved. Pruitt-Igoe in St. Louis was the poster child of the failed high-rise public housing strategy of the 1950s. At its peak, Pruitt-Igoe was home to 26,000 people in 33 high-rise buildings with little support in the way of timely maintenance or social services. The buildings were demolished by the early 1970s, and the land where they stood remains idle still today.¹⁸

Housing advocates are not opposed to demolition of unsightly public housing. Instead, they are opposed to the loss of these units with no plans to replace them. The poor residents of these projects didn't ask for the neglected maintenance and the segregation that policymakers condoned. But those policies have led to the inevitable demolition of derelict units in our urban areas. The so-called "one-for-one replacement rule," which required HUD and local housing authorities to replace each unit of public housing taken out of service with another public housing unit, was a safeguard which ensured that the total stock of public housing would not be diminished. The replacement unit had to be hard stock, public housing, and not a Section certificate or voucher. This rule has been eliminated by Congress, and since then, demolitions have increased dramatically.¹⁹ HUD has now embarked on a misguided policy of tearing down existing public housing even when it is in good condition. In St. Louis, the local housing authority recently spent \$35 million to renovate the Clinton Peabody public housing complex. That didn't stop the St. Louis Housing Authority from proposing to HUD that it be allowed to tear down as many as half of the units as part of a HOPE VI project.²⁰

Moreover, the St. Louis Housing Authority demolished buildings containing 93 units of public housing at Clinton Peabody without prior HUD permission. The assumption was that the units were in such bad condition that no one would oppose their demolition. In this and similar cases, the local housing authorities bear the primary blame for allowing units to fall into such disrepair that they appear ready for a date with the wrecking ball. A lawsuit by tenants now seeks to replace those units and stop further demolition.²¹

HUD's participation in the diminution of affordable housing is not limited to overseeing a loss of public housing units. HUD is struggling to address the imminent threat to hundreds of thousands of families residing in project-based assisted housing by the expiration of long-term contracts with private owners. Over the next few years, contracts covering thousands of projects will be expiring, and unless there is some incentive for owners to stay in the program, they will notify HUD that they are taking their buildings out of the program. During 1998 alone, 13,000 units were lost due to expiring contracts.²² While HUD pledges to provide vouchers to these tenants who will be displaced, vouchers do not directly increase the supply of affordable housing.

There are other forces at work to diminish the supply of affordable housing as well. A discussion of the problems of lead paint contamination in older housing, as well as other environmental problems such as asbestos, is beyond the scope of this article. However, they are mentioned here only to indicate that in our older urban areas, we can expect more and more units of affordable housing to be taken off line as government attempts to eliminate these hazards. Often the effort to eliminate the hazard means eliminating the housing.

HUD's inability to protect the current stock of public housing and project based assisted housing from further deterioration can be attributed in some degree to a lack of Congressional budget support. However, HUD has come under fire for mismanaging the resources it does receive from Congress. The nation's housing agency was the target of criticism, for example, for awarding grants of over \$4 million dollars to Indian tribes to build smoke shops.²³

HUD's claim of success during the Clinton Administration focused on the nation's increasing homeownership rate. It might be argued that the current increased homeownership rates show a declining need for rental units, including public housing. But even though the effort to increase homeownership is laudable, and minority homeownership rates are especially benefiting from this policy, the effort to increase homeownership can only be successful for families who have incomes sufficient to become homeowners,²⁴ who can afford the down payment, and have good enough credit to qualify for a loan with a reasonable rate of interest. Many loans to families with barely enough income to afford to purchase a home come with subprime mortgages, which carry higher than normal interest rates and excessive points due to the poor credit history of the borrower. This problem, along with easy availability and abuse of home equity loans, inflated appraisals, as well as outright fraud, should temper some of the enthusiasm in Washington over the higher homeownership figures.²⁵

While there is an utter lack of policy directly supporting new construction of public housing units apart from some limited programs like HOPE VI, there is a policy in the tax code that is the primary source for funding privately owned units available to low and moderate income families. The Low Income Housing Tax Credit program supplies tax credits to investors who provide equity to build affordable housing.²⁶ Congress has taken urgently needed action recently to increase the limit on these credits which will spur additional construction.²⁷ However, this program in some jurisdictions has been invaded by public housing authorities who are using tax credits as part of their HOPE VI projects. This has the effect of limiting tax credits available to other developers who could construct units outside the control of the housing authority and its hand-picked developers.²⁸

For attorneys representing the poor and homeless, these challenges will need advocacy on several fronts. Many lawyers have undertaken representation of public housing tenant associations fighting demolition. Attorneys are also assisting tenants of buildings with expiring Section 8 contracts to ensure that tenants' rights are observed. They are also assisting these tenants with plans to organize in efforts to buy their buildings or to partner with nonprofit agencies willing to purchase the Section 8 projects. Attorneys can also help developers access the increasing supply of tax credits available for affordable housing.

III. REGULATING OUT THE POOR: NO WAY IN, MANY WAYS OUT

Even if a poor family gets to the top of a waiting list for housing through a local housing authority, the struggle is not over. Clearing the admissions process has become more difficult for poor families. Then, once admitted, tenants are not secure in their housing because the eviction process has become easier for public housing authorities.

A. Admissions

New income-targeting guidelines adopted by Congress will affect the ability of the poor to obtain housing assistance. New federal housing policy attempts to eliminate concentrations of very low- and extremely low-income families by changing the income targets for public housing. Previously, at least 75 percent of public housing was to go to families earning 30 percent of median income or less. Under recent federal housing reforms, housing authorities are only required to rent 40 percent of their units to those whose incomes are below 30 percent of median.²⁹

While the justification for the change is to prevent concentrations of the poor which were the hallmark of the old high rise public housing projects like Pruitt-Igoe, there is nothing in the legislation which makes up for the units lost to those below 30 percent of median income who won't be housed because more families above that level will be allowed to become tenants of public housing.

Under the new income targeting rules, working families receive a strong preference for the dwindling supply of public housing. This preference works to allow new applicants with jobs to jump over families who have been on waiting lists for many years. Federal preferences which once gave priority to the homeless or to those paying a disproportionate share of their income for rent are gone. In St. Louis, a tenant association protested the new admissions policies of the St. Louis Housing Authority. The tenants called for preserving a preference for the homeless and the preference for families paying more than 50% of their income for rent and utilities. They were unsuccessful.

It is difficult to argue with a policy that clearly helps the working poor or students. However, that same policy favors them at the expense of those with even more need. Under the policy adopted by many housing authorities, a full time law student using student loans to finance an education would have a higher priority for public housing than a single unemployed mother with two children. That the family is homeless, or a member has a mental illness, is irrelevant under the new policy. This situation has created a cruel dilemma for housing advocates. While the thriving economy of the start of the 21st century has helped place many people in the workforce for the first time and housing would assist them in staying employed, the unemployed and the unemployable are told they will not be helped.

It is not just new income targeting that can keep needy families out of assisted housing. Tighter screening methods are being used by housing authorities to look at other factors as well. Private landlords have always carefully screened families applying to live in their units. Criminal background checks and credit checks are common. Many landlords even conduct visits to the applicant's current address to determine how well the family cares for its current rental home.

In recent years, HUD has given housing authorities greater ability to use screening tools like criminal background checks to keep some families out of assisted housing. However, it seems policymakers forget that to be poor often means to have a myriad of problems including bad credit, a criminal history, mental illness, drug and alcohol addiction, domestic abuse, and other problems. Instead of accepting these difficulties as issues which make life harder for the poor, federal housing policy has used these difficulties to tighten the rules on who is eligible for assisted housing.

Federal regulations on admission to public housing direct housing authorities to look at a family's "history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants."³⁰ Similar regulations in the Section 8 program state that a housing authority may

deny assistance to an applicant if any member of the family commits drug-related criminal activity or violent criminal activity.³¹ In addition, federal law now requires that anyone evicted from public housing because of drug-related criminal activity be ineligible for admission to public housing for three years.

There is no doubt that housing authorities should be able to screen out serious criminals from assisted housing. It is true that many of the homeless have had brushes with the law, but that should not exclude them from assisted housing. In fact, a recent study found that 54 percent of the homeless clients studied had some history of incarceration.³² This figure might give some policymakers reason to say less affordable housing is needed because we shouldn't be housing those with a criminal history. But just 18 percent of those surveyed had spent time in a state or federal prison. Most of those with a history of incarceration had been arrested for minor violations. While 49 percent had spent five or more days in a local jail in their lifetime, one has to understand how easy it is for someone to end up in a local jail.³³

The Law Clinic at Saint Louis University has been assisting homeless persons at various "homeless fairs" the last several years. At a homeless fair in October of 2000, law students and faculty interviewed 75 homeless persons about their legal needs. More than two-thirds of those seeking assistance at this particular fair wanted help with a minor criminal problem. All of those needing assistance had outstanding warrants or upcoming court dates in municipal courts in the St. Louis area. The charges included such things as riding the mass transit system without paying the fare, disorderly conduct, petty larceny, and traffic violations.

There are many examples of minor infractions turning into huge hurdles for the poor in obtaining housing or employment. A homeless veteran rode the MetroLink light rail system in St. Louis one day and paid the reduced fare designed for the disabled, since he had a disability and was receiving Social Security. Because he couldn't prove to an officer on the train that he had a disability, he was given a summons to appear in court on a charge of failing to pay the proper fare. The man didn't have transportation to the courthouse for his court date, and a warrant was issued for his arrest. In another case, a homeless woman was charged with eating on the MetroLink train for having a sucker in her mouth. She missed her court date and had a warrant issued which delayed her transition into permanent housing. Then there's the case of the homeless man who asked a police officer on a cold morning for some spare change to buy a donut. Instead of handing him a quarter, the officer handed the man a summons for panhandling.³⁴

The most significant concern for housing advocates representing these clients is that overzealous officials will use the HUD regulations to keep out families with minor criminal histories. Under these rules, there is no requirement that there be a conviction or even an arrest. In many cases, housing authorities get a copy of a police report of an incident involving a tenant, and automatically deny admission. All the housing officials must do is show by a preponderance of evidence that a family member has engaged in such activity, and they accept the police report as the only version of what happened.

Housing authorities could take a cue from some enlightened nonprofit housing providers which have eliminated standard screening tools. One nonprofit in St. Louis no longer requires credit checks, because it knows all of its clients have bad credit. Habitat for Humanity St. Louis has sold homes to several families who recently completed or are still in the middle of a bankruptcy proceeding.³⁵ These agencies acknowledge that the normal screening standards will leave the neediest of the needy out of the program.

Housing advocates will need to expand their educational efforts to sensitize local housing providers to the fact that an outstanding warrant or a record of spending a few days in a municipal jail should not make a family ineligible for assisted housing. Lawyers assisting the

homeless can also undertake to educate police that some violations by the homeless are out of necessity and that a more compassionate approach to law enforcement might involve offering assistance instead of offering a summons. Attorneys can also assist the homeless with clearing up outstanding warrants or minor criminal charges. Prosecutors are often willing to reduce or dismiss charges once they hear the plight of the homeless defendant.

B. Evictions

While new admissions policies make it harder for low-income families to get into public housing or obtain Section 8 vouchers, new federal and local policies are making it easier for housing authorities to evict tenants or terminate them from assisted housing.

Housing authorities have at their disposal rules against criminal conduct to use to evict tenants just as they use them to deny admission. As discussed above, a newspaper story about a drug raid or a police report about a peace disturbance often forms the sole foundation for housing authorities to send an eviction notice to a family. Zero tolerance for drugs and violence often translates into broad sweeps by police which result in numerous eviction notices for tenants in public housing complexes. Some rulings have upheld broad authority of housing authorities to evict families for drug use or possession by family members or even guests, even if the tenant had no knowledge of the presence of the drugs,³⁶ although one federal court recently held that in certain circumstances innocent tenants cannot be evicted.³⁷

Meanwhile, Congress continues to add reasons housing authorities can use to evict public housing tenants. Recent changes to federal law requires each adult resident of public housing to “contribute” eight hours per month of community service.³⁸ Residents who are employed, attend school, or who are enrolled in welfare-to-work programs are exempt from the requirement. Failure to comply with the new rule can be the basis of an eviction.

The hard-core unemployed, who are more likely than the regularly employed to live in public housing, will be most affected by the rule. Housing authorities will have difficulty finding community service opportunities for those who need to meet the requirement. The administrative burden the new law imposes on housing authorities almost ensures that some residents will be found not to have complied with the rule, and perhaps through no fault of their own. The community service rule will provide a tool for housing authorities to evict tenants who need housing the most and are least likely to become self-sufficient.

It can be argued that violation of the community-service requirement should not be the basis of an eviction. Leases should generally be limited to terms which affect the tenancy and the property. The community service requirement has no relationship to whether the tenant is keeping his end of the bargain of the lease in the usual sense—using the unit in a manner so as not to damage the property of the housing authority and in a manner that does not affect the quiet enjoyment of other tenants. Creative attorneys surely will challenge evictions based on allegations the tenant has failed to complete the required community service.

IV. HOPE VI: PROMISE OR PAIN

HOPE VI has been HUD’s flagship public housing initiative since 1992, but it has done little to replenish the diminishing supply of public housing even though the program has several laudable goals. The federally funded grants are designed to change the physical shape of public housing by constructing low-rise apartments and townhouses that become part of the surrounding community. It also aims to reduce concentrations of poverty by encouraging a greater income

mix among new developments. HOPE VI also has a service component intended to help residents find and keep jobs.

But the program is controversial, and doesn't help every city in need of more housing because housing authorities must apply competitively for the funds. In the cities where grants have been awarded, the result has been an overall decrease in the stock of public housing. A study of HOPE VI projects has found that 30,000 public housing units have been demolished so far, with 50,000 more slated to be bulldozed. Meanwhile, HOPE VI projects replace only about 45 percent of the units they demolish.³⁹ For fiscal year 1998, 22 cities received a total of \$507 million, and used it to demolish more than 10,000 units of public housing while replacing them with fewer than 7,000 new or rehabbed units.⁴⁰

A major concern, in addition to the loss of units, is the resulting fact that many of the original residents of the area are not returning to the new housing. A HUD Inspector General report states that in six of ten HOPE VI projects, less than half of the original residents moved back into the new community. The National Low Income Housing Coalition has found that "HOPE VI is still displacing more families than there are new units being built."⁴¹ The group analyzed the 1998 HOPE VI grant recipients and found that they would relocate almost 8,300 families, with less than half of those moving back into new public housing units.

Advocates for these tenants are concerned that once HOPE VI projects are finished and on line, that tenants from the original neighborhood who want to move into a new unit will be kept out by strenuous screening methods. Housing authorities have indicated residents can "apply" for units in the new development and will be given a priority, but stress that they must be found eligible. More than a few housing advocates worry that because by definition many public housing tenants have poor credit or minor criminal histories, that they will be denied admission to the new developments.⁴²

HOPE VI authorizing legislation requires tenant participation in the planning of any new development using program funds. But often the tenant participation is window dressing. Several lawsuits have been filed by public housing tenant associations challenging HOPE VI projects, often citing lack of resident involvement as a major aspect of the suit.⁴³ Even HUD admits it could be doing a better job of including residents in HOPE VI planning.⁴⁴

In addition to resident displacement, HOPE VI projects have been plagued with numerous delays and have caused questionable impacts on surrounding neighborhoods. Those who move away due to demolition of their public housing often end up in areas of high concentrations of poor and minority families, something the program seeks to eliminate. A recent study in Chicago found that 80 percent of families who were relocated under HOPE VI projects settled in neighborhoods that are 90 percent minority-occupied or higher.⁴⁵

Public housing officials agree HOPE VI "is not a panacea." While new construction is helpful, they argue they need more capital funds to adequately maintain the stock they have, complaining that current funding levels from Congress fall far short.⁴⁶ This, housing authorities can argue, leaves them no alternative but to sell, demolish, or abandon existing units. Yet, HUD has seemed to pin all its hopes for public housing on the HOPE VI program. Attorneys working with the homeless and low-income must be familiar with how their local housing authorities plan to participate in the program. Advocates must be vigilant to ensure resident participation in the development of plans to ensure adequate replacement housing for public housing units which will be taken off line.

In several cities, tenant organizations have filed federal lawsuits against HUD and the local housing authority over HOPE VI projects.⁴⁷ These suits claim violations of the Fair Housing Act due to the disparate impact of the projects on minorities, women, and families with children. Little case law has developed as of this time from this litigation, but tenants have made it clear

they will use every tool at their disposal to ensure that millions in public dollars—millions which would not be coming to their community had it not been for the many years they suffered in dilapidated public housing—are used to meet the needs of those at the lowest end of the economic spectrum.

V. THE PROBLEM WITH VOUCHERS

Instead of backing any large-scale program of new construction of public housing or subsidized housing, HUD's policy has been to allow Section 8 vouchers attempt to meet the need for more affordable housing. This approach appeals to those who support a market-based approach to housing resources. They theorize that private developers and landlords will produce the housing demanded by the market, and a growing quantity of families with Section 8 vouchers will be part of that demand. This theory ignores the realities of the market and of very real discrimination in many cities.

Many families who have waited years on housing authority waiting lists to obtain a Section 8 voucher are not able to use the voucher once they get to the top of the list. While the voucher is attractive to landlords in that it allows them to collect market rate rent, many families face severe obstacles to use of the voucher.

Housing Comes First, a St. Louis based housing advocacy organization, recently studied the voucher system in the St. Louis area. In St. Louis County, which has approximately one million people, half of the Section 8 vouchers issued to families were returned unused. In the City of St. Louis, 40 percent of the Section 8 vouchers were returned because the family could not locate a landlord who would rent to them.⁴⁸ Usually, applicant families have just 60 days to find a landlord who will rent to them, although extensions totaling 120 days can be granted. If that time expires before the family can find a willing owner, the family gives up its voucher and goes to the end of the waiting list.

Complicating the search by Section 8 families is the fact there is no requirement that a landlord accept a Section 8 tenant. The "take one-take all rule," which stated that a landlord who rented to one Section 8 family could not refuse to rent to others, has been repealed. Since Section 8 voucher holders are not a protected class under the discrimination laws of most jurisdictions, it is perfectly legal for landlords to turn away families for the very fact they have the Section 8 voucher.⁴⁹

In addition, since in most urban areas a high percentage of families applying for Section 8 housing are minorities, they face very real discrimination by owners and managers. In highly segregated cities like St. Louis, Section 8 projects and tenants have faced strong opposition in many areas, even to the point that low and moderate income neighborhoods fight to block subsidized families whose incomes may actually be higher than that of the current residents.

Even if the tenant finds a landlord who will rent to her under the Section 8 program, other hurdles remain. The very poor often cannot afford the security deposit required to move into the unit. Moreover, while the voucher is not time limited in its assistance, landlords who rent to Section 8 families are not required to keep the tenants longer than one year. This means a Section 8 voucher holder who has followed all of the rules of the housing authority and the landlord could be forced to look for a new home every year even though she retains her voucher.⁵⁰

HUD has attempted to alleviate the Section 8 crisis by adopting higher payment standards in many cities. Under the new rules, Fair Market Rents will be raised from the 40th to the 50th percentile of the local rent distribution in areas that have an excessive concentration of families

with Section 8 assistance or where families have difficulty finding landlords who will rent to them.⁵¹ It remains to be seen whether these efforts can overcome the poor image Section 8 housing has in many communities.

VI. CONSTRUCTION, CONSTRUCTION, CONSTRUCTION

There is no doubt a need for a broad continuum of housing assistance to attack the nation's housing crisis. Homeless shelters will not disappear from our major cities in the foreseeable future. Transitional housing programs continue to grow. Decent market rate rental units will also be needed, and homeownership will continue to be the major choice for wealthier Americans.

The new decade will also see growth in innovative new housing configurations for low-income families. Congregate housing, such as co-housing, will increase. Nonprofit social service agencies will operate multi-unit buildings for four or five families, with 24-hour supervision, shared kitchen and social facilities where families will share day care duties and cooking chores. For those with problems related to poverty such as addiction or illness, group homes will become more numerous and more widely accepted. Nonprofit housing providers are taking the lead with many of these innovative alternatives for the poor. Attorneys have unique opportunities to assist these organizations with transactional legal assistance.

Yet HUD's own studies confirm that the real housing need in this country is traditional decent, safe and affordable housing for those making less than 30 percent of median income. These families are left out of many of the programs designed to help people find affordable housing because their income is so low. The answer is simply to build more public housing.

This new construction of public housing would have to be accomplished in a climate where income targeting did not exist. New units should not be reserved for the highest income working families. With regarding to the design of this new housing, HUD is out of the business of building public housing high rises, and everyone is grateful for that. In addition, HUD tells us that it now knows how to build viable public housing. Today's public housing is low-rise and is mixed in with homes and apartments being sold and rented at market rates. Again, no one appears to be arguing with the benefits of this new approach. It is the amount of public housing units being built that is the sole source of argument at this time. To build more, more communities must be willing to accept scattered site public housing.

HOPE VI projects are funneling millions of dollars in support for market rate housing, while replacing only a fraction of public housing units demolished to make way for that market rate housing. HUD and local housing authorities must take a hard look at their plans to determine whose needs are the priority in the development. While the first step is for these agencies to reconfigure HOPE VI developments to provide greater numbers of public housing units, some are even suggesting that housing authorities may need to take an aggressive role in developing new affordable housing in their communities.⁵² Regional approaches clearly have the best chance of succeeding, as they allow for public housing units to be in scattered-site developments that avoid large concentrations of the very poor.

VII. CONCLUSION: A ROAD MAP FOR ATTORNEYS

Despite a thriving economy and the ability of federal policymakers to make strong inroads into eliminating housing poverty if they were so inclined, the poor are threatened on many fronts by current policy.

Demolition of obsolete public housing units seems attractive to our urban leaders, but these units are not being replaced. For the units which remain, the poor are being screened more carefully by housing authorities so that anyone with a minor criminal history or other problem associated with homelessness and poverty is often denied admission. The unemployed face losing their place on waiting lists to those who have jobs. Those who are lucky enough to be admitted face tougher standards of conduct, including community service requirements which carry eviction as a punishment if they are not followed.

HOPE VI, HUD's answer to public housing problems, brings with it numerous problems for the poorest of the poor who are displaced and must search for housing in other depressed areas. They often find their Section 8 vouchers unusable.

Attorneys have numerous opportunities to assist the homeless and the very poor who seek assisted housing. They can work with public housing residents to block further demolition until plans are in place for replacement housing. They can assist tenants of Section 8 projects with plans to purchase buildings from owners who want to escape the program.

Attorneys can educate police, housing officials, and the public about the criminal justice system and explain how a homeless person can end up in jail over a speeding ticket. They can represent individuals in municipal courts in an effort to get minor charges dismissed and help make their clients eligible for housing.

But the affordable housing bar must make its top priority the support of policies which call for constructing new public housing. Attorneys can take an active role in representing tenants and ensuring they have a role in determining the shape of HOPE VI developments to ensure sufficient construction of public housing. At the same time, advocates can lobby federal elected officials, HUD and local housing authorities to garner more resources for new construction. And it will require, in some circumstances, that fair-minded lawyers litigate fair housing claims against these agencies to ensure that the poorest of the poor are given the opportunity to meet their most basic housing needs.

Notes

1. Department of Housing and Urban Development, *Waiting in Vain: An Update on America's Rent Housing Crisis*, at iv (March 1999) (Public housing is owned and operated by local housing authorities, as opposed to Section 8 units which are owned by private companies or individuals.) [hereinafter HUD, *Waiting in Vain*].

2. *Id.* at v.

3. Housing Comes First, *Still Vouchered Up and Nowhere to Go Part II: Problems and Promise in Missouri's Subsidized Housing Programs* (Nov. 9, 1999) [hereinafter Housing Comes First].

4. HUD, *Waiting in Vain*, *supra* note 1, at 3.

5. *Id.*

6. Department of Housing and Urban Development, *Rental Housing Assistance-The Worsening Crisis* 22 (March 2000) [hereinafter HUD, *Rental Housing-Assistance*].

7. *Id.*

8. *Id.* at 25.

9. *Id.* at 22.

10. Norm Parish, *Co-workers, Tenant Groups are Sorry to See Veteran Area HUD Chief Retire*, ST. LOUIS POST DISPATCH, Feb. 6, 2000, at C-1.

11. HUD, *Waiting in Vain*, *supra* note 1, at 8.

12. *Id.*

13. *Id.*

14. *Id.*

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15. Department of Housing and Urban Development, *The Widening Gap: New Findings on Housing Affordability in America* (Sept. 23, 1999) [hereinafter HUD: *The Widening Gap*].
 16. HUD, *Waiting in Vain*, *supra* note 1, at ii.
 17. National Low Income Housing Coalition, *Out of Reach* (Sept. 20, 2000), at <http://www.nlihc.org.html>.
 18. Peter Salsich, Jr., *Solutions to the Affordable Housing Crisis: Perspectives on Privatization*, 28 J. MARSHALL L. REV. 263, 294-296 (1995).
 19. Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, Pub. L. No. 105-276, 10 Stat. 531 (codified as 42 U.S.C. § 437).
 20. *See* Darst-Webbe Tenant Ass'n v. St. Louis Housing Auth. & U.S. Dep't of Housing & Urban Dev., No. 4:99CV354-SNL (E.D. Mo.). Copy of complaint available from author.
 21. *Id.*
 22. HUD, *Writing in Vain*, *supra* note 1, at v.
 23. Deidre Shesgreen, *HUD's Budget Battle is as Much About Politics as Money*, ST. LOUIS POST DISPATCH, Feb. 13, 2000, at A10.
 24. Department of Housing and Urban Development, *U.S. Housing Market Conditions* (Feb. 2000), available at <http://www.huduser.org/periodicals/ushmc/winter99/index.html>.
 25. Harold Levine, *Looking for Shelter*, ABA JOURNAL 61 (Feb. 2000).
 26. I.R.C. § 42 (2000).
 27. Associated Press, *Tax Breaks Are On Way To Aid Development*, ST. LOUIS POST DISPATCH, Dec. 17, 2000, at A7. This approval came as part of an omnibus spending package adopted in the final days of the Congressional session. At the time of publication of this article, the Public Law number was not available.
 28. This is the case in St. Louis where the Housing Authority has used a significant portion of the tax credits allocated to the St. Louis region for the next few years.
 29. 42 U.S.C. § 1437(n) (2000).
 30. 24 C.F.R. § 960.205 (2000).
 31. 24 C.F.R. § 982.553(a) (2000).
 32. Interagency Council on the Homeless, *Homelessness: Programs and the People They Serve* (1999), at <http://www.huduser.org/publications/homeless/homelessness.pdf>.
 33. *Id.*
 34. This event is called Homeward Bound and was attended by more than 400 homeless and formerly homeless families at the University of Missouri in St. Louis.
 35. The author is a member of the Law Committee of Habitat for Humanity St. Louis.
 36. *Willock v. Schenectady Municipal Housing Authority*, 706 N.Y.S.2d 503, 271 A.D.2d 818 (N.Y. App. Div. 2000); *Ann Arbor Housing Comm'n v. Wells*, 240 Mich. App. 610, 618 N.W.2d 43 (2000).
 37. *Rucker v. Davis*, 2001 U.S. App. Lexis 904 (9th Cir. 2001).
 38. 42 U.S.C. § 1437(j) (2000).
 39. *Id.*
 40. *See generally* Neal Pollack, *Knocking Down the Past to Build the Future*, ENTERPRISE QUARTERLY (1999).
 41. *Id.*
 42. *Cabrini-Green Local Advisory Council v. Chicago Housing Authority*, 1997 WL 31002 (N.D. Ill. 1997).
 43. *Winton Pitcoff, New Hope for Public Housing?*, SHELTERFORCE, Mar.-Apr. 1999, at 19.
 44. *Id.*
 45. *Id.*
 46. Robert Solomon, *Notes from the Inside: Thoughts about the Future of Public Housing*, 10 J. AFFORDABLE HOUS. & COMM. DEV. LAW 43 (2000).
 47. *See* Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, *supra* notes 19, as examples (short form public law).
 48. *Housing Comes First*, *supra* note 3.
 49. The Federal Fair Housing Act does not include source of income or recipients of housing assistance as a protected class. 42 U.S.C. § 3604 et seq. (2000).
 50. 42 C.F.R. § 982.309 (2000).
 51. 65 Fed. Reg. 58,870 (Oct. 2, 2000).
 52. Lynn Cunningham, *Large PHAs and Their Regional Housing Markets: Time for More Robust Advocacy for Affordable Housing*, 10 J. AFFORDABLE HOUS. & COMM. DEV. LAW 48 (2000).

“THE POSSIBILITY OF A BELOVED PLACE”: RESIDENTS AND PLACEMAKING IN PUBLIC HOUSING COMMUNITIES

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What we need to live well, to dwell, is to trust in the possibility of a beloved place and our own significant part in the making of such places.¹

I. PROLOGUE: “IT IS TO BE HOPED THAT THEIR REMOVAL WILL BE EFFECTED WITH AS MUCH GENTLENESS AS POSSIBLE”²—THE DEATH AND DISCOVERY OF SENECA VILLAGE

Between 1825 and 1829, a Dutch immigrant landholder sold off fifty parcels of farmland lodged between what are now 89th and 82nd streets on the north and south, and the Great Lawn of Central Park and Central Park West, of Manhattan.³ Of the fifty lots, twenty-four were purchased by elders of the African Methodist Episcopal Zion Church and by a group of free African American families. These first settlers raised nine wood frame houses in those first four years.⁴ Over the next three decades, some six hundred souls, in sixty households, would build their homes, pay taxes, and rear children in the community of Seneca Village.⁵ On this ground they built a church, and then two more; consecrated two cemeteries, and established a “Colored School” for the children. By 1856, 264 residents lived there, about two thirds of them African Americans, and about one-third the more recent arrivals, mostly Irish with a scattering of German immigrants.⁶

By the fall of 1857, the houses were condemned, the families were dispersed, and the AME church and school were gone.⁷ The rest of the dwellings and institutions followed. Construction on Central Park began in 1858. Seneca Village disappeared to all but a handful of historians⁸ until the excavation of Central Park’s Great Lawn in 1996, when archaeologists uncovered the foundations, shards and other fragments of a thriving, racially and ethnically diverse community.⁹

Why this settlement grew, died, and was forgotten so quickly, is a lesson in the power of “spin” and the persuasiveness of a dominant story. One among many pressures that produced Central Park was the agitation of wealthy landholders on the Upper West Side for a barrier against the swelling population of African American and particularly Irish residents to their immediate south.¹⁰ A contemporary account of the plan to clear the land expressed sympathy for and distinguished the village’s African American residents from their less desirable neighbors:

“. . . west of the reservoir, within the limits of the Central Park, lies a neat *little settlement* known as ‘Nigger Village.’ The Ebon inhabitants. . . present a pleasing contrast in their habits and the appearance of their dwellings to the Celtic occupants, in common with hogs and goats, of the shanties in the lower part of the Park. . . .” “It is to be hoped that their removal will be effected with as much gentleness as possible.” (italics in the original)¹¹

Subsequent renditions omitted any mention of the existence of a stable settlement within the bounds of the future park. Egon Viele, the first engineer for the Central Park project, described the site as: “. . . the refuge of about five thousand squatters, dwelling in rude huts of their own construction, living off the refuse of the city. . . .”¹² and set the tone for all to follow. Ten years

later, the memory of the “neat little settlement” had metamorphosed further. One writer dismissed the village as less than negligible:

“. . . a dreary waste of sterile rocks. . . , relieved now and then by filthy sink-holes and pools of stagnant water. Upon these rocks and around these pools were gathered a large number of rickety little one-story shanties, and a mixed population of ‘squatters,’ mostly Irish, and pigs, goats, chickens, cows and children. . . . an excrescence on the fair features of the City. . . .”

Celebrating the dispersal of this “population” by the police, the writer commemorated the “. . . herculean task which lay before them, particularly that of ridding the round of its squatters, pigs and other animals. The raid made by the police upon these stubborn ‘insects’ will not be forgotten.”¹³ In a final and lasting transformation, in 1907 a local historian depicted the neighborhood buried under the Park as a “wilderness” and “waste” of “. . . many families of colored people with whom consorted and in many cases amalgamated debased and outcast whites.”¹⁴

II. TODAY’S “URBICIDES”: MARGINALIZATION AND DISPERSAL OF DISTRESSED COMMUNITIES

To clear the way for the new park, the residents of Seneca Village had to be made to disappear. Their marginality made the trick easy. The repeated depiction of the settlement as ragged—a wasteground of discarded, disconnected pieces of urban life, some of them human—sealed its elimination from place and from memory.

What happened to Seneca Village set a pattern for a process: the diminishment of a population in preparation for its dispersal. One author has combined the triple processes of diminishment, dispersal and demolition under one coinage, “urbicide,” and has located it as early in history as the sack of Troy and the diaspora of the Jews under the Babylonian captivity.¹⁵ Seneca Village presents a more recent example. Closer to our time still, the urban renewal sparked by the incentives offered through the 1949 National Housing Act bears all the hallmarks of urbicide:¹⁶ the subordination of local and particular to city-wide and abstract interests; the imposition of one aesthetic vision of a city on one neighborhood’s vision of itself; and the ease with which local interests and neighborhood visions could be minimized, held as they were by populations already isolated by race. The examples are legion—the West End in Boston,¹⁷ Oak Street in New Haven,¹⁸ “Southwest” in the District of Columbia,¹⁹—as are the critiques, the most powerful of which mourn the loss of self-contained, flawed but vibrant worlds.²⁰

Among the marginal communities most recently to be dispersed in the process of urban renewal is that of public housing residents. By architectural and political design, public housing complexes began their history in racial and geographical isolation, an isolation intensified over the years by demographic shifts, labor and housing market forces, and vicissitudes of federal housing policy. Atrocious management and withdrawal of federal financial support for maintenance made of many complexes notorious hellholes that replicated the worst features of the early twentieth century slums that they were built to replace. From the early 1970’s on, media coverage of spectacles such as the demolition of the Pruitt-Igoe towers in St. Louis heightened public awareness of the reality of physical decline of some public housing, so that all public housing came to represent the most removed, the most “other” of isolated poor communities, the archetype of the “outcast ghetto.”²¹

Today's prescription for curing what have been depicted as undesirable concentrations of poverty, joblessness and attendant social pathology, is to disband them: to integrate present configurations of public housing community by type of housing tenure and consequently by income. This is a goal that can only be achieved by moving current residents out, moving residents able to rent units and purchase homes at market rate in, and in some cases by demolishing the structures that have come to symbolize failure. The HOPE VI program, HUD's primary capital public housing initiative from 1993 to the present, has funded the demolition of an eventual total of 82,000 "severely distressed" public housing units, to be replaced with 51,000 "revitalized" units with a mix of housing types and rent levels.²² In this present incarnation, this is a strategy that has evolved in fits and starts over the past thirty years of federal housing policy. Taking the long view, one can see in it an echo of the urban renewal of years past, and the Seneca Villages and other urbicides of long ago.

The question is whether the current residents of public housing will have a place in the new world order: will they have reason "to trust in the possibility of a beloved place," and to take "significant part in the making of such places?" The question might seem as irrelevant now as it did to the mid 1950's generation of policy makers and urban planners who looked at communities, saw none, and bulldozed them over. Indeed, some commentators look at the urban renewal of the 1950's, with its significant loss of affordable housing units, displacement of thousands of poor tenants, and alliances with private developers, and at the "new urbanism" of HOPE VI, with its significant loss of affordable housing units, displacement of thousands of poor tenants, and alliances with private developers, and see little difference.²³ Whether the participation of public housing tenants in place-making is possible or even desirable depends in part on the perception of which Seneca Village these residents now inhabit: the "neat little settlement" of contemporaneous description and present-day historians' revelation; or the "wilderness and waste" that was, and is, the prevailing view of public housing.

That participation may also depend on what this essay will explore as an anomaly, or at least a contradiction within federal housing policy: a sporadic history of support for public housing residents to organize and to take control of their physical environments. From the early 1970's, when foundation and federal funds picked up on spontaneous insurgencies to help tenants take over management of their properties, through a resurgence of enthusiasm for tenant training for self management in the mid 1980's, federal programs focused on resident management as a favored strategy for resident involvement. Resident management is only one of any number of strategies, and only one of any number of markers for the ability of tenants in public housing to constitute community. More recently, Congress deepened and broadened its funding of resident initiatives to include training in basic board development; most recently, funding for community building in public housing has responded to time limits imposed in the revised public welfare system, and focused more on assisting the individual resident in developing job skills for use off the premises than organizing skills for use on them. Today's articulation of the mandate for direct provision of low rent housing, the Quality Housing and Work Responsibility Act of 1998 (QHWRA)²⁴ simultaneously espouses tenant empowerment and tenant dispersal, two goals that seem so hard to reconcile that they pose an internal contradiction.

Few raise their hands in support of public housing. People even like to blow it up. The dramatic, and dramatized, implosion of the fourteen-story high rises at the Murphy Homes in Baltimore assumed an air of cathartic celebration, scheduled as "a spectacular kickoff to the July Fourth weekend."²⁵ The Department of Housing and Urban Development (HUD) listed the demolition of 100,000 public housing units by fiscal 2003 as one of its performance goals in its 1999 Annual Performance Plan;²⁶ since 1992, some 56,500 units have been lost to the public housing inventory, approximately eighty percent of them removed through demolition.²⁷ A

tangible, visible target, public housing has been easier to vilify than public welfare. But in a housing economy in which many who earn minimum wage would have to work between 103 and 133 hours a week to earn the amount necessary to make rent on a two bedroom apartment,²⁸ and full time teachers, police officers and laborers seek emergency overnight shelter,²⁹ no housing resource can be taken for granted. The question is whether populations associated with public housing can be.

III. “WHERE DOES COMMUNITY GROW?”³⁰—DEPICTIONS, DE-CONCENTRATION, AND DISPERSAL OF PUBLIC HOUSING COMMUNITIES

Some might dispute that “community” fits with “public housing”—that public housing, often described early in its history as a way station, and later as shelter of last resort for the hardest to house, was in its conception and its very physical design intended to discourage any formation of community. As I will describe later, there is consensus on at least some of the history, politics, and assessment of the physical features: that much public housing was deliberately sited in areas rejected by builders of market-rate housing, where poor people of color already endured limited access to jobs, transportation and public services; and that often its builders corrupted its maladaptive design with structural shortcuts and shoddy materials. What is much less clear is that these historical antecedents of necessity produced conditions that crippled the generation of community. But media attention to some of the more spectacular physical deficiencies, and the acceptance into popular perception and social policy of theories with far-ranging import—theories about the impacts of physical structure, and segregation by geography, race and income on the behavior and self-image of residents of public housing—ultimately have made of these conditions a kind of inevitability, and of the dispersal of these communities an unexamined given. I will review some of those influences here.

A. *A River of Trees, A Sewer of Glass: Theories of the Influence of Design on the Construction of Public Housing Community*

Many theories contribute to the conviction that public housing complexes provide inhospitable soil for the growth of community. One of the most persuasively argued is that the very design of public housing structures doomed them to decay, and their inhabitants to dysfunctionality, from the beginning. This conclusion derives from several analyses that often get compacted together. Each proceeds from different assumptions, depending on the belief of the proponents in the inherent power of architecture to create patterns of social interaction and behavior.

One view of public housing construction and design is that it was built to look “cheap and proud of it,” to save money but also demonstratively to distinguish low rent from ingrained expectations of the appearance of middle class housing.³¹ At least one commentator has suggested that, in general, renting historically has enjoyed less social and political support than owning, and renters in any income bracket are considered to be more questionable contributors as citizens than are home owners.³² If one accepts that thesis, then renters in low rent, government-owned housing labor under a dual opprobrium. Lawrence Vale, a professor of urban studies and planning at MIT who has contributed to the re-design of several public housing complexes in Boston and has written extensively about the design and history of public housing,³³ has pushed the position further: that public housing was designed not only to distinguish but to stigmatize. He has observed, first, that there is “. . . a hierarchy of architectural styles and spatial arrangements”³⁴ that manifests the hierarchy of housing tenures, with owned

housing at the top of the scale and public housing at the bottom. Next, he has suggested that public housing renters feel the impact of living at the bottom of the architectural pile not merely from the shame of association with visibly stigmatized structures and exclusion from the world of those who live in more acceptable ones, but from internalization of the architectural stigma: that “. . . layers of stigma blend and merge into a single image of the ‘undeserving poor.’”³⁵ This image projects to the “outside” world, but intrudes inwardly as residents absorb the pain of the stigmatization.³⁶

This last contention—that physical environment works as a molder of character and of world view—extends, but also says something different from, the observation that the built physical environment of public housing operates externally, as political symbol. It claims a power for bricks and mortar and configuration of space that others see as incidental. But some have argued that the most-maligned features of public housing architecture actually were conceptualized not to stigmatize, but to uplift. Alexander von Hoffman has noted that the two characteristic features of 1950’s public housing design—the “super-block,” the parallel rows of buildings that extend beyond the limits of a city block, and the high-rise tower—simply adopted the fashions of post-war European modernist architecture.³⁷ Von Hoffman views the adaptation of these elements of design to public housing as just one more example of what he calls “visionary idealism,” the idea that “. . . manipulation of the environment can improve the social circumstances and behavior of the poor. . . .”³⁸ This architectural hubris channeled the more altruistic impulses of affordable housing policy from the Progressive through the post-war eras. The goal of architecture for the poor was not to punish them for their poverty, but to pluck them from the disease and moral disorder of tenements and re-lodge them in more salubrious settings.

As von Hoffman has summarized the history and theology of the architectural modernism of the 1950’s, architects did not confine their faith in the ability of architecture to transform and provide moral uplift only to the poor. As one of the first proponents of “defensible space,”³⁹ principles of urban architectural design inspired by Jane Jacobs’s *The Death and Life of Great American Cities*, and formulated in part in direct reaction against the case history of the Pruitt-Igoe towers, Oscar Newman himself in retrospect viewed that debacle of design not primarily as a construct meant deliberately to stigmatize the poor people living within it, (though that may have been the effect), but as one example of the International Style gone wrong. Pruitt-Igoe’s eleven story towers, all thirty-three of them, were intended to accommodate desires for green space with a “river of trees” planted in the large, undifferentiated open spaces between the towers, and for living space with common laundry and garbage facilities, and common rooms on every third floor. Flaws in the execution, but primarily flaws in the basic concept, turned the “river of trees” into a “sewer of glass and garbage.”⁴⁰ Pruitt-Igoe and other exemplars ignored not merely the elements associated with that object of desire—the middle class home with a front and a back and land the owner could walk around—but some more organic principles that the model of “home” shared with “defensible space:” the role of physical environment in creating for residents “surveillance opportunities” that contribute to the ability to exercise “territorial influence,” or real control over space, and therefore increase residents’ psychic investment in the places in which they live.⁴¹

“Obsolescence”—that which is so overtaken by time or fashion as to seem useless beyond repair—has become an indicator for the public housing units that will be marked for drastic renovation or removal. Several years ago, HUD described the purpose of the HOPE VI program as one of “public housing transformation, “ a vision attainable through the obliteration of past mistakes:

Changing the physical shape of public housing. This includes tearing down the eyesores that are often identified with obsolete public housing and replacing them with homes that complement the surrounding neighborhoods and are attractive and marketable to the people they are intended to serve, meeting contemporary standards of modest comfort and liveability.⁴²

As currently authorized through the QHWRA, the HOPE VI program funds the “. . .demolition, rehabilitation, reconfiguration, or replacement of obsolete public housing projects (or portions thereof).”⁴³ In applying for awards for revitalization or demolition, public housing authorities must show that targeted buildings qualify as “severely distressed,”⁴⁴ defined under the Act first as requiring the following:

“...major redesign, reconstruction or redevelopment, or partial or total demolition, to correct *serious deficiencies in the original design* (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems and other deficiencies in the physical plant of the project;. . . .”⁴⁵ (emphasis mine)

The fatalism underlying what I would call the “architectural determinism” position—that the flaws were poured into the concrete and lay as embedded there as original sin—has made it easy to collect all of the problems plaguing public housing, deem them irreparable, and call them “obsolescence.” While headline value and visceral appeal contribute as well to the attractiveness of the solution, “obsolescence” justifies the ultimate course of action for reform of public housing, which is to dynamite the mistakes. As the National Commission on Severely Distressed Public Housing noted, whatever the impact of flawed design, public housing throughout its tenure has suffered from shortfalls in funding for capital improvements and for routine and long-term maintenance.⁴⁶ It is simpler, and quicker, to eliminate buildings as outmoded, rather than to acknowledge that at least some of them represent the sad results of years of neglect.

It is true that HUD relies on renovation as well as demolition to rejuvenate its inventory. It has awarded fewer than half of its HOPE VI grants over the seven years of the program to projects solely for demolition.⁴⁷ But as noted earlier and I will describe more fully below, the image of demolition carries its own momentum. “Obsolete,” as an element of “distressed,” has been stretched to cover not merely elements of physical design but philosophies of how and why poor people should be housed.

Does it matter whether the contribution of architecture to the decline of public housing, and to public perception of it as “other,” was deliberate or maladroit? Whether design in and of itself predestined public housing to deteriorate, or whether deterioration resulted from the many political forces to which design only gave expression? And above all, did design of public housing cause residents to self-destruct within it? Ironically, at least one proponent of the theory that public housing was built bad, to look bad, to make residents feel bad, does not believe that confinement in public housing has drained residents of their will to create community. Vale comments positively on the cohesiveness of the Commonwealth Tenants Association, which negotiated a 223 page redevelopment management agreement with the Boston Housing Authority and with private management.⁴⁸ As I will describe below, one premise underscoring a quarter century of governmental support for resident management of public housing is that tenants can, or can be trained to, muster sufficient internal organization and drive to engage in self-management.

B. Faulty Towers: The Power of Media Images of “Wilderness and Waste”

As Joseph Shuldiner, Assistant Secretary for Public and Indian Housing in the first Clinton administration admitted, the appearance of some public housing has fed its own bad press. In an interview in 1994, Shuldiner explained the difficulty of moving the public beyond its disapproval of public housing, when the physical face of public housing (especially in big media markets) so readily presents such easy grist for distaste:

When I was back in New York everybody always used to say the thing that was killing us was Newark, because the editors from the New York Times would drive in from New Jersey and they would go by those vacant buildings and say, that’s public housing. . . . If it’s good public housing, nobody knows it’s public housing. If it’s bad housing, everyone assumes it’s public housing.⁴⁹

Some of the worst satisfy expectations of the worst so easily that it is impossible to get beyond the gut-turning images of linked social and physical decay. A tenant of the Robert Taylor Homes in Chicago, frustrated at his inability to enlist Jesse Jackson in efforts to save the project from demolition, (“If you (Jackson) can go to Kosovo, Bosnia, why can’t you come to the Robert Taylor Homes?”) fared no better when he tried to engage a reporter’s sympathies through a tour of the property:

His purpose was to show me that “it’s totally a normal life” and that the answer was honest management, not demolition. But the smell of urine in the hallways and sewage in the courtyards, the out-of-service elevators, the pitch-black stairwell, the prison-grade steel webbing that encased the buildings, the young drug courier grinning boyishly at us as he played hide-and-seek with plainclothes cops—an hour and a half into Galtney’s tour, his case was in ruins.⁵⁰

The reporter concluded that he “began to understand why Belgrade under NATO bombing might be preferable. . . .”⁵¹

Popular conception that community cannot grow in public housing has been reinforced by best-selling “hero stories,” such as *There Are No Children Here*. Alex Kotlowitz’s graphic account, published first in a series of occasional pieces in the Wall Street Journal, and then as an extended chronicle, follows two brothers growing up amidst the deplorable conditions of the Henry Horner Homes.⁵² “Hoop Dreams,” the documentary, spends two years in the lives of talented high school basketball players in Cabrini-Green,⁵³ another of the several public housing complexes in Chicago that attract so much journalistic attention. Ron Suskind, another reporter for the Wall Street Journal, portrayed a teenager struggling to escape an unnamed public housing project in southeast Washington, D.C. to make his place in the Ivy League.⁵⁴ In these extremely sympathetic narratives, only the superhuman strivings of a single parent or an occasional teacher enable the courageous young protagonists to surmount their surroundings. Their immediate neighborhoods offer them nothing. The only “community” that the public housing complexes present consists of a gauntlet of obstacles to be overcome. Other depictions of life in public housing present the decay, without even the possibility of redemption.⁵⁵ Exceptions, such as the documentary “No Place Like Home,” which chronicles the successes of public housing residents in managing their properties in Washington D.C., St. Louis and Boston, are few and far between—and shown on PBS.⁵⁶

As noted earlier in the example of coverage of the demolition of one of the high-rise public housing complexes in Baltimore, if squalor in high-rise public housing buildings draws media coverage, then the explosion of high-rise public housing buildings draws even more—and the promise of coverage draws explosions. Hartung and Henig evoke the image of then-secretary of

HUD Henry Cisneros in 1995, taking a sledgehammer to the wall of one project in St. Louis, and pushing the button to bring down five towers in Philadelphia.⁵⁷ If the trip had been a rock concert, it would have been billed as the “HUD Ten City Demolition Tour” (without the T shirts). Through the saga of Claribel Ventura, the mother of six who became a media icon for every possible negative association of welfare receipt with generational dependency and parental unfitness, Lucy Williams has demonstrated how coverage that seeks out the most sensationalist, stereotypical aspects of an image or event can affect policy more profoundly, and more swiftly, than the most carefully documented presentation.⁵⁸ Coverage in mass print, visual, and other media has pushed the negative archetypal symbols of public housing—the high rises, the garbage, the gangs—into prominence, and more shaded images into the background. Despite the reality—that, as of the early 1990’s, only 6% of public housing stock was assessed as “severely distressed,”⁵⁹ that only 27% of public housing buildings were high-rises,⁶⁰ and that only seven of the thirty-four sites showing sufficient indicators of “severe distress” to merit HOPE VI awards between 1992 and 1995 included high-rise buildings⁶¹—“public housing” in the popular imagination means super-blocks, big towers, and bad-smelling hallways.

C. The People in the Buildings: Federal Preferences and Loss of Confidence in the Capacity to Build Community

With the exception of the “hero stories,” images of public housing residents tend to take a back seat to images of the buildings they live in.⁶² Deep digging into government monographs of limited circulation,⁶³ unpublished manuscripts⁶⁴ and small press materials⁶⁵ offers a glimpse of neighborhoods with thriving institutions. One can infer from materials even less widely available to the general public—court decisions and litigation materials—the determination of residents in some bitterly contested struggles over redevelopment to hold their own against dispersal of what they at least consider to be their community⁶⁶—or certainly to care enough to dispute as to who among them most deserves to represent the community.⁶⁷ Truly to get a good picture would require interviews with the residents, or at least resident leaders, identifiable to outsiders through, for instance, their association with HOPE VI redevelopment plans⁶⁸—a labor-intensive project which is regrettably not part of this paper (or at least of this stage of it). But the dearth of popularly broadcast images of anything good leaves space open for assumptions to control. Some assumptions are supported by data: that people who live in public housing are very poor;⁶⁹ and that in some communities they are disproportionately minorities.⁷⁰ Other assumptions—that residents in public housing do not work, that most of them receive income from public assistance,⁷¹ and that they consist overwhelmingly of female-headed households with many children⁷²—are not.

Rational or irrational assumptions about who public housing residents are may fix presumptions about their capacity to organize and to participate actively in the formation of community. Even sophisticated students of public housing policy have inferred something from the operation of the federal preference program about the “place-making” capacity of public housing residents. Never in the history of the program has public housing supply met demand; since almost the beginning, it has been a tenet of public housing law that housing authorities had to set priorities for managing their waiting lists, usually in ways that indicated current thinking about who public housing was supposed to serve and what needs it was supposed to meet. The National Housing Act of 1949 required priority placement in public housing—at least on paper—for persons displaced by the urban renewal it set in motion.⁷³ Some twenty years later, the National Commission on Urban Problems assessed that accommodation as creating pockets of the residents least able originally to re-locate themselves, and “. . . often referred to as problem

families or the pathologic poor. . .,” whose presence in public housing prompted more “self-respecting families” to move out.⁷⁴

In 1979 Congress enacted the first of what are commonly known as the “federal preferences” for waiting list management, requiring public housing authorities to reserve annually at least 50% of available units for families who were displaced or occupying substandard housing.⁷⁵ Over the next thirteen years, the categories of preference expanded to include homeless families, and persons paying more than 50% of their income in rent. For the other 50% of available units, public housing authorities were to engage in a public process of formalizing their own preference systems, with suggested priority holders to include families seeking reunification with children in foster care, and families in transitional shelters.⁷⁶ It was this structure of preferences that Congress suspended in 1996,⁷⁷ and which QHWRA repealed in 1998, leaving localities to decide which, if any, preferences to institute.⁷⁸

To my knowledge, no one has examined data sets—if such sets exist—from 1979 to the present, to ascertain how or whether the legislation of federal preferences actually changed the composition of public housing residency. The empirical answer may not matter. When public housing authorities were freed from the preference system in 1996 to favor tenants with earned income, many did so, as much as a means of collecting more income from rents as to vary the demographics of the tenant bodies. But they also chose working families to counter a perception, one born out anecdotally if impossible to quantify statistically, that public housing was occupied with unstable, expensive-to-manage, families.⁷⁹ Lawrence Vale expressed the popular wisdom that the preference system created a “disproportionate concentration of poverty and of households with multiple problems. . . .”, and warned that, whatever the truth, the very existence of the preference system contributed to the opinion that public housing had become a “repository for the nation’s ‘problem people.’”⁸⁰ Public housing residents themselves may feel the same way. Although earlier lapses in screening tenants may also have been to blame, loss of control over and apprehensiveness about who their new neighbors might be, may indeed have created cleavages between the “old-line” tenants and those admitted under the preference system.⁸¹

D. The Concentration Reality and the De-concentration Imperative

1. How “De-concentration” Became the Reigning Current Housing Policy

No mandate in current federal policy for public housing rings more emphatically than the call for “de-concentration:” the dispersal of clusters of poor public housing tenants. There is little dispute that “concentration” is not only a demographic truth about public housing but a result of calculated political engineering. Historians of public housing concur that, from the beginning of the public housing program, policies of racial containment steered African Americans to particular complexes, and situated segregated public housing complexes in already segregated urban neighborhoods.⁸² In Chicago as elsewhere, New Deal public housing policy focused on improving housing for northward-migrating African Americans without disturbing existing racial neighborhood patterns, a concession reinforced by the Public Works Administration’s adoption of the “neighborhood composition rule.”⁸³ No locale was forced to accept public housing, and it was a prize that few suburban enclaves wanted—so it was cities that created public housing authorities, and cities that absorbed greater concentrations of poor and minority tenants into areas already concentrated for class and race.⁸⁴ Local urban housing authorities were susceptible to political pressures against locating public housing units in white, middle class neighborhoods, and to commercial pressures against competition for richer tenants. These influences forced decisions to squeeze more units into more expensive, more densely populated city space.⁸⁵

The question is not whether there is concentration of minority and poor people in public housing so much as whether that concentration itself has caused the evils associated with “outcast ghettos.” “De-concentration” can be implemented in two ways; each has different purposes and histories, and arises from different premises about the impacts of clusters of poor people of color on neighborhoods. The first, and older strategy, resulting from the *Gautreaux*⁸⁶ litigation initiated in the 1960’s against HUD and the Chicago Housing Authority, promoted “de-concentration” as a remedy for a civil rights violation: the collusion of local and federal government in the segregation of African Americans in substandard public housing.⁸⁷ The *Gautreaux* project, and its progeny, the Moving to Opportunity Demonstration,⁸⁸ operate by moving small numbers of public housing tenants out, one by one, to neighborhoods more fully integrated by race and class. While the “mobility” strategy does assume a dearth of opportunity, and perhaps of community, in the projects from which it helps tenants re-locate, it also acknowledges a truth—that the same forces of discrimination that created “outcast ghettos” also placed resources for education and employment beyond their residents’ reach, and, with assistance, public housing residents are capable of taking advantage of those resources.

Compared to the incremental, long-term course of the family-based mobility strategies, “de-concentration” as a feature of present-day housing policy has a short history with broad impact. As that history has been re-constructed, it began with Congress’s creation in 1989 of the National Commission on Distressed Public Housing, with the charge “to develop a national action plan to eliminate by the year 2000 unfit living conditions in public housing projects determined by the Commission to be the most severely distressed.”⁸⁹ In its report, issued in 1992, the Commission recommended that Congress dedicate a ten-year appropriation to the “capital improvement and related needs” of the 86,000 units that the Commission had evaluated as “severely distressed.”⁹⁰ The Commission cited the presence of one or more of the following as indicators of “distress:” “families living in distress; rates of serious crimes in the development or the surrounding neighborhood; barriers to managing the environment; physical deterioration of buildings.”⁹¹ Recognizing some baseline imperatives of what it costs for a public housing authority to run low rent housing, the Commission also suggested changes designed as much to raise more money from rents as to effect sociological experiments with the composition of the tenant body: to allow housing authorities to jettison the preference system; to admit a higher percentage of higher income families if rents were still to be calculated based on income; and, in some cases, to attract working families by setting flat maximum rents that would not increase with increases in earned income.⁹²

By 1999, that background had been re-written. HUD has pointed to the National Commission’s Report as the direct ancestor of the HOPE VI program, stating that the core recommendation of the Report was that severely distressed units be “eradicated.”⁹³ There was no such recommendation, the only reference to “eradication” being mentioned in the prefatory cover letters to Congressional committee chairs.⁹⁴ Despite this claim for intellectual cover, the definition in QHWRA of “severely distressed—“ a definition that justifies the demolition of public housing stock—expresses a very long journey from the Commission’s original four-part articulation. As quoted earlier, Congress expanded this definition in the QHWRA considerably, to include “inappropriately high population density” among the “serious deficiencies in the original design” of public housing defined as “severely distressed,”⁹⁵ QHWRA defines “families living in distress” as those who were “very low-income families with children, unemployed, and dependent on various forms of public assistance.” It also adds as an indicator of distress any building that “. . . is a significant contributing factor to the physical decline of and disinvestment by public and private entities in the surrounding neighborhood. . . .”⁹⁶ The many indicators, old

and new, are conjunctive: a building must fulfill all of them in order to qualify for funds for demolition or renovation.⁹⁷

The emphaticness with which QHWRA treats “concentration” leaves little doubt as to the prevailing political wisdom on its contribution to urban decay. The “Findings” of the QHWRA list “the concentration of very poor people in very poor neighborhoods” first among the problems by which public housing is “plagued;”⁹⁸ “facilitating mixed income communities and decreasing concentrations of poverty in public housing” follows close behind among the “Purposes.”⁹⁹ The Act affirmatively forbids public housing authorities to “concentrate very low-income families . . . in public housing dwelling units in certain public housing projects. . . .”¹⁰⁰ QHWRA takes what were in part the Commission’s recommendations to allow flexibility in management and cost containment, and makes of them the technical instrumentalities to dismantle guarantees inserted in the U.S. Housing Act in the 1980’s that public housing would serve the poorest of the poor: it lowers from 75 to 40 the minimum percentage of residents who must have incomes at or below 30% of the area median;¹⁰¹ and it repeals the federal preferences mentioned above, allowing public housing authorities latitude to choose working families and adopt “local preferences,” based on assessments of housing needs.¹⁰² Public housing authorities must incorporate in their “public housing agency plan,” an innovation of the QHWRA, the steps they will institute in their admissions policies to assist in the “de-concentration of low income families.”¹⁰³ Other statutory changes collaterally assist the drive towards de-concentration. They reverse guarantees on the supply side, parts of the statute added to hold the line on, though not increase, the number of federally subsidized housing spaces for very low income people. The Act permanently eliminates the “one-for one replacement rule,” introduced in 1981 and suspended in 1995.¹⁰⁴

In contrast with the “mobility” strategy contemplated by *Gautreaux* and its spin-offs, the current strategy for “de-concentration” consists of simultaneously moving large numbers of public housing tenants out and either higher-earning eligible tenants, or market rate tenants in. This is the version of “de-concentration” that most of the U.S. Housing Act was repealed in order to accommodate. Where mobility strategies are gradualist, it is precipitous. It also aims to assist a different constituency: not solely, or even primarily, the residents who are being displaced, but a more ambiguously defined community of stakeholders, those whose revulsion at the deterioration they see or imagine may have prompted them to “disinvest” in the neighborhood.

2. *The “Second De-concentration” and Social Uplift: The “Truly Disadvantaged” and the Power of an Idea*

Intellectual history is always risky, but several factors may have influenced the change from, first, a preference for amelioration of public housing to eradication of it; and next, from broad characterization of the problem as one involving physical deterioration, crime and family distress, and unnamed “barriers” to management, to one far more specifically involving families receiving welfare, some causal connection between public housing and neighborhood-wide decline, and high density of residents as an element of faulty design. I have discussed a few possible influences: media portrayal of public housing as all high-rise and all decaying, despite data to the contrary; the belief that physical design inevitably marked public housing complexes for obsolescence; and the more quietly spoken conviction that the reservation of housing for the most desperately in need had brought in a less desirable tenant population.

Some analysts of the evolution of public housing policy have commented that a confluence of factors has produced the imperative for “de-concentration” of the residents of public housing: a newly defined problem (as stated by the theory that concentrations of poor people, or of poverty, are responsible for the ills of the inner city) plus a solution available and already activated for

other purposes (the shift from construction of public housing units to issuance of housing certificates or vouchers as a way to meet demand for very low rent housing), plus the political needs of the Department of Housing and Urban Development to “re-invent” itself and dodge the strafing from a newly elected Republican Congress hostile to its mission in general and to the concept of public housing in particular.¹⁰⁵ Other influences included the advent of “welfare reform” in 1996,¹⁰⁶ which renewed focus on the minority of residents of public housing who receive public welfare,¹⁰⁷ and shifted priorities within HUD’s programs for tenants training from community organization to individual self sufficiency, a development I will discuss more fully below. Other elements derive from popular conceptions, hard to prove or disprove, on the deleterious effect of public or subsidized housing complexes on property values and the economies of surrounding neighborhoods.¹⁰⁸

One influence on the drive to deconcentrate can be traced with an unusual clarity. In his studies of concentrated poverty in Chicago, William Wilson has theorized that the departure from the inner city of jobs and, thus, of working people who can serve as role models, has reinforced the economic and geographic isolation of already marginalized poor neighborhoods. This isolation fosters the perpetuation of “ghetto-related behaviors and attitudes,” which in turn contribute to a fatal loss of productive community.¹⁰⁹ While other researchers contend that the persistence of discrimination in housing and employment, not the absence of middle class exemplars, isolates poor and minority residents in undesirable localities,¹¹⁰ Wilson’s thesis has been influential at HUD. At least one HUD-commissioned study of public housing communities explicitly cites Wilson’s work in *The Truly Disadvantaged* in support of the proposition that isolation from mainstream norms and breakdown of interior institutions both cause and manifest an all-entrapping, self-reinforcing “culture of poverty.”¹¹¹ Other commentators have attributed former HUD Secretary Henry Cisneros’s enthusiastic embarkation upon the policy of deconcentration to the influence of William Wilson and Douglas Massey.¹¹²

The corollary of Wilson’s thesis—that the dysfunctionality of the “outcast ghetto” arises partly from the absence of role models—is that conditions of ghettos will improve if role models are introduced. One example of the thesis made flesh is the completion in 1991 of Lake Parc Place in Chicago, a renovation of two of six towers of public housing stock owned by the Chicago Housing Authority (CHA), which had vacated seven hundred families from the deteriorating site in 1985.¹¹³ Funded in part as a demonstration under the “MINCS” (Mixed Income New Communities Strategy) program which Vincent Lane, head of the CHA, lobbied into the Cranston-Gonzalez Affordable Housing Act of 1990,¹¹⁴ Lake Parc represented Lane’s espousal of the hypothesis that the severe isolation of ghetto residents deprived them of the opportunity for “collective socialization” through exposure to role models.¹¹⁵ The MINCS legislation allowed the Housing Authority to fill half of 282 apartments with “low income families” earning between 50% and 80% of median income, and the rest with “very low income families” earning below 50%, a departure from the usual income targeting requirement that 75% of residents of public housing earn below 50% of median.¹¹⁶ The goal was explicitly to put Wilson’s theses to the test: to monitor whether interaction between wage-earning tenants attracted from outside public housing, with average income of \$22,000, and the returning former residents of this and other public housing complexes, with average income of \$5000, would inspire the latter to economic self-sufficiency and compliance with house rules.¹¹⁷ The incentives to attract the higher income residents included significant spending on security and amenities not normally approved for public housing, such as landscaping and closet doors,¹¹⁸ and a cap on rents at \$371 for the first five years of tenancy, as long as the tenant’s household income remained below 80% of area median.¹¹⁹

The lessons learned from this experiment in social engineering may not be the ones sought. Researchers from Northwestern University surveyed (by interview and questionnaire) two groups of residents after they had lived at Lake Parc Place for a year. The first group consisted of twenty female heads of household of whom half were lower income former residents of public housing;¹²⁰ the second, of 198 families, of which slightly under half were former residents of this or other public housing.¹²¹ What made the results ambiguous was the difficulty of asking what everyone really wanted to know: do you talk to/watch the children eat meals with tenants who are richer/poorer than you are, and if so, what effect has this had on you? The discomfort and flat-out insulted reactions of the poorer tenants to questions about their perception of their wage-earning neighbors as role models deterred interviewers from asking the same questions of the larger sample. Actual proof of any “role model effect” was hard to come by: the much smaller sample of residents who responded to a follow-up survey two years later reported decreases in employment.¹²² A different summary of the same study reports significantly more negative responses: the less poor interviewees regarded their poorer neighbors as messy and loud, and stated that they had either no time or inclination to socialize with them.¹²³

One critic of the Lake Parc project, and of Rosenbaum’s, Stroh’s and Flynn’s overview of it, finds the real lessons of the experiment to be unsurprising: that spending the kind of money for security, amenities and physical plant long withheld from conventional public housing properties will produce greater satisfaction on the part of residents, greater desire to maintain the properties in good condition, and generally better environments. The hoped-for lessons—that it takes wage-earning tenants to show their un- or under-employed neighbors how to act in rental housing and how to enter the job market—are unsupportable by the research designs, and may be ultimately unascertainable.¹²⁴

IV. AN ALTERNATIVE VISION: ORGANIZATION FOR TENANT MANAGEMENT

The Federal government has provided systematic recognition of, and support to tenants in, their capacity for self-governance in one particular context: that of property management. As the result of a campaign born of strange alliances, the Housing and Community Development Act of 1987 instituted resident management as a routine, formalized feature of public housing.¹²⁵ But resident management emerged in the 1970’s as a spontaneous, indigenous movement of residents outraged at the incompetence of their housing authorities; it expanded as a foundation-funded social experiment; and it flowered as a conservative strategy for the empowerment of individuals. Supporters of the concept came to it from all points on the political spectrum. It is useful to trace the resident management movement from its inception to the present as the one program which has drawn and continues to draw federal support for tenant capacity-building. Particularly telling is how resident management has served changing concepts of the purpose of public housing—as a way station, as shelter of last resort, as training arena for life skills, and as laboratory for citizenship.

One historian of the public housing residence management movement has divided advocates for resident management into three camps, labeled by the company they kept: “conservative,” those who saw resident management’s value solely as a training ground for homeownership and eventual freedom from dependency on government subsidy; “liberal,” those who saw inherent good in resident management as an outgrowth of other CD endeavors, as a collaboration which would make government more accountable, and as a strategy to improve residents’ quality of life; and “progressive,” those who saw resident management as neither a goal or means of empowerment, but one of any possible outgrowths of distinct processes of community

organizing and strengthening.¹²⁶ While strains of each justification for resident management echo throughout the entire history of such endeavors, four distinct periods of financial support for resident management emerge, each marked by the priorities and ideologies of the funders: the foundation-backed limited demonstration initiatives of the 1970's; the homeownership—focused projects funded by the National Center for Neighborhood Enterprise through the 1980's; the assumption by HUD, through the Housing and Community Development Act of 1987, of responsibility for a wide-scale program of technical assistance to residents in the late 1980's through the early 1990's; and the more diffuse technical assistance initiatives funded through the Tenant Opportunities Program (TOP) and Resident Opportunities Self-Sufficiency Program (ROSS) from the mid-1990's to the present.

A. An End or a Means: Early Experiments in Resident Management

A synergy of emerging strong tenant leadership and collective indignation over neglect by local public housing authorities of daily and structural maintenance produced the first attempts at resident management. In 1971, the Bromley-Heath Tenant Management Corporation signed its first management contract with the Boston Housing Authority. Expanding to control three developments by 1973, the Corporation had grown from a base of grass-roots organizing in the 1960's, when residents had built a tenant organization dedicated to providing social services, health care, and security.¹²⁷ After a protracted rent strike and exhaustive negotiations with housing authority officials, from 1973 to 1975 tenant leaders in St. Louis assumed partial management responsibilities in five projects, with training sponsored by the Ford Foundation.¹²⁸ Following closely on the St. Louis example, from 1976 to 1979 the Ford Foundation and the Department of Housing and Urban Development co-sponsored the National Tenant Management Demonstration Program, funding and monitoring seven new management sites in six cities.¹²⁹

The National Tenant Management Demonstration embarked on a gamble: could outside funders, trainers and program designers generate the same conditions for resident control that had arisen out of the spontaneous activism of indigenous tenants' leaders? Progress was slow in the first year. Although the initial elected directors of the tenant management corporations tended to be long-term, stable residents dedicated to restoring their properties to the orderliness they recalled from an earlier time, most of them struggled with their responsibilities. Most averaged an education level through 11th grade, and functioned as single heads of household. Initial turnover among the elected directors was high.¹³⁰ The difficulty experienced by housing authority staff in adapting to changing roles, and residents' unfamiliarity with group process forced trainers to scale back their expectations from training in property management to training in basic board functions such as how to conduct a meeting.¹³¹ Ultimately, after extensive training, tenants performed as well as their housing authorities had in executing key functions such as rent collections, filling vacancies, and responding to maintenance requests, and outperformed their housing authorities in other measures.¹³² But the expense was considerable—training of residents and technical assistance ran up management costs from 13-62% over those incurred by housing authority management alone.¹³³

The most important findings from the demonstration may have been the most difficult to measure: what levels of tenant involvement and leadership correlated with (if not caused) the tangible measures of success? Some connections emerged: for at least the duration of the study, the resident management corporations most successful at executing “key functions” were those with the strongest tenants' associations and leaders, where “strongest” is defined by extensive organization of and participation from the tenant body; and with the strongest links to local leaders outside the housing authority.¹³⁴ Other measures of success fell short of concrete

standards such as reliability of rent collections, but had meaning for residents nonetheless. Despite some burn-out, by the end of the demonstration tenant managers and their employee staff reported pride in their acquisition of not only the technical skills of property management, but of the “soft” skills of listening, negotiating and meeting people’s needs, and in their ability to make a difference in their neighbors’ lives: a sense of “. . . altruism and public spirit.”¹³⁵ However significant the demonstration may have been for nurturing community cohesion and real improvement in living conditions, housing authorities saw no value in continuing this level of investment on their own: of the seven demonstration sites, only one survived past the expiration of the foundation funding.¹³⁶

In 1978, a year into the Demonstration project, enthusiasm during the Carter administration for tenant management generated a task force and a report, with recommendations for adoption of national regulatory standards for tenant participation in functioning of housing authorities.¹³⁷ What was striking about the Task Force’s recommendations was that, despite the title, they emphasized first above all the importance of developing broad-based democratic participation by tenants in their own governance and in the governance of public housing. The report set out elaborate procedures for formation and recognition of tenants’ associations, and for triennial elections with third-party monitors.¹³⁸ The organizational process was to culminate in a formal contract between the newly constituted and recognized tenants’ association and their housing authorities, in which the parties would agree on the substance of at least twenty-four management items, including lease provisions, tenant selection, eviction policy, rent ceilings, and demolition or rehabilitation.¹³⁹ While these agreements were necessary preparations for tenant management, they could exist apart from it—this report conceived of community organization in a tenant body as an end in and of itself.

The Task Force report and the short-lived National Demonstration experiment illustrated well the conflicting perspectives about the value of intense participation of tenants in the management of their dwellings. Unlike their predecessors in Boston and St. Louis, the projects of the demonstration program were all generated from the top down, by program staff of Ford and HUD who saw the goal of tenant management as stabilization of the tenant body and cooperation with the housing authority, rather than as empowerment. As products of policy rather than of tenant initiative and hard-won collaboration with the local housing authorities, these programs lacked the internal strength and external support to survive the expiration of the foundation’s funding.¹⁴⁰ In contrast, the Task Force emphasized an incremental, bottom-up approach to resident management, in which—following William Peterman’s “liberal” typology—strengthening of tenants’ capacity to organize became the most important factor. While the details of the Task Force’s recommendations concerning tenant elections re-surfaced some fifteen years later in the form of the re-vamped Tenant Opportunities Program, arguably this was all that survived of them. That tenants could ever become full partners in management decisions *short* of actually assuming liability for management themselves was lost from the calculation.

B. Technical Assistance and Training for Management: The Advent of A National Program

Sharply curtailed budgets for every aspect of public housing—construction, renovation and both simple and capital maintenance—in the early 1980’s exacerbated deterioration of physical plants and neglect of basic services, re-creating (and in some instances reinforcing) conditions that had prompted the tenant-takeovers of the early 1970’s.¹⁴¹ Beginning in 1985, Robert

Woodson's National Center for Neighborhood Enterprise (NCNE) received funding from the Amoco Foundation to administer a three year technical assistance and property management training program for residents in twelve resident management corporations, some of which had operated continuously since the early 1970's, some of which the new project sought to revive from the National Tenant Management Demonstration.¹⁴² Woodson, and to an even greater degree some of the resident leaders whom he sponsored, viewed resident management as an expression of self-determination and moral uplift. Federal support of resident management would do more than deliver a good return on scarce federal housing dollars in the form of improved rent collections and better services; it would counter the practice of channeling all federal program dollars towards problem populations, thereby implicitly "punishing responsible behavior."¹⁴³ In a later writing in which he excoriated affirmative action and public housing and social welfare programs as benefitting respectively only the black middle class and the "social service industry,"¹⁴⁴ Woodson extolled resident management in public housing as a force for channeling neighborhood talent into local production of local assets that would remain in and enrich poor communities.¹⁴⁵ Kimi Gray, a NCNE grantee, and chair of the only wholly resident-managed public housing complex in the District of Columbia, envisioned resident management as nothing less than the vehicle for re-engineering community through re-construction of character:

Once we educate our people, reprogram their different habits, take away their dependency, make them independent, restore pride, then we change our communities.¹⁴⁶

Evaluators of the NCNE grantees found that some did a better, and cheaper, job of delivering on routine maintenance and administrative services than their housing authority counterparts, particularly in cities with troubled public housing authorities.¹⁴⁷ As was true of their predecessors (and for some, their younger selves) ten years earlier, tenant leaders saw the empowerment of participants as a more important product of management than the tangible deliverables.¹⁴⁸ In contrast to public housing authority personnel, those residents who were involved in management at any level saw their role as one of strengthening their complexes into permanent communities within which they all could stay and prosper, rather than of holding the line on conditions long enough to enable residents to move up and out.¹⁴⁹

But there were some caveats. Even if tenant leaders acknowledged empowerment of residents as an important by-product, or even goal, of tenant management, it was not always clear that tenant management provided a vehicle for democratization or even broad community participation. Several of the enduring resident management corporations were dominated by visionary founding leaders, who moved the organizations forward but had scant regard for broadening tenant involvement in governance. The much eulogized, and recently eulogized, late Kimi Gray exemplified the strengths and weaknesses of this model.¹⁵⁰ Her management style in the mid 1980's generated controversy and dissension among her constituents, particularly with her single-minded determination to evict lower-income residents in favor of those who were more economically secure, in preparation for conversion of the units to ownership.¹⁵¹ If "success" meant the capability not only to deliver on the day to day demands of routine maintenance, rent collections, and enforcement of house rules, but to promote new initiatives and address systemic problems, then resident management corporations with strong boards of directors and consistent interactions with the tenants carried the day—more so than did those with the isolated, strong leaders and more quiescent boards.¹⁵² Generally, all tenant organizations had trouble in sustaining the involvement of residents over the long term. Attrition of energy, plus the monopolization of authority and administration by a few, raised serious issues of succession, with low turnout at elections and little demonstration by tenants of interest in challenging the established leadership.¹⁵³

Of the twelve residents' groups which Woodson's project supported, only three remain on HUD's current list of "full-service" resident management corporations—out of a total, across the nation, of twelve.¹⁵⁴ Given this survival rate (on which more, later), the most lasting of the NCNE's accomplishments may have been its convocation of grantees to lobby in 1986 for H.R.4026, a federally funded program of technical assistance to assist in the formation development of new "resident management entities" and in the support of existing ones.¹⁵⁵ The successor to H.R.4026, Section 122 of the Housing and Community Development Act of 1987, added Section 20, "Public Housing Resident Management," to the United States Housing Act. The new section mandated a process for creating a resident management entity, in which the elected resident council would be responsible for approving or rejecting the creation of a nonprofit resident management corporation,¹⁵⁶ and allowed the allocation of up to \$100,000 in funds per public housing complex for technical assistance to establish resident management entities and for training.¹⁵⁷

The primary questions which this newly institutionalized national program had to answer were no different from those posed by the experiments of the 1970's and 1980's: is community-building in public housing best conceptualized as culminating in the management of public housing properties; is there measurable value in community organization as a goal unto itself; and can "community" be generated by external infusions of cash and technical assistance?

Over three hundred resident organizations received technical assistance funds under the Resident Management Technical Assistance Grant program as an immediate result of the Housing and Community Development Act.¹⁵⁸ A study required by the Act¹⁵⁹ and conducted in 1992 of eighty recipients, all of them new organizations, showed that most of the recipients channeled their funding towards training of residents in organization-building. This included learning about the mechanics of formerly structuring themselves as organizations through incorporation and the drafting of by-laws, and about how to conduct elections and meetings.¹⁶⁰ As resident leaders had mentioned in studies of previous efforts at training tenants to assume management roles, many participants in "emerging resident management corporations" considered this training in organization-building to be intrinsically valuable, apart from its worth as a means to building competence in management.¹⁶¹

C. From Building the Collective to Uplifting the Individual: Changes in Direction of the Technical Assistance Program

As the technical assistance program created in the late 1980's continued, it was confronted with the question of whether community organization should take precedent over other priorities in the scramble for federal funds. Three uneasily reconcilable demands buffeted the program during the mid-1990's: for financial integrity and signs of tangible accomplishment from the residents; for signs of tangible accomplishment from HUD, as the agency fought for its life under Congressional fire; and for performance to fulfill the goals of welfare reform. These demands hastened a movement in the program that had already begun: away from training residents to serve the entire tenant body through resident management, and towards support for individual efforts at economic betterment.

Despite the award of 986 grants of about \$80 million in total to public housing tenants organizations under the 1987 Act between 1988 and 1998, since its congressionally-mandated study of 1993 HUD has commissioned no evaluations of the accomplishments of resident organizations.¹⁶² It is necessary to re-construct the history of the program through administrative notices and other sources. In 1994 HUD re-named and restructured the resident management assistance program as the "Tenant Opportunity Program" (TOP), with emphasis on insuring the

organizational integrity of tenant bodies through formally monitored elections, the institution of fixed three year terms and recall provisions for officers, the adoption of by-laws, and delineation of the relationship between resident management corporations and their parent resident councils.¹⁶³ This re-emphasis on the core activity of organization-building addressed baseline problems concerning “internal conflicts between competing resident councils” and the need among residents and resistant housing authorities for clear guidance on election and training procedures to insure the participation of representative, responsive tenant organizations.¹⁶⁴ HUD would continue for the next few years to use proof of incorporation, by-laws, application for recognition of federal tax exempt status, and democratic, fair elections of residents’ council representatives as benchmarks of achievement, stressing their importance in administrative notices and including them as items to be checked on work plans and on formal semi-annual reports.¹⁶⁵

HUD extolled the value of TOP-sponsored training in organizational development as enabling residents to “. . . move toward responsible roles in their communities. . . .”¹⁶⁶ But in its re-structuring of the program the agency also made it clear that its goals for TOP extended beyond the preparation of leadership for community strengthening:

- (1) (To) Prepare residents to experience the dignity of meaningful work, to own and operate resident businesses, and to move toward financial independence; (2) enable them to choose where they want to live; and (3) assure meaningful participation in the management of their housing developments.¹⁶⁷

HUD also stated its intent to advocate amendment of the technical assistance portion of the U.S. Housing Act to allow for funding resident initiatives apart from resident management.¹⁶⁸

The dual emphasis on capacity building for the sake of the individual, and on capacity building for the sake of the community, underscored a basic worry: could training in fiscal accountability, program management, and board development remedy the lack of experience which public housing residents may have had in these areas? HUD needed to be concerned about residents’ capabilities to bid for and run multi-thousand dollar programs for the sake not only of pure program integrity, but of challenges to HUD’s own credibility. As noted earlier, HUD faced congressional pressures for its elimination; in 1994 the agency authored its “Reinvention Blueprint” to pre-empt externally imposed crippling budget cuts.¹⁶⁹ The agency echoed the “reinvention” theme at every opportunity, highlighting how its re-design in 1994 of the resident management technical assistance program “reinvented resident management.”¹⁷⁰ Anxiety over what residents were doing with federal funds, and what Congress thought about it, was warranted: in 1996 Congress threatened to defund TOP for weaknesses in financial controls.¹⁷¹ Whether this warning was justified by conditions in the field, or motivated by political considerations, HUD’s administrative notices to the field between 1995 and 1997 did indicate concerns about the accountability of inexperienced grantees. Most residents councils were dependent on consultants to assist in grant-writing and program design, and needed guidance in the proper competitive process and the merits in choosing those consultants.¹⁷² HUD also communicated concern about whether the grantees were spending training money appropriately, and were choosing training appropriate to the goals of the program.¹⁷³ Citing a “lack of focus on performance objectives” and “failure to target TOP grants toward the basic self-sufficiency needs of residents,” in 1997 HUD reported that it put 64 grantees in default for failure to comply with the terms of the program.¹⁷⁴

Responding to passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, in 1997 HUD restructured the TOP again, with channeling funds towards “welfare to work” as the explicit goal. The prospect that a significant minority of the public housing

population could lose income through the imposition of time limits on welfare set a priority for action, an urgency that elevated the strain in the program that delivered social services to individuals over that which built capacity for the collective.¹⁷⁵ Reflecting that preoccupation, the grant notice required applicants to demonstrate that a minimum of 75% of the residents assisted by their programs were individuals “affected “by the welfare reform legislation.”¹⁷⁶ It also characterized the TOP as focused on individual enhancement, with projects “. . . aimed at furthering economic lift and independence” and technical assistance grants as targeted to benefit residents “. . . by obtaining skills that will make them more employable in the local community.”¹⁷⁷ It is noticeable that, of the six categories of activities eligible for funding, “resident capacity building” in areas such as community organizing and board development was fifth, following “homeownership opportunity,” “resident management” and “resident management business development” for individual entrepreneurs in descending order, with first place accorded to “social support needs” such as child care, literacy, services for elderly and disabled residents, and training programs on substance abuse.¹⁷⁸ HUD also incorporated ongoing concerns about residents’ capabilities to take on projects, for the first time requiring applicants already to have secured or to have applied for recognition of federal tax exempt status.¹⁷⁹ The notice of funding availability for the 1998 TOP program echoed the emphasis on moving “welfare dependent families” to work. For the first time, HUD explicitly directed organizational development grant funds to enable residents to engage not only in managing property, but in running welfare to work programs.¹⁸⁰ At the same time, HUD did authorize use of TOP funds for less targeted, more community-building activities, such as training board members of residents’ organizations in community organizing.¹⁸¹

To the present, the pressure to move residents from welfare to work has dominated what began as a training program for public housing residents to exercise collective self-determination in managing their properties. In the 1998 QHWRA, Congress formalized what the agency had for all purposes already accomplished: it deleted section 20(f) of the United States Housing Act, that part of the 1987 Housing and Community Development Act that had authorized expenditures for training in resident management, and added a new section 34, “Services for Public Housing Residents.”¹⁸² The new statutory section confined eligibility for funding to activities “. . . designed to promote the self-sufficiency of public housing residents or provide supportive services for such residents, . . .” Of the specifically enumerated eligible activities, resident management ranked fifth out of five, behind funding service coordinators, space for the delivery of supportive services, and the services themselves, which included services such as adult literacy, job search skills and child care ancillary to work readiness.¹⁸³

Consequently, HUD’s 1999 round for funding technical assistance to public housing residents eliminated TOP, and substituted for it the Resident Opportunities and Self Sufficiency Program (ROSS).¹⁸⁴ ROSS funds an expansive range of activities. These include existing and new resident management initiatives and resident business development, and services one would normally associate with them, such as aid in negotiating management contracts and in drafting business plans.¹⁸⁵ Also as before, HUD has stretched the list of eligible projects to encompass programs to deliver social services such as employment counseling, youth programs, housekeeping and personal care for the elderly and disabled, and child care. What ROSS does not do explicitly is reserve funds for the “soft skills” of community organizing, board development or leadership training, although it does offer “capacity-building grants” to enable resident associations to participate in resident management, administer their grants, or “participate in Housing Agency decision making.”¹⁸⁶ As HUD has offered since 1998, the technical assistance program does fund residents to hire mediators actually to mediate disputes among residents, and to train residents in principles of mediation.¹⁸⁷

D. Training for Resident Organizations: Whose Measure of Success?

The absence of any collection of, or assessment of, performance data for most of the twelve year history of national technical assistance to public housing residents' organizations cripples any attempt to evaluate the impact of the program. As is so often the case, we hear about the failures: about the program funds that pay for trips to Las Vegas and for big screen TVs, the irregularities that justified apprehensiveness about residents' savvy in choosing consultants and using other people's money.¹⁸⁸ We also know, as stated earlier, that in roughly only thirteen complexes do residents exercise full management control over their properties. If management is the measure, then a quarter century of private and public funding to groom tenants to take charge of their physical environments has been a failure.

What we can know only imperfectly is whether, by other measures, funding to resident organizations has ever been a success. Where goals mix and shift, as they have throughout these programs—between collective and individual empowerment, between building both concrete and intangible structures for staying in a stable community and for giving individuals the tools to move out—measurement is almost impossible. As I have described, the studies that reviewed the first decade and a half of experiments in resident management training frequently return over and over again to the “soft skills” in which trainees took great pride—the education in listening, in conducting effective meetings. Arguably the acquisition of these skills as an end in itself was the unintended byproduct of some residents' lack of formal education in the most basic skills of management; trainers were forced to focus long and hard on what they initially thought would be quick first lessons in organization -building. As analysts of community-based organizations know, the creation of an organization whose chief product is the building of capacity for citizenship is not an achievement which funders easily can or will quantify, assess, and pay for.¹⁸⁹ In this respect, Congress and HUD were no different from any foundation or corporate grantor. Particularly once welfare revision made moving residents into jobs, any jobs, an imperative, the federal funder's impatience with collective empowerment as a product manifested itself in the strengthening of emphasis in the TOP program on individual economic self-sufficiency.

But training in the “arts of democracy” is in fact a part of what funders of private community-based organizations are now orienting themselves to do, under the theory that “capacity-building” for stable, accountable institutions is a necessary prerequisite to more tangible accomplishment.¹⁹⁰ “Capacity,” much over-used and under-defined, has been described as consisting of the internal strength of an organization's board, employees and members, that enables the organization to engage in the functions most significant for its ability to improve its community: running programs, collaborating with other institutions, advocating for residents in the political arena, and collecting resources for its own support.¹⁹¹ It is certainly not clear that successful resident management, with more measurable outcomes, is successful at promoting resident participation and democracy, and consequently at developing broad-based capacity. Not all residents want to become involved in the nitty gritty of property management; conversely, residents consumed with the details of property management may have no time, or inclination, for democratic process.¹⁹² Desirability of training residents in capacity building as a long term investment in community building, just as foundations now pay for it for neighborhood-based organizations, depends again on the perception of whether there is anyone worth training. If the “human capital” equivalent of “severely distressed” is “severely without capacity,” as Wilson's theories and the mixed income ideology suggest, then there is no role for capacity-building for the current tenants of public housing.

V. COMMUNITY-BUILDING IN A DIASPORA: THE MIXED MESSAGES OF CURRENT PUBLIC HOUSING POLICY

The HOPE VI program, and the QHWRRA that formalized many of its features into law,¹⁹³ achieve a contradiction: the enhancement of resident participation in planning for new communities “. . .when virtually no residents remain to participate.”¹⁹⁴ As noted earlier, the 1998 overhaul of the U.S. Housing Act makes law the theory that clusters of poor people, primarily unemployed single female heads of household with children, produce unhealthy neighborhoods. To dissipate these clusters, the Act removes elements of former public housing law that conserved low rent housing stock for very poor people. The HOPE VI program provides one vehicle for implementing the objective of de-concentration. “De-concentration” need not mean elimination: housing authorities’ applications for HOPE VI funds are rated for the effectiveness of their de-concentration plans, and not for reduction in the numbers of public housing units. In theory, housing authorities may replace demolished units as long as they locate them in neighborhoods “. . .with low levels of poverty and/or concentrations of minorities.”¹⁹⁵

But reduction in the numbers of public housing units affordable for residents of extremely low income in fact seems to be a hallmark of HOPE VI plans. In his study of HOPE VI projects in Chicago, Atlanta, and San Antonio, Jerry Salama found that of the 1001 units of public housing to be replaced in the Techwood/Clark-Howell Homes in Atlanta, 360 would be targeted to tenants eligible for public housing;¹⁹⁶ and in Cabrini-Green in Chicago, 139 units would remain for unemployed, very low income residents out of an original 1,324, in a neighborhood in which 7% of the residents received income from work.¹⁹⁷ Other HOPE VI projects present similar profiles.¹⁹⁸ While the high vacancy rates in some complexes means that few residents remain to be displaced,¹⁹⁹ the destruction of these units still results in a net loss of units affordable to very poor people. Although HUD allows a housing authority to dedicate up to fifteen percent of HOPE VI programs funds for a mandatory “Community and Supportive Services Program,” one that must provide intensive services to relocated and remaining residents alike to enable them to achieve, among other goals, living wage jobs,²⁰⁰ no one has monitored whether these programs have enabled residents initially earning below 10% of median income to gain enough income to afford rents and mortgage payments targeted at residents earning up to 80%. One study that HUD commissioned depicts the newfound stability, cleanliness, and community spirit of the renovated HOPE VI communities—and also describes several former housing projects to which fewer than a third of the original residents have returned.²⁰¹ The five and ten year follow-ups that HUD promises of its assessment in 1996 of fifteen HOPE VI projects should give a more systematic picture of who moves back in, and under what circumstances.²⁰²

As Salama notes, the three developments demonstrate the market realities of de-concentration and public-private partnerships. One attraction of HOPE VI’s “mixed finance” possibilities is the ability it gives public housing authorities to diversify types of housing stock and, of course, incomes of the occupants; another is “leverage,” to enable a housing authority to augment public with private funds, so that the profits from market rate rental units could subsidize replacement of public housing units affordable to very low income renters.²⁰³ But at least in this sample, “cross-subsidization” only worked one way. Of the three projects studied, none commanded sufficient private resources to offset the considerable costs of keeping the rents in renovated apartments affordable to renters at 30% of median income.²⁰⁴ The only way that the San Antonio housing authority was able to replace with public housing units virtually all the 421

units it was tearing down in the Spring View Apartments was with its own grant money—a very large HOPE VI award for a relatively small number of units.²⁰⁵

In noting the possibilities which HOPE VI offers for partnerships between public housing authorities and developers, one commentator has enumerated the ability to transfer “valuable tracts of developable land” as among the assets that any housing authority has to contribute to any deal.²⁰⁶ For some residents who see (as with the Lake Parc example) the sudden outpouring of resources for benefits they never had, for the sake of new residents with incomes to which they can never aspire, the new public housing communities may seem like less of an opportunity for them than a land grab for developers.²⁰⁷ Indeed, a study of ten HOPE VI redevelopment plans suggests that gentrification is what makes HOPE VI possible, as housing authorities count on new real estate activity in surrounding areas to attract more up-scale clientele to market rate rentals.²⁰⁸ HUD’s own study forecast gloomy outcomes for HOPE VI projects in a few cities, due partly to the residents’ well-grounded skepticism about whether their housing authorities could or would make good on their commitments.²⁰⁹ Sometimes, residents have rejected the rhetoric of a better tomorrow and fought to keep what they know of an imperfect today.²¹⁰ In other instances, residents have litigated and negotiated to preserve as much as possible of an opportunity to return in strength, re-knit as a community.²¹¹

What then is peculiar about current housing policy is that, despite its explicit goal of uprooting and re-shuffling very poor residents to achieve diverse economic populations,²¹² it not only retains vestiges of the old resident empowerment programs such as ROSS, but provides two vehicles for participation if not decision-making by, as noted above, residents who may not be there. The HOPE VI application process itself gives residents an opportunity to voice concerns about development. HUD mandates some degree of resident involvement in the application process for HOPE VI grants. For the year 2000 grant cycle the Department not only requires housing authorities to hold at least one training session for residents, and three public meetings for residents and other community members, on the mechanics of HOPE VI and on the details of the authority’s proposed plan, but lays out the particulars of what the meetings should cover, including relocation, re-occupancy, and the extent of demolition.²¹³ In addition to the threshold requirements it sets for holding public meetings, HUD also rates applications for HOPE VI funding on the quality of outreach to residents and “the broader community.”²¹⁴

Other mechanisms provide potential for residents to affect not merely the progress of a particular development, but the governance of their public housing authority. With some exceptions, the QHWRA requires governing boards of housing authorities to include in their membership at least one tenant “directly assisted by the public housing agency,” whom, depending on the agency’s five year plan, the tenants may elect.²¹⁵ In addition, a newer institution through which residents may exert influence on the direction of their public housing authority is the resident advisory board, an innovation instituted by the QHWRA.²¹⁶ The resident advisory board exists to participate in the formulation of five year and annual public housing agency plans, another new requirement, plans which dictate the direction of the housing authority on all critical activities such as admissions and occupancy, assessment of how to meet housing needs, and plans for demolition or disposition of properties.²¹⁷ Housing authorities must document the participation of, or at least consultation with, resident advisory boards in the formulation of these plans before they can submit them to HUD.²¹⁸

As with so many policy directives, it is hard to know whether the dictates on paper translate into a difference in the field. No data is available on the compliance of housing authorities with the creation of resident advisory boards, let alone on the substantive contributions of the boards themselves. Though commentators have expressed optimism about the potential for residents to use their boards to build the goal of conservation of affordable housing into the five year plans,

and the annual plans to review compliance with the overarching goal,²¹⁹ true participation will depend on whether residents receive adequate notice of public hearings on the plans in time to do anything about them, and whether the resident advisory boards engage in meaningful consultation.²²⁰

As for resident participation in the HOPE VI process, a sample of HUD's ratings of the HOPE VI applications might indicate whether a proposal ever stood or fell on whether it could show attendance at informational meetings of thirty residents or three hundred—or whether those residents' opinions made a difference in the decisions made about development. HUD's study of fifteen of the first recipients of HOPE VI grants and of the residents in the affected public housing complexes revealed a range of involvement by residents in the planning, from “broad and active participation” to “next to nil.”²²¹ HUD's informal program guidance to housing authorities sends a mixed message about the essentialness of the participation of public housing residents in the design of HOPE VI projects. While the Department calls upon local authorities to solicit the “advice counsel, recommendations and input of affected residents and the broader community,”²²² it also emphasizes that as the grantee, the authority has ultimate power to decide the disposition of funds, and that resident input is “integral” to planning and implementation, “without controlling it.”²²³

Finally, only the regulations for the resident advisory boards even attempt to answer the question of who will participate when it's up to the last person who's left to turn out the lights.

The regulations anticipate a range of possibilities for selection of members—from existing jurisdiction-wide or individual resident councils. As may be the case for complexes where tenant participation either never took hold, or where significant numbers of residents lose their homes so that the function of the resident councils is disrupted, from whatever remains of the resident constituency generally.²²⁴

VI. CONCLUSION: COUNTER-IMAGES: DEFENDERS OF COMMUNITY

A study performed at the Ida B. Wells and Robert Taylor Homes public housing complexes in Chicago knits up some of the themes—environmental determinism; characteristics, real and imagined of the community of public housing residents—that I have discussed, and also suggests some possibilities for different conceptualizations. Researchers enlisted the residents' councils of these two complexes to recruit three “resident observers” to study and record where residents congregated in the public spaces of these two very different physical plants: the Taylor Homes with its multiple sixteen story high rises; and the portion of the older Ida Wells apartments that consisted of low rise row houses. The women who were chosen had lived in either of the two developments for between nineteen and thirty-two years.²²⁵ Over the course of several days during June of 1994, these resident observers documented ninety six sets of observations of the four sides of any of several targeted buildings where people were congregating within fifty yards of any one side. The observers noted information for each site on number of adults and youth, number of trees, the activities, the distance of the people from the trees and from the building, and the distance of the trees from the building.²²⁶

Researchers culled patterns from these reports: that overall, three times as many people congregated near spaces with trees as near spaces without them;²²⁷ that more residents were attracted to the trees that were planted closer to the buildings; and that children and adults with children gravitated even more to “treed outdoor spaces” than did groups of adults alone.²²⁸ They extrapolated a good deal more: that by creating manageable zones to which people are attracted in large, unmanageable housing complexes with little private space, “treed spaces” provide some

of the “defensible space,”—opportunities for surveillance and supervision of children, and for social interaction—that these physical spaces lack.²²⁹ Another study of the Robert Taylor Homes by the same researchers posits stronger social networks among the residents who live in “high nature areas.”²³⁰

The researchers in the “tree” study concluded that there may be methods for providing more livable public housing complexes that are less drastic than demolishing them.²³¹ One could conclude a good deal more. The study’s design implicitly acknowledged the presence of several resources in a population deemed to be without any: the influence of long term residents who can be trained and who have a stake in the community, and the ability of residents to make something of the few amenities that they are given. Without romanticizing the conditions present in some public housing, other researchers of the resident populations in the Chicago complexes slated for demolition also have stressed how residents create their own networks to compensate with mutual self help for the historic lack of resources: with rides to jobs, with baby-sitting, and with doubling-up and combining incomes.²³² This is not to say that better facilities and access to services would not be welcome. It is to say that the mere presence of decaying structures may not be a perfect indicator of the capacity of the people inside.

The benchmarks of “distress” that qualify a public housing project for demolition and renovation highlight deficiencies. They do not consider counter-benchmarks: the residents’ organizations that, with or without federal financial assistance, have cohered long enough to be effective organizers, service providers, and advocates against their own dispersal. Some, like the Mission Main Tenant Task Force in Boston, are strong enough to survive relocation and return. In place since the late 1980’s, the Task Force functions with a sixteen member board and paid staff, runs recreational and cultural programs and provides other social services—and with original and new board members retained enough cohesiveness to persist in tough negotiations with its housing authority and political figures to retain the best deal possible for its constituents through the HOPE VI reconfiguration.²³³ Others, like St. Thomas Resident Council in New Orleans, have received far less consideration. Despite a host of organizing and economic development initiatives, and the association’s record in building a consortium of providers across the city to supply meaningful social services to the residents,²³⁴ St. Thomas faces imminent demolition,²³⁵ with few truly affordable housing units planned in replacement.

There are doubtless countless other public housing residents’ organizations whose activities were considered insufficient proof of the community’s viability to warrant less desperate remedies, and which will be compromised or stopped by demolition and relocation. It is too soon to tell whether, as happened with their historical predecessors, their efforts will vanish without an imprint on memory.

Epilogue

Last summer PBS premiered a series, “Great Streets,” a showcase for the history of the world’s famous avenues. The inaugural episode featured Fifth Avenue in New York City. As any chronicle of this thoroughfare must, the program gave prominent place to Central Park. There was plenty of narrative about the genius of Olmsted’s design and about the feats of engineering. Of the Park’s pre-history, all that was said was that the Park was built on largely vacant land.²³⁶

How soon we forget.

Notes

* Professor of Law and Director, Community and Economic Development Law Clinic, Washington College of Law, American University. The author wishes to thank her dean, Claudio Grossman, and the Washington College of Law, for generous research support; her research assistants, Heather Buanno and Mary Burford, for their diligence and persistence; her colleagues, Michael Diamond, Susan Jones and Sidney Watson, for their kindness in reviewing the draft; and her Symposium reader, Michelle Adams, for going above and beyond the call in her careful and thoughtful comments.

1. LYNDA H. SCHNEEKLOTH & ROBERT G. SHIPLEY, *PLACEMAKING: THE ART AND PRACTICE OF BUILDING COMMUNITIES* 18 (1995).
2. *See infra* note 11 and accompanying text.
3. New York Historical Society, “What is Seneca Village” Exhibition Flier (1997) (on file with the author).
4. ROY ROSENZWEIG & ELIZABETH BLACKMAR, *THE PARK AND THE PEOPLE: A HISTORY OF CENTRAL PARK* 65 (1992).
5. *Id.* at 70.
6. New York Historical Society, *supra* note 3. For a detailed description of the New York Historical Society’s exhibit, “Before Central Park: The Life and Death of Seneca Village,” including information on the individual households of the settlement, see Douglas Martin, *A Village Dies a Park is Born*, N.Y. TIMES, Jan. 31, 1997, at C1. Many reporters covered the opening of the Society’s exhibit in January 1997; a particularly engaging story described one Brooklyn resident’s discovery that his ancestors on his mother’s side may have lived in Seneca Village. *See* Clyde Haberman, *The History Central Park Almost Buried*, N.Y. TIMES, Feb. 28, 1997, at B1.
7. ROSENZWEIG & BLACKMAR, *supra* note 4, at 89.
8. For interviews with historians Roy Rozenzweig and Peter Salwen, whose research of city maps and tax records had persuaded them of the existence of a settlement even before physical artifacts of Seneca Village were uncovered, see Douglas Martin, *Before Park, Black Village: Students Look Into a Community’s History*, N.Y. TIMES, Apr. 7, 1995, at B1.
9. Michael Finnegan & Chrisena Coleman, *Central Park Hiding Village Artifacts*, N.Y. DAILY NEWS, Jan. 9, 1998, at 35.
10. EDWIN G. BURROWS & MIKE WALLACE, *GOTHAM: A HISTORY OF NEW YORK CITY TO 1898*, at 792 (1999).
11. N.Y. TIMES, July 9, 1856.
12. ROSENZWEIG & BLACKMAR, *supra* note 4, at 64.
13. *Local Intelligence – Central Park*, N.Y. TIMES, Aug. 19, 1866.
14. ROSENZWEIG & BLACKMAR, *supra* note 4, at 67 (quoting JOHN PUNNETT PETERS, *ANNALS OF ST. MICHAEL’S, 1807-1907*, at 445-6 (1907)).
15. Marshall Berman, *Falling Towers: City Life After Urbicide*, in *GEOGRAPHY AND IDENTITY: LIVING AND EXPLORING THE GEOPOLITICS OF IDENTITY* 172, 172-5 (1996).
16. For a critique of the financial incentives for residential demolition provided in the United States and National Housing Acts, see ROBERT HALPERN, *REBUILDING THE INNER CITY: A HISTORY OF NEIGHBORHOOD INITIATIVES TO ADDRESS POVERTY IN THE UNITED STATES* 67-8 (1995).
17. Herbert Gans took up residence in the West End to study the impact of the impending redevelopment of the neighborhood on the residents. He left seven years later, at the beginning of demolition, an opponent of the redevelopment and a believer in the vitality and cohesiveness of the West End’s Italian immigrant working class community (as did my parents, then newlyweds and medical residents at nearby hospitals, who remembered the West End as a bustling and welcoming place to live). *See* HERBERT J. GANS, *THE URBAN VILLAGERS: GROUP AND CLASS IN THE LIFE OF ITALIAN-AMERICANS* 305-6 (1962).
18. Robert A. Solomon, *Building a Segregated City: How We All Worked Together*, 16 ST. LOUIS U. PUB. L. REV. 265, 287-8 (1997).
19. The video documentary, *SOUTHWEST REMEMBERED: A STORY OF URBAN RENEWAL* (Lamont Productions, Inc. 1990), depicts the elimination and redevelopment of the community of southwest D.C. during the mid-1950’s. For the decisions that expanded the power of eminent domain to allow condemnation for not only public use, but public purpose, and in doing so cleared the way for the D.D.C. Redevelopment Land Authority to take down both residential and commercial buildings and re-sell the property to commercial developers in the name not only of elimination but prevention of the hypothetical recurrence of “slums and blight,” see Berman v. Parker, 348 U.S. 26 (1954); and *Schneider v. District of Columbia*, 117 F.Supp. 705 (D.C. Cir. 1953).
20. In addition to Gans’s study, *supra* note 17, for other contemporaneous descriptions of the impacts of 1950’s – style urban renewal, see MARTIN ANDERSON, *THE FEDERAL BULLDOZER: A CRITICAL ANALYSIS OF URBAN RENEWAL, 1949-1962*, at 54 (1964) (estimating the eviction of some 609,000 persons by March, 1963 as a result of urban renewal); and Marc Fried, *Grieving for a Lost Home*, in *THE URBAN CONDITION: PEOPLE AND POLICY IN THE METROPOLIS* 151 (Leonard J. Duhl ed., 1963).
21. Peter Marcuse, *The Enclave, the Citadel, and the Ghetto: What Has Changed in the Post-Fordist U.S. City*, 33 URB. AFF. REV. 228, 229-32 (1997) (describing the emergence of the “outcast ghetto” an urban phenomenon distinct, in its greater exclusion from mainstream society, from the “ghetto”).
22. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *HOPE VI FACT SHEET* (1999).
23. *See* Larry Bennett, *Do We Really Wish to Live in a Communitarian City?: Communitarian Thinking and the Redevelopment of Chicago’s Cabrini-Green Public Housing Complex*, 20 J. URB. AFF. 99, 113-4 (1998).

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24. Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, 112 Stat. 2461, 2518 (1998) [hereinafter QHWRA].
25. Sarah Pekkanen & Zerline A. Hughes, *After 36 Years, a Pile of Memories*, BALTIMORE SUN, July 4, 1999, at A1.
26. MARTIN D. ABRAVANEL ET AL., BUILDING HEALTHY COMMUNITIES THROUGH FEDERAL HOUSING POLICY: CURRENT DEVELOPMENTS IN THE UNITED STATES 10 n. 7 (1998).
27. Conversation with Ainars Rodin, Dir. for Demolition and Disposition, Special Applications Unit, Dep't of Housing and Urban Development (June 15, 2000); U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, DEMOLITION/DISPOSITION FISCAL ACTIVITY SUMMARY, NATIONAL REPORT (as of June 14, 2000) (reporting 101,906 units approved for removal from the public housing inventory, to include demolition or disposition, between 1992 and 2000, with 56,544 units actually removed).
28. NATIONAL LOW INCOME HOUSING COALITION/LOW INCOME HOUSING INFORMATION SERVICE, OUT OF REACH (1999), available at <http://www.nlihc.org/oor99/badmetro.htm>.
29. Evelyn Nieves, *Many in Silicon Valley Cannot Afford Housing, Even at \$50,000 a Year*, N.Y. TIMES, Feb. 20, 2000, at 20 (reporting that some full time employees in service jobs in northern California use their full day passes to nap all night on public busses, as the only shelter they can afford; that 34% of homeless people in Santa Clara County work full time; and that teachers, police officers, firefighters, and others earning more than \$50,000 a year must seek help at overnight shelters).
30. Rebekah Levine Conley et al., *Where Does Community Grow? The Social Context Created by Nature in Urban Public Housing*, 29 ENV'T & BEHAV. 468 (1997).
31. John Atlas & Peter Dreier, *From "Projects" to Communities: Redeeming Public Housing*, J. HOUSING 21, 26 (1993).
32. See Donald A. Krueckenberg, *The Grapes of Rent: A History of Renting in a Country of Owners*, 10 HOUSING POL'Y DEBATE 9, 10 (1999).
33. See, e.g., Lawrence J. Vale, *Public Housing Redevelopment: Seven Kinds of Success*, 7 HOUSING POL'Y DEBATE 491 (1996); Lawrence J. Vale, *The Revitalization of Boston's Commonwealth Public Housing Development*, in AFFORDABLE HOUSING AND URBAN DEVELOPMENT IN THE UNITED STATES 100 (Willem van Vliet ed., 1997).
34. Lawrence J. Vale, *Destigmatizing Public Housing*, in GEOGRAPHY AND IDENTITY: LIVING AND EXPLORING GEOPOLITICS OF IDENTITY 226 (Dennis Crow ed., 1996).
35. *Id.* at 439.
36. Not all observers of public housing residents and their attitudes towards their homes would agree; surveys performed in the mid 1970's of residents of many different public housing complexes scattered across the country suggest that many felt positive about their housing. See RACHEL BRATT, REBUILDING A LOW-INCOME HOUSING POLICY 63-4 (1989).
37. Alexander von Hoffman, *High Ambitions: The Past and Future of American Low-Income Housing Policy*, 7 HOUSING POL'Y DEBATE 423, 426-7 (1996).
38. *Id.* at 439.
39. OSCAR NEWMAN, DEFENSIBLE SPACE 50 (1973) (summarizing discussion principles for "defensible space," including the influence of design on the "perception of a project's uniqueness, isolation, and stigma").
40. OSCAR NEWMAN, CREATING DEFENSIBLE SPACE 9-10 (1996).
41. OSCAR NEWMAN, DEFENSIBLE SPACE 50 (1973).
42. Department of Housing and Urban Development, Notice of Funding Availability For Public Housing Demolition, Site Revitalization, and Replacement Housing Grants (HOPE VI), 61 Fed. Reg. 38,024, 38,025 (1996).
43. QHWRA §535(a), 112 Stat. at 2581.
44. See Department of Housing and Urban Development, Notice of Funding Availability for the HOPE VI Programs, 65 Fed. Reg. 9599, 9603 (2000).
45. QHWRA §535(j)(2)(A)(i), 112 Stat. at 2584.
46. NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING, THE FINAL REPORT 76 (1992).
47. HOPE VI GUIDEBOOK, HOPE VI PROGRAM AUTHORITY AND FUNDING HISTORY 1, 6 (2000) (of 274 grants HUD awarded 35 for planning, 131 for revitalization, and 108 for demolition only). Since some revitalization projects also include plans for demolition, the number of demolition grants alone does not indicate fully the amount of demolition supported by the HOPE VI program. *Id.* at 6 (describing revitalization grants for 1999 as assisting the demolition of 9815 units).
48. Vale, *The Revitalization*, *supra* note 33, at 110.
49. Chester Hartman, *Shelterforce Interview: Joseph Shuldiner, Assistance Secretary for Public and Indian Housing*, 77 SHELTERFORCE ONLINE (Sept/Oct. 1994), available at <http://www.nhi.org>.
50. George Packer, *Trickle-Down Civil Rights*, NY TIMES MAG., Dec. 12, 1999, at 75, 78.
51. *Id.*
52. ALEX KOTLOWITZ, THERE ARE NO CHILDREN HERE (1991).
53. See W. David Koeninger, *A Room of One's Own and Five Hundred Pounds Becomes a Piece of Paper and "Get a Job:" Evaluating Changes in Public Housing Policy from a Feminist Perspective*, 16 ST. LOUIS U. PUB. L. REV. 445, 445 n.1, 446 (1997) (citing Hoop Dreams, Kotlowitz's book, and describing media coverage of conditions at Cabrini Green in Chicago).
54. RON SUSKIND, HOPE IN THE UNSEEN: AN AMERICAN ODYSSEY FROM THE INNER CITY TO THE IVY LEAGUE (1998).

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55. In *THE PROMISED LAND*, Nicholas Lemann chronicled the pilgrimage of African Americans from the Deep South to Chicago through, among others, the story of Ruby Daniels and the public housing unit she moved into at Robert Taylor Homes. By 1985, the apartment building showed all the archetypal symbols of public housing decay: “. . .littered with empty bottles and piles of uncollected garbage.” NICHOLAS LEMANN, *THE PROMISED LAND: THE GREAT BLACK MIGRATION AND HOW IT CHANGED AMERICA* 295 (1991).
56. *Corporation for Educational Radio and Television, the New Urban Renewal: Reclaiming Our Neighborhoods, Park III: No Place Like Home* (PBS television broadcast, May 30, 1997).
57. John M. Hartung & Jeffrey R. Henig, *Housing Vouchers and Certificates as a Vehicle for Deconcentrating the Poor: Evidence from the Washington, D.C. Metropolitan Area*, 32 URB. AFF. 403, 404 (1997) (citing T. Uhlenbrock, *Vaughn Complex is on its Way Down*, ST. LOUIS POST DISPATCH, May 2, 1995, at B1, 2).
58. Lucy A. Williams, *Race, Rat Bites, and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate*, 22 FORDHAM URB. L.J. 1159, 1159-61 (1995).
59. THE FINAL REPORT, *supra* note 46, at 15.
60. John Atlas & Peter Dreier, *From “Projects” to Communities: Redeeming Public Housing*, J. HOUSING 21, 26 (1993).
61. HUD BASELINE ASSESSMENT OF HOPE VI, at 1-20 (1996) [hereafter HUD HOPE VI BASELINE].
62. A “Nexis” search for January 1999 through June 2000, using “public housing residents” as the search term, yielded out of the forty-nine entries (including newswire services) two “hero” stories; two stories about programs to equip residents with marketable job skills; one story about a college scholarship fund for residents and raised by residents; one article about a college and career fair for public housing residents; and one article about home buying by public housing residents. Most of the rest announced awards under the 1998 HOPE VI funding cycle. See PHA Hires Resident Leader Jackie McDowell for Key Executive Post, PR NEWSWIRE, Aug. 16, 1999; Chris Grier, *Shuttle Service Putting Woman on Fast Track Toward Success*, THE VIRGINIAN-PILOT, Aug. 25, 1999, at B9 (subsidized housing residents builds business to shuttle residents from homes to work); *Public Housing Residents Get a New Change to Break Cycle of Poverty with Jobs in the Healthcare Industry*, PR NEWSWIRE, Mar. 5, 1999 (about graduation ceremony for nurse’s aides); Glenn E. Rice, *Unemployed find work in community; Public Housing Residents Help Build Neighborhood*, THE KANSAS CITY STAR, June 18, 1999, at C4 (OJT for residents in construction trades); Knight Stivender, *Public Housing Residents Aid Students, \$1,000 Scholarships Awarded to Four*, THE TENNESSEAN, Aug. 20, 1999, at 6B; *Public Housing Residents Invited to Attend College and Career Day*, PR Newswire, Feb. 23, 2000 (college fair for residents in Richmond, Va.); Michael Lollar, *Lewis Shares Knowledge of Route Out of Poverty*, THE COMMERCIAL APPEAL, Mar. 28, 1999, at F7 (residents recount experiences in buying their own homes).
63. See generally SUSAN R. FRIES & G. THOMAS KINGSLEY, HOPE VI: COMMUNITY BUILDING MAKES A DIFFERENCE (2000) (prepared for HUD); ARTHUR J. NAPARSTEK, DENNIS DOOLEY & ROBIN SMITH, COMMUNITY BUILDING IN PUBLIC HOUSING: TIES THAT BIND PEOPLE AND THEIR COMMUNITIES (1997) (prepared for HUD).
64. The engagement of public housing residents in managing or buying their rental properties has been the subject of several graduate dissertations. See, e.g., Monica E.S. Clarke, *Is There a Way Out for Public Housing Residents? A Descriptive Study of Public Housing Residents and Efforts to Become Homeowners* (1998) (Master’s Thesis in Urban Studies, University of New Orleans).
65. See Alma H. Young & Jyaphia Christos Rodgers, *Resisting Racially Gendered Space: The Women of the St. Thomas Resident Council, New Orleans, in Marginal Spaces*, Vol. 5 Comparative Urban and Community Research 95-112 (Michael Peter Smith ed., 1995).
66. Demolition plans under HOPE VI for the most popularized visible symbols of the failure of public housing, the projects in the Chicago Housing Authority’s inventory, have sparked significant litigations. See *Cabrini-Green Local Advisory Council v. Chicago Housing Authority and Joseph Shuldiner*, No. 96 C 6949, 1997 WL 31002, (N.D. Ill. Jan. 22, 1997). Memorandum Opinion and Order (denying defendants’ motions to dismiss the plaintiffs claims that CHA’s plan to demolish 1324 units and reserve only 300-325 of the replacement units for public housing constituted discrimination under the Fair Housing Act and Civil Rights Act of 1964 against the African American residents who would be displaced); *Henry Horner Mothers Guild v. Chicago Housing Authority*, No. 91 C 3316, 1998 WL 111582, (N.D. Ill. Mar. 6, 1998), Memorandum Opinion and Order (requiring the CHA to replace buildings slated for demolition under the recently suspended “one for one replacement” rule); *Concerned Citizens of ABLA v. The Chicago Housing Authority*, No. 99 C 4959, Complaint at 1-3, 29-34 (N.D. Ill. File July 29, 1999) (alleging that the past and planned displacement of African American families from the Addams, Brooks, Loomis and Abbott developments violated the U.S. Housing Act, the Fair Housing Act and Civil Rights Act of 1964).
67. See also *Alexandria Resident Council v. Alexandria Redevelopment and Housing Authority*, 979 F.Supp. 409, 410 (E.D. Va. 1997) (describing competing claims of original citywide tenants’ association, and newly formed association, to represent residents of public housing complex slated for demolition); *aff’d*, *Alexandria Resident Council v. Samuel Madden Tenant Council and Alexandria Redevelopment and Housing Authority*, (unpub. Op.) 153 F.3d 718, 1998 WL 415726 (4th Cir. 1998); *vacated*, 218 F.3d 307 (4th Cir. 2000) Ann O’Hanlon, *Alexandria Officials Given Ultimatums (sic); Judge, HUD Threaten Sanctions if Tenants Not Allowed to Redevelop the Berg*, WASH. POST, Nov. 13, 1999, at Metro B2 (judge in the above-captioned case orders housing authority for the second time to accept a redevelopment bid from the Alexandria Resident Council).
68. See generally Housing Research Foundation, at <http://www.housingresearch.org>.
69. See Paul Burke, U.S. Department of Housing and Urban Development, *A Picture of Subsidized Households in 1998: United States Summaries* 40 (1998) (noting average income for a household to be \$9100, or 25% of the national median).

70. *Id.* at 41 (noting 69% of residents of public housing nationally are members of minority groups, with 47% of them African American, 19% Hispanic, and 2% Asian or Pacific Islander). On concentration of poor and minority residents in public housing, see Douglas S. Massey & Shawn M. Kanaiaupuni, *Public Housing and the Concentration of Poverty*, 74 SOC. SCI. QTRLY 108, 119 (1993) (finding that, for the Chicago study area, poor African Americans were far more likely to live in areas of concentrated poverty, in public housing complexes and in proximity to them, than were poor whites).

71. See Burke, *supra* note 69, at 40 (noting that 18% of public housing residents nationally received a majority of their income from welfare, including federal Temporary Assistance to Needy Families (TANF) or state-sponsored General Assistance; and that 24% of all public housing residents receive majority of their income from employment).

72. While 39% of households in public housing residents – not a small number – consist of single women with children, *id.* at 41, 32% of the residents are seniors, 24% are seniors with disabilities, and 30% are younger disabled persons (obviously there is overlap among these figures), *id.* at 40. Although *A Picture of Subsidized Households* does not tabulate sized of families, it does indicate that 50% of the public housing inventory consists of one bedroom apartments. *Id.* at 41.

73. National Housing Act of 1949, Pub. L. No. 81-71, § 302(a), 63 Stat. 413, 423 (1949) (requiring public housing agencies to give first preference for placement to families displace by “any public slum-clearance or redevelopment project initiated after January 1, 1947,” with preference within this group to families of service-connected disabled veterans).

74. NATIONAL COMMISSION ON URBAN PROBLEMS, 91st Cong., BUILDING THE AMERICAN CITY 111 (COMM. PRINT 1968).

75. Housing and Community Development Amendments of 1979, Pub. L. No. 96-153, §206(a), (b)(1-2), 93 Stat. 1101, 1108 (1979).

76. See 42 U.S.C. §1437d(c)(4)(A) (1990); for a summary of the legislative history of the federal preference system, see Stanley S. Herr & Stephen M.B. Pincus, *A Way to Go Home: Supportive Housing and Housing Assistance Preferences for the Homeless*, 23 STETSON L. REV. 345, 353-87 n. 38-69 (1994).

77. Balanced Budget Downpayment Act I, Pub. L. No. 104-99, §402(d)(1)(A), 110 Stat. 26, 41 (1996).

78. Veterans Affairs and HUD Appropriations Act, §514(a), 112 Stat. at 2547.

79. Department of Housing and Urban Development, Office of Policy Development and Research, *The Uses of Discretionary Authority in the Public Housing Program*, 6-7 (July 1999).

80. Lawrence J. Vale, *Destigmatizing Public Housing*, in GEOGRAPHY AND IDENTITY: LIVING AND EXPLORING GEOPOLITICS OF IDENTITY 226, 229 (Dennis Crow ed., 1996). For an emphatic view that the federal preference and other tenant selection policies resulted in public housing that is “utterly devoid of social capital,” see Lewis H. Spence, *Rethinking the Social Role of Public Housing*, 4 HOUSING POL’Y DEBATE 355, 367 (1993).

81. One resident leader included the move-in of undesirable tenants as one element in the decline of her apartment complex: “We saw people moving into our community that was not screened. We had no say-so as to who would come and be our next door neighbor.” *Tenant Management of Public Housing: Hearing Before the Subcomm. on Hearing and Community Development of the House Comm. On Banking, Finance, and Urban Affairs*, 99th Cong. 22 (1986) (hereafter “1986 Hearing”) (statement of Lena Jackson, President, Lakeview Terrace Management Corp., Cleveland, OH).

82. For overviews of the federal role in increasing the isolation of minorities in inner cities and the racial segregation of the suburbs, see KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 195-203 (1985) (describing the influence of the federal Home Owners’ Loan Corp. in encouraging the use of race and class-based criteria for lending). For critiques of the federal role in racial steering in public housing, see ARNOLD R. HIRSCH, MAKING THE SECOND GHETTO: RACE AND HOUSING IN CHICAGO, 1940-1960, at 10 (1983); Arnold R. Hirsch, “Containment” on the Home Front: Race and Federal Housing Policy from the New Deal to the Cold War, 26 J. URB. HIST. 158 (2000).

83. HIRSCH, MAKING THE SECOND GHETTO, *supra* note 82, at 14.

84. For a comprehensive review of the history of federal public housing construction, site selection, and racial discrimination, see Jon C. Dubin, *From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color*, 77 MINN. L. REV. 739, 753 n.66, 754 n.67 (1993).

85. See JACKSON, *supra* note 82, at 222-27; BUILDING THE AMERICAN CITY, *supra* note 74, at 110.

86. For the consent decree that set the parameters of the *Gautreaux* demonstration, see *Gautreaux v. Landrieu*, 523 F. Supp. 665, 672-82 (N.D. Ill. 1981).

87. For summaries of the import of *Gautreaux* and of the implementation of its consent decree, see Florence Wagman Roisman & Hilary Botein, *Housing Mobility and Life Opportunities*, 27 CLEARINGHOUSE REV. 335 (1993); Leonard S. Rubinowitz, *Metropolitan Public Housing Desegregation Remedies: Chicago’s Privatization Program*, 12 N. ILL. U. L. REV. 589, 619-24 (1992) (describing the implementation of the *Gautreaux* demonstration).

88. See John Goering, *The Moving to Opportunity Social ‘Experiment’: Early Stages of Implementation and Research Plans*, 1 POVERTY RES. NEWS 2 (1997), available at <http://www.jcpr.org/spring97/article2.html> (describing the five city Moving to Opportunity (“MTO”) Demonstration, which monitors the effect of intense re-location support for public housing residents moving to integrated neighborhoods on their success in employment and new schools).

89. Department of Housing and Urban Development Reform Act of 1989, Pub. L. No. 101-235, § 501(3), 103 Stat. 1987, 2049 (1989).

90. THE FINAL REPORT, *supra* note 46, at 18.

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91. *Id.* at B-2, app. B.
 92. *Id.* at 25, 69-70.
 93. Department of Housing and Urban Development, *HOPE VI Program Authority and Funding History*, in HOPE VI GUIDANCE 1 (Aug. 2000), available at http://www.hud.gov/pih/programs/ph/hope6/history_8-8-00.pdf.
 94. THE FINAL REPORT, *supra* note 46, Transmittal Letter (Aug. 10, 1992) (summarizing (erroneously) the message of the Report: “to eradicate severely distressed public housing by the year 2000”).
 95. QHWRA § 535(a), 112 Stat. at 2518, 2584 (to be codified at 42 U.S.C. § 1437v(j)(2)(A)(i)).
 96. *Id.* at § 535(a), 112 Stat. at 2585 (to be codified at 42 U.S.C. §§ 1437v(j)(2)(A)(iii)(I), 1437v(j)(2)(A)(ii)).
 97. *See, e.g.*, Notice of Funding Availability for the HOPE VI Program, 65 Fed. Reg. 9599, 9603 (2000) (including among indicators of “severe distress” necessary to qualify for HOPE VI the elements catalogued in § 535(a) of the QHWRA, *supra* notes 95-96).
 98. QHWRA § 502(a)(3), 112 Stat. at 2520.
 99. *Id.* at § 502(b)(3), 112 Stat. at 2521.
 100. *Id.* at § 513(a), 112 Stat. at 2544 (to be codified at 42 U.S.C. § 1437n(a)(3)(A)).
 101. *Id.* at § 513(a), 112 Stat. at 2544 (to be codified at 42 U.S.C. § 1437n(a)(2)(A)). *See also* Changes to Admission and Occupancy Requirements in the Public Housing and Section 8 Housing Assistance Programs, 65 Fed. Reg. 16,692, 16,695 (2000) (to be codified at 24 C.F.R. § 960.202(b)) (explaining HUD’s Final Rule on “targeting”).
 102. QHWRA § 514(a)(1), 112 Stat. at 2547 (to be codified at 42 U.S.C. § 1437d(c)(4)(A)). *See also* § 519(a), 112 Stat. at 2555 (to be codified at 42 U.S.C. § 1437g(e)(2)(B)) (requiring HUD to calculate into its formula for distributing operating funds to housing authorities an incentive to increase rental income from working tenants); Changes to Admission and Occupancy Requirements in the Public Housing and Section 8 Housing Assistance Programs, 65 Fed. Reg. at 16,726 (to be codified at 24 C.F.R. § 960.206).
 103. QHWRA at § 511(a), 112 Stat. at 2532-33. *See also* Public Housing Agency Plans, 64 Fed. Reg. 56,844, 56,863 (1999) (to be codified at 24 C.F.R. § 903.7(c)(2)) (requiring public housing authorities to include in their public housing agency plans an admissions plan incorporating deconcentration as an objective); Rule to Deconcentrate Poverty and Promote Integration in Public Housing, Final Rule, 65 Fed. Reg. 81,213, 81,215 (Dec. 22, 2000).
 104. *See* QHWRA § 531(a), 112 Stat. at 2573 (to be codified at 42 U.S.C. § 1437p(d)) (allowing construction of new public housing units on the same site or in the same neighborhood after demolition only if the number of replacement units is “significantly fewer than the number of units demolished”); § 519, 112 Stat. at 2556 (forbidding use of capital or operating funds for construction that would increase the net number of public housing units, except when the construction is part of a “mixed-finance” project and would cost less than providing assistance through tenant-based subsidy); Rule to Deconcentrate Poverty and Promote Integration in Public Housing, Final Rule, 65 Fed. Reg. 81,213, 81,215 (Dec. 22, 2000).
 105. John M. Hartung & Jeffrey R. Henig, *Housing Vouchers and Certificates as a Vehicle for Deconcentrating the Poor: Evidence from the Washington, D.C., Metropolitan Area*, 32 URB. AFF. REV. 403, 405 (1997).
 106. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).
 107. Burke, *supra* note 69, at 40 (noting that 18% of public housing residents nationally receive a majority of their income from welfare, including federal Temporary Assistance to Needy Families (“TANF”) or state-sponsored General Assistance; and that 24% of all public housing residents receive a majority of their income from employment).
 108. *See* Chang-Moo Lee, Dennis P. Culhane & Susan M. Wachter, *The Differential Impacts of Federally Assisted Housing Programs on Nearby Property Values: A Philadelphia Case Study*, 10 HOUSING POL’Y DEBATE 75, 89 (1999) (finding that both public housing complexes and private complexes that rent to Section 8 certificate holders have “modest to slight negative impacts on property values”); Sandra J. Newman & Ann B. Schnare, “. . . And a Suitable Living Environment”: *The Failure of Housing Programs to Deliver on Neighborhood Quality*, 8 HOUSING POL’Y DEBATE 703, 726-27 (1997) (finding that, since public housing is located “disproportionately” in neighborhoods of low employment and deteriorating housing stock, it hurts the life chances of those who live there—but is not responsible for processes of neighborhood decline that in most cases had begun before the housing was built and constituted a reason for the choice of site in the first place).
 109. *See* WILLIAM J. WILSON, WHEN WORK DISAPPEARS 51-52 (1996) (explaining how loss in the inner cities of connection to the world of conventional paid work promotes adoption of behaviors maladaptive to functioning anywhere else); WILLIAM J. WILSON, THE TRULY DISADVANTAGED 57-60 (1987).
 110. *See* Douglas S. Massey, Andrew B. Gross & Kumiko Shibuya, *Migration, Segregation, and the Geographic Concentration of Poverty*, 59 AM. SOC. REV. 425, 442-43 (1994) (finding that concentrated poverty results from segregated housing markets, with “nonpoor” African Americans facing restricted housing choices that make them more likely to migrate to poor neighborhoods than to “nonpoor” ones); Scott J. South & Kyle D. Crowder, *Leaving the ‘Hood: Residential Mobility Between Black, White and Integrated Neighborhoods*, 63 AM. SOC. REV. 17, 25 (1998) (finding that African Americans are “substantially” more likely than whites to leave racially mixed tracts for racially segregated ones, thus maintaining high levels of residential segregation by race).
 111. ARTHUR J. NAPARSTEK ET AL., COMMUNITY BUILDING IN PUBLIC HOUSING: TIES THAT BIND PEOPLE AND THEIR COMMUNITIES 23 (United States Department of Housing and Urban Development 1997).
 112. Peter Dreier & David Moberg, *Moving from the ‘Hood: The Mixed Success of Integrating Suburbia*, Vol. 7 No. 24 THE AMER. PROSPECT (1996), at <http://www.prospect.org/archives/24/24drei.html>.

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113. Michael H. Schill, *Chicago's Mixed-Income New Communities Strategy: The Future Face of Public Housing?*, in AFFORDABLE HOUSING AND URBAN REDEVELOPMENT IN THE UNITED STATES 135, 142-45 (Willem van Vliet ed., 1997).
114. See Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 522, 104 Stat. 4079, 4207 (1990), *repealed by* QHWRRA § 582(a)(10), 112 Stat. at 2518, 2644.
115. For the opinion that the MINCS project, as implemented through Lake Parc Place, represented a direct importation of Wilson's THE TRULY DISADVANTAGED into housing policy, see Schill, *supra* note 113, at 148-49; James E. Rosenbaum, Linda K. Stroh, & Cathy A. Flynn, *Lake Parc Place: A Study of Mixed-Income Housing*, 9 HOUSING POL'Y DEBATE 703, 714 (1998).
116. See Rosenbaum, Stroh & Flynn, *supra* note 115, at 705-06; Cranston-Gonzalez National Affordable Housing Act § 522(f)(2), *repealed by* QHWRRA § 582(a)(10) (allowed public housing agencies in the MINCS demonstration to fill up to half of their units with low income families).
117. Rosenbaum, Stroh & Flynn, *supra* note 115, at 714-15.
118. *Id.* at 715-16.
119. *Id.* at 705.
120. *Id.* at 720; Schill, *supra* note 113, at 151.
121. Rosenbaum, Stroh & Flynn, *supra* note 115, at 719.
122. *Id.* at 732-33 n.3.
123. Schill, *supra* note 113, at 151.
124. Lawrence J. Vale, *Comment on James E. Rosenbaum, Linda K. Stroh, and Cathy A. Flynn's "Lake Parc Place: A Study of Mixed-Income Housing,"* 9 HOUSING POL'Y DEBATE 749, 749-52 (1998).
125. See Housing and Community Development Act of 1987, Pub. L. No. 100-242, § 122, 101 Stat. 1839 (1987).
126. William Peterman, *The Meanings of Resident Empowerment: Why Just About Everybody Thinks It's a Good Idea and What It Has to Do with Resident Management*, 7 HOUSING POL'Y DEBATE 473, 478-80 (1996).
127. *Id.* at 474; ARTHUR J. NAPARSTEK ET AL., U.S. DEP'T OF HOUSING AND URB. DEV., COMMUNITY BUILDING IN PUBLIC HOUSING: TIES THAT BIND PEOPLE AND THEIR COMMUNITIES 45-46 (1997).
128. MARY A. QUEELEY ET AL., NATIONAL TENANT MANAGEMENT DEMONSTRATION: THE FIRST THREE YEARS 11-12 (1981) [hereinafter NTMD 1981]; *Tenant Management of Public Housing: Hearing Before the Subcomm. on Housing and Community Development of the House Comm. on Banking, Finance and Urban Affairs*, 99th Cong. 12 (1986) [hereinafter 1986 Hearing] (statement of Bertha Gilkey, President, Cochran Tenant Management Corp., St. Louis, Missouri).
129. Peterman, *supra* note 126, at 475; MANPOWER DEMONSTRATION RESEARCH CORPORATION (MDRC), THE FIRST ANNUAL REPORT ON THE NATIONAL TENANT MANAGEMENT DEMONSTRATION 13-14 (1977) [hereinafter FIRST ANNUAL REPORT 1977].
130. NTMD 1981, *supra* note 128, at 67.
131. FIRST ANNUAL REPORT 1977, *supra* note 129, at 30.
132. NTMD 1981, *supra* note 128, at 183-85.
133. Peterman, *supra* note 126, at 475.
134. Daniel J. Monti, *The Organizational Strengths and Weaknesses of Resident-Managed Public Housing Sites in the United States*, 11 J. URB. AFF. 39, 40 (1989).
135. NTMD 1981, *supra* note 128, at 97-8.
136. Peterman, *supra* note 126, at 475.
137. *Final Report of the Task Force on Tenant Participation in the Management of Low-Income Housing* (Nov. 1978), in *Tenant Management of Public Housing: Hearing Before the Subcomm. on Housing and Community Development of the House Comm. on Banking, Finance and Urban Affairs*, 99th Cong. 123, 133 (1986).
138. *Id.* at 134.
139. *Id.* at 135-36.
140. Monti, *supra* note 134, at 50.
141. See W. Dennis Keating & Janet Smith, *Past Federal Policy for Urban Neighborhoods*, in REVITALIZING URBAN NEIGHBORHOODS 50, 54-55 (W. Dennis Keating et al. eds., 1996).
142. DAVID CAPRARA & BILL ALEXANDER, EMPOWERING RESIDENTS OF PUBLIC HOUSING: A RESOURCE GUIDE FOR RESIDENT MANAGEMENT 14 (National Center for Neighborhood Enterprise ed., 1989); ICF INC., U.S. DEP'T OF HOUSING AND URB. DEV., EVALUATION OF RESIDENT MANAGEMENT IN PUBLIC HOUSING 1-3 (1992) [hereinafter ICF 1992].
143. 1986 Hearing, *supra* note 128, at 28-29 (statement of Robert L. Woodson, President, National Center for Neighborhood Enterprise, Washington, D.C.).
144. Robert L. Woodson, *Race and Economic Opportunity*, 42 VAND. L. REV. 1017, 1019, 1025-26 (1989).
145. *Id.* at 1037.
146. 1986 Hearing, *supra* note 128, at 39 (statement of Kimi Gray, Chairperson, Kenilworth-Parkside Resident Management Corp., Washington, D.C.).
147. ICF 1992, *supra* note 142, at 9-8.
148. *Id.* at 9-7.
149. *Id.* at 9-2.

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150. See Mary Wachter, *Kimi Gray, the Miracle Worker, and Christmas in April*, in TAKING BACK OUR NEIGHBORHOODS: BUILDING COMMUNITIES THAT WORK 51, 52-53 (1996) (describing Kimi Gray as “an authentic miracle worker” who organized her tenants to register to vote, petition the mayor to turn over management of the complex, and take classes in home repair and household budgeting; and who fined and evicted them for infractions of house rules); See also Louie Estrada, *Public Housing Advocate Kimi Gray Dies: Northeast Woman a Leader in Converting Projects to Resident Ownership*, WASH. POST, Mar. 4, 2000, at B7.
151. Monti, *supra* note 134, at 45.
152. *Id.*
153. ICF 1992, *supra* note 142, at 9-3, 9-4.
154. Department of Housing and Urban Development, Office of Public and Assisted Housing, Public Housing Properties Under Management by Resident Management Corporations (n.d.) (Apr. 26, 2000) (received by author). The list does not cover “dually managed” public housing projects, in which public housing authorities and residents split responsibilities, and erroneously excludes the venerable Bromley-Heath Tenant Management Corporation, which the Boston Housing Authority removed from and restored to full management responsibilities. See e-mail from Mary Lou Crane, Department of Housing and Urban Development, Secretary’s Representative for New England (May 3, 2000) (on file with author).
155. See 1986 Hearing, *supra* note 128, at 6 (H.R. 4026); and statements of officers of resident management corporations and Robert Woodson in support of H.R. 4026, at 12-42.
156. Housing and Community Development Act of 1987, Pub. L. No. 100-242, § 122, 101 Stat. 1839 (1987) (codified as amended at 42 U.S.C. § 1437r(a)).
157. *Id.* at § 122, 101 Stat. at 1842 (codified as amended at 42 U.S.C. § 1437r(f)).
158. Gregg G. Van Ryzin, *The Impact of Resident Management on Residents’ Satisfaction with Public Housing*, 20 EVAL. REV. 485, 486 (1996).
159. See Housing and Community Development Act § 122, 101 Stat. at 1842.
160. ICF INC., REPORT ON EMERGING RESIDENT MANAGEMENT CORPORATIONS IN PUBLIC HOUSING 3-11, 3-12 (1993) [hereinafter ICF 1993].
161. *Id.* at 4-4.
162. For the 1988-1998 figures on the “TOP” program, see U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Fact Sheet: Tenant Opportunities Program (TOP) (July 1998). HUD changed the name of the technical assistance program it administered under the Housing and Community Development Act of 1987, codified at 42 U.S.C. § 1437f(r), “Resident Management Technical Assistance and Training,” from the “Resident Management Program,” to the “Tenant Opportunities Program” in 1994, as part of a major re-drafting of the program’s regulations. 59 Fed. Reg. 43,622, 43,628 (Aug. 24, 1994). Section 34 of the QHWRA, which replaces 42 U.S.C. § 1437r(f), does require HUD to report by 2001 on the performance of tenant organizations under the grant program. QHWRA § 538(b), 112 Stat. 2461, 2594 (1998).
163. Department of Housing and Urban Development, 59 Fed. Reg. 43,622, 43,636 (1994) (to be codified at 24 C.F.R. pt. 964).
164. Department of Housing and Urban Development, 59 Fed. Reg. at 43,622.
165. See, e.g., Department of Housing and Urban Development, Public and Indian Housing, Notice, PIH 96-5 (Feb. 13, 1996) [hereinafter PIH Notice] (clarifying procedures set forth for elections to residents’ councils in 24 C.F.R. pt. 964); PIH Notice 96-29 (May 16, 1996) (citing organizational development as an example of allowable subjects for training to be completed within the first three to six months of award of the technical assistance grant); Department of Housing and Urban Development, Public and Indian Housing, Tenant Opportunities: Semi-Annual Report, Form HUD-52370, at 2 (May 1996) (noting adoption of bylaws, incorporation, and training in “leadership and organization capacity” as elements of “Progress Summary”).
166. PIH Notice, 96-29, 2 (1996).
167. Department of Housing and Urban Development, Final Rule, 59 Fed. Reg. 43,622 (1994).
168. *Id.*
169. Hartung & Henig, *supra* note 105 and accompanying text. Jennifer J. Curhan, *The HUD Reinvention: A Critical Analysis*, 5 B.U. PUB. INT. L.J. 239 (1996).
170. Department of Housing and Urban Development, Notice of Funding Availability for FY 1996 for the Public and Indian Housing Tenant Opportunities Program Technical Assistance, 61 Fed. Reg. 35,021, 35,022 (1996).
171. H.R. Rep. No. 104-812 (1996) (stating that “The Conferees are concerned about reports of wasteful spending practices and allegedly fraudulent activities within the program, practices which put the program at risk of elimination altogether”).
172. PIH Notice, 95-20 (1995) (advising resident’s groups and public housing authorities on proper competitive bidding procedures to select consultants for a “full service approach,” in which applicants chosen to assist in writing proposals for TOP grants would remain to assist in implementation); PIH Notice, 96-67 (1996) (requiring establishment of written procurement procedures for materials and services).
173. PIH Notice, 96-18 (1996) (restricting residents’ organizations’ use of grant funds for travel, to insure that travel funds are used for relevant training); PIH Notice, 96-48 (1996) (requiring grantees to submit semi-annual performance reports, on new form).
174. Department of Housing and Urban Development, Combined Notices of Funding Availability for FY 1997 for the Public and Indian Housing Economic Development and Supportive Services Program and the Tenant Opportunities Program, 62 Fed. Reg. 31,272, 31,273 (1997) [hereinafter *NOFA FY 1997*].

175. *Id.* at 31272. 42 U.S.C. § 608 (a) (7) (A) (1998) (prohibiting states from using funds under the Temporary Assistance to Needy Families program to assist any family with an adult who has received assistance for sixty months, starting with the commencement of the state program funded under the statute). CONGRESSIONAL RESEARCH SERVICE, WELFARE REFORM: STATE PROGRAMS UNDER THE BLOCK GRANTS FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES, at 5, Table 2 (1997) (listing major elements of the welfare plans that forty states, Guam and the District of Columbia had submitted to the Department of Health and Human Services as of Jan. 31, 1997. Of the plans, fourteen either limited assistance to a number of months within a sixty month period, or imposed a lifetime restriction of fewer than sixty months).

176. *NOFA FY 1997*, *supra* note 174, at 31,286.

177. *Id.* at 31283.

178. *Id.* at 31284-85.

179. *Id.* at 31283.

180. Department of Housing and Urban Development, Consolidated Economic Development and Supportive Services and Tenant Opportunities Programs, Notice of Funding Availability, 63 Fed. Reg. 23907, 23908 (1998).

181. *Id.* at 23910.

182. QHWRA § 532, 112 Stat. at 2575. *Id.* at § 538, 112 Stat. at 2592.

183. *Id.* at § 538(a), 112 Stat. at 2592-93.

184. Department of Housing and Urban Development, Notice of Funding Availability: Resident Opportunities and Self Sufficiency (ROSS) Program, 64 Fed. Reg. 43,530, 43,531 (1999) [hereinafter *FY 1999 ROSS NOFA*].

185. *Id.* at 43,532.

186. *Id.* at 43,535.

187. Department of Housing and Urban Development, Funding Availability for Public Housing Resident Opportunities and Self Sufficiency (ROSS) Program, 65 Fed. Reg. 9697, 9701 (2000) [hereinafter *FY 2000 ROSS NOFA*].

188. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OFFICE OF INSPECTOR, AUDIT REPORT: TENANT OPPORTUNITY PROGRAM GRANTEEES, DISTRICT OF COLUMBIA HOUSING AUTHORITY 2-4 (2000) (concluding that, as a result of inadequate oversight and training by HUD and the D.C. Housing Authority, seven District of Columbia recipients of TOP grants spent about half of their funds on ineligible expenses, during the evaluation period of 1/1/98 through 9/30/99. These expenses included a cruise and a training trip to Las Vegas, and some large screen TVs. Recipients failed to reconcile their bank accounts or keep their checkbooks secure, and they let their consultants write checks).

189. Herbert J. Rubin, *There Ain't Going to be Any Bakeries if There is No Money to Afford Jellyrolls: The Organic Theory of Community Based Development*, 41 SOC. PROBS. 401, 405 (1994) (noting a history of conflict between community based organizations and their funders, whether from government or the private sector, over whether to place priority on measurable products such as housing, or on less tangible projects such as community empowerment).

190. Allan D. Wallis, *Toward a Paradigm of Community-Making*, 85 NAT'L CIVIC REV. 34, 35 (1996); Norman J. Glickman & Lisa J. Servon, *More Than Bricks and Sticks: Five Components of Community Development Corporation Capacity*, 9 HOUS. POL'Y DEBATE 497, 499-502 (1998) (summarizing recent developments in funding for "comprehensive community initiatives" and other community building projects that focus on developing the leadership capacity or community-based organizations).

191. Glickman & Servon, *supra* note 190, at 501-506.

192. Gregg. G. Van Ryzin, *The Impact of Resident Management on Residents' Satisfaction with Public Housing*, 20 EVAL. REV. 485, 499 (1996) (in a study of resident satisfaction with resident management in public housing complexes, finding that residents placed little value on opportunities to be involved in decisions about the property); Rubin, *supra* note 189, at 403 (questioning whether development activities draw the administrators of community based organizations away from advocacy).

193. QHWRA § 535, 112 Stat. at 2581 (incorporating the pragmatic standards of HOPE VI into law). Jerry J. Salama, *The Redevelopment of Distressed Public Housing: Early Results from HOPE VI Projects in Atlanta, Chicago, and San Antonio*, 10 HOUS. POL'Y DEBATE 95, 97 (1999) (describing the goals of the QHWRA as "distilled" from HUD's Notices of Funding Availability for the HOPE VI program in 1996-98). Eileen M. Greenbaum, *Quality Housing and Work Responsibility Act of 1998: Its Major Impact on the Development of Public Housing*, 8 J. AFFORDABLE HOUS. & COMM. DEV. L. 310, 310 (1999) (tracing line of descent from the National Commission's Report through Pub. L. 102-389, the Urban Revitalization Demonstration, Department of Veterans Affairs and HUD and Independent Agencies Appropriations Act of 1993, and continued through successive HUD appropriations bills as HOPE VI). Peter W. Salsich, Jr., *Thinking Regionally About Affordable Housing and Neighborhood Development*, 28 STETSON L. REV. 577, 588-89 n.75, n.79 (1999).

194. Salama, *supra* note 193, at 131.

195. Department of Housing and Urban Development, Funding Availability for the HOPE VI Program, 65 Fed. Reg. 9599, 9613 (Feb. 24, 2000) [hereinafter *HOPE VI, FY 2000 NOFA*].

196. Salama, *supra* note 193, at 106.

197. *Id.* at 108.

198. It is almost impossible to retrieve a representative sample from the 247 HOPE VI projects funded through 1999. *See supra* note 47. Wide variations are possible within the same region depending on local law, the particular local housing authorities' ability to garner high levels of public subsidy to bring down the costs of renovation or construction, or make development sufficiently attractive to the

private sector so that market rate or “affordable” housing at the high end will subsidize the very low rent units. For example, a local one for one replacement rule will mandate the complete replacement of demolished public housing units in the Samuel Madden site in Alexandria, Virginia. Telephone conversation with Paul Fiscella, attorney for the Alexandria Residents’ Council (Dec. 17, 1999). *See also* Housing Research Foundation, Samuel Madden Homes: HOPE VI Site Profile, *available at* www.housingresearch.org/hrf/hrf, visited June 30, 2000) (that the Alexandria, Virginia Redevelopment and Housing Authority will demolish and fully replace 100 public housing units, with an additional 14 units to be built for “affordable homeownership” and 152 unsubsidized homeownership units; *id.*, George B. Murphy Homes, Emerson Julian Gardens: HOPE VI Site Profile (demolition by Baltimore City Housing Authority of 793 units and replacement with 260, with “over half” providing affordable homeownership, and no detail on disposition of the other units).

199. *See, e.g.*, Housing Research Foundation, St. Thomas HOPE VI Site Profile, Update Jan. 4, 2000, *available at* www.housingresearch.org/hrf/hrf (stating that the Housing Authority of New Orleans planned with its 1996 HOPE VI grant to demolish 1310 of 1510 units of the St. Thomas development, and reserve 30% of the remaining two hundred units after their rehabilitation for families earning under 30% of median income; 51% of the complex was vacant).

200. *See* HOPE VI, FY 2000 NOFA, *supra* note 195, at 9600 (allowing up to 15% of grant money to pay for community and supportive services); *id.* at 9604-5 (requiring housing authority to include information in its VI proposal about how it will track relocated residents in order to provide social services to them; listing eligible activities for Community and Supportive Services funds).

201. Arthur J. Naparstek, Susan R. Freis & G.Thomas Kingsley, prepared for the Department of Housing and Urban Development, *HOPE VI: Community Building Makes A Difference* at 17-20 (Feb. 2000) (describing the HOPE VI revitalization of the Windsor Terrace public housing complex in Columbus, Ohio). The Windsor Terrace HOPE VI project replaced 442 public housing units with 230. *Id.* at 19. While 6% of the former residents were “gainfully employed,” *id.* at 17, 160 of the household heads of families moving into the new 230 units had jobs, *id.* at 18. Of the new occupants, only 89 out of the original 359 residents occupying the complex before demolition had returned. The authors of this study commented that this return rate of under 25% repeats in other HOPE VI sites. *Id.* at 20.

202. HUD HOPE VI Baseline, *supra* note 61, at 1-1 (1996) (introduction to the Baseline Assessment Study); *id.* at Exhibit 6-3, “Impacts on Original Residents” at 6-6 (table indicating questions about participation in HOPE VI process, relocation, and return, to be researched as part of the five and ten year follow-up studies).

203. *See* 24 C.F.R. § 941.600 (2000) (authorizing public housing authorities “. . .to use a combination of private financing and public housing development funds to develop public housing units,. . .” and along with development partners “. . .to structure transactions that make use of private and/or public sources of financing”).

204. Salama, *supra* note 193 at 119. It was possible, but not yet assured, at the time of writing that the strong housing market in Chicago might allow the Chicago Housing Authority to garner sufficient rents from the market rate units in its HOPE VI partnerships to subsidize the rents for public housing units. *Id.*

205. Salama, *supra* note 193 at 110-11(of the 421 units in this complex, all to be demolished, 208 would be replaced as public housing units, and 105 as single family homes, with the housing authority developing 203 replacement public housing units off site.)

206. Paul K. Casey, Jane E. Sheehan & Jon M. Laria, *Public Housing, Private Development: The Lawyer’s Role*, 11 PROBATE & PROPERTY 56,60 (Sept./Oct.1997)

207. *See* Salama, *supra* note 193, at 97, 98 n.3 (citing “legitimate resident concerns about landgrabs” and quoting attorneys for residents of public housing complexes in Chicago); U.S. General Accounting Office, *HOPE VI: Progress and Problems in Revitalizing Distressed Public Housing* 16 (July 1998) (describing residents’ fears of displacement in favor of development interests in Atlanta, Chicago, and Boston).

208. Elvin K. Wyly & Daniel J. Hammell, *Islands of Decay in Seas of Renewal: Housing Policy and the Resurgence of Gentrification*, 10 HOUSING POL’Y DEBATE 711, 745 (1999)

209. HUD HOPE VI Baseline, *supra* note 61, at 7-1 (1996) (that housing authorities in San Francisco and Atlanta “have a history of not delivering on promises to public housing tenants” with resultant suspicion on the tenants’ part).

210. *See* Judy Rakowsky, *Cathedral Complex Tenants Seek Cutoff of Federal Funds*, BOSTON GLOBE, Aug. 7, 1999, at B4, col. 5 (residents of the Cathedral public housing complex in Boston’s South End oppose city’s HOPE VI application, due to plans to reserve only a third of the new development’s units for poor tenants); Telephone conversation with Jay Rose, attorney for Cathedral complex tenants, Greater Boston Legal Services, July 6, 2000 (once the Boston Housing Authority (BHA) rejected the Cathedral residents’ suggestion to diversify neighborhood incomes by converting some units of the complex to units affordable for residents at 40-80% of median income rather than to straight market rate units, since the rapidly gentrifying neighborhood already was experiencing an infusion of high-income renters, the residents filed written protests with HUD, which denied the BHA’s HOPE VI application).

211. *See* cases cited at note 66 for litigation by residents against the Chicago Housing Authority and HUD; and at note 67 for litigation by the established resident council of the Alexandria, Virginia public housing community to force the housing authority to recognize its bid to develop the property. Residents of the Mission Main complex in Boston negotiated the right to return of all five hundred households in occupancy before the beginning of demolition, with a rental mix of 300 of the 535 projected units to be affordable to residents below 30% of median income, 145 for residents at 35-65% of median, and 90 to be market rate. Telephone conversation with Jay Rose, attorney for Mission Main tenants, *supra* note 210.

212. *See* Department of Housing and Urban Development, Rule to Deconcentrate Poverty and Promote Integration in Public Housing Rule, 65 Fed. Reg. 81,213, 81,215 (Dec. 22, 2000) (explaining how Housing Authorities may skip over applicants on waiting lists to further a deconcentration policy).

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213. HOPE VI, FY 2000 NOFA, *supra* note 195, at 9604 (requirements for public meetings for HOPE VI Revitalization applications); *id.* at 9608 (documentation required to show compliance with requirement of public meetings).
214. *Id.* at 9614 (awarding one point for communicating “regularly and significantly with affected residents and members of the surrounding community about your application. . .” and demonstrating that “affected residents” received “substantive opportunities to participate in the development of your HOPE VI plan”).
215. QHWRA §505, 112 Stat. at 2523. Exceptions include public housing authorities in states which require members of governing bodies to be salaried and to serve full time; and authorities with fewer than three hundred units, if the resident advisory board receives and fails to respond to notice that residents may serve. *Id.* See also Department of Housing and Urban Development, Proposed Rule, 64 Fed. Reg. 33,644, 33,645 (June 23, 1999) (implementing Pub.L. 105-276, §505).
216. QHWRA §511, 112 Stat. at 2534.
217. Department of Housing and Urban Development, Public Housing Agency Plans, Final Rule, 64 Fed. Reg. 56,844, 56,862 (to be codified at 24 C.F.R. § 903.5) (describing the information that a housing authority must include in its five year plan); *id.* at 56,863 (to be codified at 24 C.F.R. § 903.7) (describing the information that must be included in an annual plan); *id.* at 56,866 (to be codified at 24 C.F.R. § 903.13) (describing the role and composition of the Resident Advisory Board).
218. *Id.* at 56,866 (describing process of consultation with resident advisory board before submission of the annual plan); *id.* at 56,867 (to be codified at 24 C.F.R. § 905.21) (describing process of consultation with resident advisory board “or other resident organization” before submission of the five year plan).
219. See David B. Bryson & Daniel P. Lindsey, *The Annual Public Housing Authority Plan: A New Opportunity to Influence Local Public Housing and Section 8 Policy*, 33 CLEARINGHOUSE REV. 87, 103 (May-June 1999).
220. HUD’s final rule requires the public housing authority only to provide a copy of the plan at its central office during business hours; to publish one 45 day notice of a public hearing, to be held at a place “convenient to the tenants;” and to conduct “generally reasonable outreach activities.” Department of Housing and Urban Development, Public Housing Agency Plans, Final Rule, 64 Fed. Reg. 56,844, 56,866 (to be codified at 24 C.F.R. § 903.17).
221. HUD HOPE VI Baseline, *supra* note 61, at 5-12 (1996)
222. Department of Housing and Urban Development, General Guidance on Resident and Community Involvement 1 (Oct. 1999), available at www.hud.gov/pih/programs/ph/hope6/genguiderescominv.pdf.
223. *Id.* at 2.
224. Department of Housing and Urban Development, Public Housing Agency Plans, Final Rule, 64 Fed. Reg. 56,844, 56,862 (to be codified at 24 C.F.R. § 903.13(b)).
225. Rebekah Levine Coley, Frances E. Kuo & William L. Sullivan, *Where Does Community Grow? The Social Context Created by Nature in Urban Public Housing*, 29 ENV. & BEHAVIOR 468, 473-4 (1997).
226. *Id.* at 477-8.
227. *Id.* at 481.
228. *Id.* at 486.
229. *Id.* at 488-490.
230. Coley, Kuo & Sullivan, *supra* note 225, at 488-9 (citing F.E. Kuo, W.C. Sullivan, R.L. Coley & L. Brunson, *Fertile Ground For Community: Innercity Neighborhood Common Space* (1997) (manuscript)).
231. *Id.* at 490.
232. Sudhir Alladi Venkatesh, *An Invisible Community: Inside Chicago’s Public Housing*, 8 AM. PROSPECT, (Sept.-Oct.1997), available at www.prospect.org/archives/34/34venkfs.html. Over twenty-five years ago Carol Stack documented how two poor African American families living in privately owned housing developed patterns of mutual reliance different from those expected from a stereotypical middle class life style. Carol Stack, *All Our Kin: Strategies for Survival in a Black Community* 1-10 (1974).
233. Phone conversation with Jay Rose, *supra* note 210; HUD HOPE VI Baseline, *supra* note 61, at 3-27.
234. See Young & Christos-Rodgers, *supra* note 65, at 104-110.
235. See Housing Research Foundation, St. Thomas HOPE VI Site Profile, *supra* note 199; E-mail correspondence from Prof. William Quigley, Loyola University Law School at New Orleans, July 7, 2000.
236. Public Broadcasting Service, “Great Streets - Fifth Avenue with Brian Stokes Mitchell,” shown July 5, 2000; available at www.pbs.org/pressroom/2000/summer/releases/greatstreets.htm.

AFFORDABLE HOUSING: CAN NIMBYISM BE TRANSFORMED INTO OKIMBYISM?*

PETER W. SALSICH, JR.**

I. INTRODUCTION

As the record setting expansion of the United States economy moves into the new millennium, there is overwhelming evidence, which confirms that millions of American families have serious difficulty obtaining both decent and affordable housing. This is particularly true for families whose income is below the national median income of approximately \$48,000.¹ These reports are particularly troublesome. They continue a theme that has been repeated so often as to become monotonous since homelessness returned to the national consciousness in the early to mid 1980s.²

While money, or its lack thereof, is a major factor in both actual and threatened homelessness,³ the attitude of persons blessed with affordable housing and their political representatives is an increasingly important factor. The economics of housing keeps single family home ownership out of the reach of most families in the lower quartile of the median income range, \$24,000 and below, and makes it increasingly difficult for those in the next quartile, \$25,000 - 48,000.⁴ Affordable housing for that segment of the population likely will be something other than the traditional detached, single-family house. In addition, housing for lower income families and those with special needs increasingly is combined with social services. These services can be delivered more efficiently in multifamily or group home settings.⁵

But the popularity of single family zoning and the infamous dicta of the Supreme Court in *Euclid v. Ambler Realty Co.*⁶ that apartments are “parasites,” have prompted owners of single family homes and their local government representatives to strongly resist efforts to locate multifamily forms of affordable housing in residential neighborhoods. These efforts have been so widespread that two new terms have entered the English language: *NIMBYism* (“Not In My Backyard”), describing the opposition of current residents to incursions of “different” people or activities into a neighborhood,⁷ and *exclusionary zoning*, describing a popular technique to protect people afflicted with NIMBYism.⁸

This essay will review the NIMBY syndrome as it applies to affordable housing developments, particularly efforts to prevent homelessness by increasing the supply of housing that is affordable to the lowest income levels in our society. This type of housing may take the form of public housing or Section 8 apartments, group homes for persons with disabilities, housing cooperatives, and single-family homes rented by persons or families who also receive extensive social services. Traditional land use regulations impose considerable barriers to these forms of housing because of the general policy favoring owner-occupied, single family, detached houses on relatively large lots. This policy effectively excludes efforts to increase the supply of affordable housing for persons in danger of homelessness from large areas of our residential communities.

The frame of reference for this essay is a 1995 resolution of the American Bar Association’s House of Delegates sponsored by the ABA Commission on Homelessness and Poverty⁹ that commits the ABA to a collaborative effort with state and local bar associations to encourage greater integration of affordable housing and related services in residential neighborhoods, and to

develop non-adversarial techniques for resolving disputes between affordable housing providers or occupants and their neighbors.¹⁰

Housing advocates and community leaders have collaborated in a number of communities to overcome barriers to such housing while still retaining the family-oriented status of their land use policies. This article will examine some of those efforts, in particular the Montgomery County inclusionary zoning ordinance, the Santa Fe Community Housing Trust, the California mandatory planning statute, and the consensus building suggestions arising out of the dialogue between the Building Better Communities Network and the National League of Cities.

This article concludes with the recommendation that collaborative efforts be undertaken in all communities to seek common ground among the often warring groups of affordable housing advocates, providers and consumers, and local government officials, businesses and residents. The dispute resolution technique of active listening should play a major role in this effort. With it, people of good will may be able to understand and alleviate the fears that drive much of the rhetoric on both sides. Once that is accomplished, techniques such as the Montgomery County inclusionary zoning ordinance, the California mandatory planning legislation, and the Santa Fe Community Housing Trust can spread to other localities.

II. RESPONDING TO NIMBYISM

The “Not in My Backyard”(NIMBY) term has become a popular shorthand description of public reaction to a variety of land uses deemed beneficial or necessary by the community at large, but unpopular to land owners and occupants in the immediate vicinity of the proposed use.¹¹ It is associated with another term, “locally unwanted land uses”(LULUs), which describes the kinds of uses (group homes, soup kitchens, garbage dumps, waste treatment plants) that typically trigger the NIMBY reaction.¹²

The Commission on Homelessness and Poverty’s publication, *Not in My Backyard: A Guide to Lawyers Working With Group Homes, Shelters, and Soup Kitchens*,¹³ uses a story about a *Big Orange Splot*¹⁴ as a metaphor for the NIMBY syndrome.

The Big Orange Splot is symbolic of what occurs in the “Not In My Backyard” (“NIMBY”) situation. Mr. Plumbeam’s neighbors perceived that their street was “neat” and did not want to change it. Neighbors perceive what they think their neighborhoods are all about and what they should be. They don’t like change to their neighborhoods if it means, in their minds, an adverse impact. They don’t want buildings to come into their neighborhoods if they perceive it will reduce the value of their residential properties. They don’t want group dwellers to come into their neighborhoods if they perceive it will increase the amount of garbage, trash, ruckus, and noise in the neighborhood; or if it will cause their neighborhoods to be less safe. Or, if they perceive the people moving into the neighborhoods not be a “family,” as they define it. Or, if they perceive the people coming into the neighborhoods not to be “like them.”

Yet, *The Big Orange Splot* is not only symbolic of what occurs in the NIMBY situation, but is also an example of how we can address a NIMBY situation. Neighbors’ perceptions can be changed, as long as they become convinced that change is better, as in *The Big Orange Splot*, Mr. Plumbeam convinced them that each of their houses should be different on their street so that their house looked “like all their dreams.”¹⁵

NIMBYism, directed against programs providing housing and social services for low income families and persons with special needs, manifests a clash between two very powerful social forces: the desire for personal privacy expressed through the legal power to exclude and protected by the public land use regulatory technique of zoning on one hand, and the desire to experience the stability and peaceful environment of residential neighborhoods by persons with special needs as an alternative to institutional settings.¹⁶

One example of efforts to respond to NIMBY problems encountered by affordable housing providers is the Building Better Communities Network (BBCN),¹⁷ which was organized after a three-day conference in Washington, D.C. during November 1998. The conference was sponsored by an interfaith collaboration in Washington, D.C., the Campaign for New Community (CNC).

The Conference brought together several hundred people from a wide diversity of interests: housing advocates, legal aid and public interest lawyers, group home directors, supportive services providers, state and local legislators, planners, and program administrators, recipients of housing and social services programs, and representatives of community and residential neighborhood organizations. At the close of the conference, more than one-hundred persons signed a resolution to create the BBCN. A twenty-three person Advisory Board was selected, which adopted a statement of Principles and Actions Agenda for BBCN. The statement provides in part:

The *Building Better Communities Network* was founded on the belief that welcoming communities are better communities, and that there are broad social benefits of diverse, collaborating communities that transcend the benefits to specific classes or individuals. The Network supports the expansion of housing and human services for all people and advocates for inclusive communities where civil rights are protected, diversity is celebrated, neighbors and community institutions collaborate for mutual support, and all members of the community are involved in planning for matters, which affect their quality of life. We recognize the potential for conflicts and pledge ourselves to create the opportunity for a discussion in which all parties can be heard.¹⁸

The Network is guided by the basic principle that “sound communities are characterized by the opportunity for all people to live together and have equal access to housing and services.”¹⁹ This means that each person has a “responsibility to work with others to make our own neighborhoods inclusive,”²⁰ and the freedom “to choose a home and a neighborhood” without encountering discrimination in the availability of housing or human services.²¹ Governments are instruments of the people, and as such “must cease to discriminate and affirmatively undo the effects of past discrimination and segregation.”²²

The Network condemns NIMBYism as “contrary to the universal principle of the worth of each person, and threaten[ing] to the social unity essential to harmony and progress.” Inclusive communities are “built and sustained through collaboration of all community institutions” in responding to “neighbors in need.” Such collaboration among communities within a region “benefits the entire region, and ensures that each community takes an active part in responding to regional housing and service needs.”²³

One of the most interesting and hopeful developments with BBCN is the growing consensus that basic assumptions should be re-examined in an effort “to move to a more productive discussion” with all stakeholders as an alternative to the “pitched battles over siting.”²⁴ For example, Michael Allen, Senior Staff Attorney at the Bazelon Center for Mental Health Law in Washington, D.C., raised the possibility at the conference and in later e-mail correspondence that the congregate model of housing for persons with disabilities, including the group home which has caused so many siting controversies, is not the best way to provide housing and services for persons with disabilities. Congregate housing often costs more than independent housing offered through “tenant-based” assistance. Congregate housing also segregates its residents from their neighbors, while diminishing the “personal freedom and privacy” of the residents, he argued. He called for a greater effort to find “workable alternatives.” Such an effort may lead to a discovery of approaches that are “cheaper, more respectful of residents’ dignity, and that, because they require no public participation, would not raise all the community opposition we see to larger congregate settings,” he asserted.²⁵

III. MOVING TOWARD INCLUSION: THE MONTGOMERY COUNTY, MARYLAND APPROACH

“Urban sprawl” is another term that has entered the American consciousness in the last few years.²⁶ It connotes an end-of-century version of the fabled land rushes of the 19th Century. In reality, it is the extreme manifestation of what scholars have termed the “socioeconomic sector, or wedge” pattern of growth in American metropolitan areas. According to this theory, three distinct neighborhoods, working class, middle class, and upper class, “grow in pie-shaped wedges into the expanding city.”²⁷ These patterns have become noticeable in the St. Louis metropolitan area, as well as many other metropolitan areas.²⁸ For example, a working class wedge has moved out of north St. Louis along I-70 and into the suburban communities in north St. Louis County; a middle class wedge has gone generally south along I-55 into unincorporated areas of south St. Louis County; while an upper class wedge can be seen moving out through I-44 and I-64 (Highway 40) into west St. Louis County and St. Charles County.²⁹

As a resident of Glendale in southwest St. Louis County and an employee of Saint Louis University, I don’t often have the opportunity to visit St. Charles County except to pass through it on trips to Jefferson City, Columbia or Kansas City, Missouri.³⁰ I do know about the growth of St. Charles County, primarily from newspaper, radio, and television accounts. In November 1999, however, I spent an afternoon in St. Charles County and was stunned by both the enormity and quality of the growth-taking place. The vitality and energy that I observed from a drive down Mid Rivers Mall Drive from I-70 to Highway 94 and then to Highway 40 was truly impressive.

My reason for being there was to take part in a panel discussion at St. Charles County Community College concerning growth and affordable housing. The program was sponsored by the Community Council of St. Charles County as part of the “Vision St. Charles Leadership Program.” Other speakers included the county planning director, the mayor of the city of St. Charles, and two legislators, one from the city and the one from county.

The inspiration for the particular discussion was a recent controversy concerning the re-zoning of land in a mobile home park, which necessitated the relocation of its residents. The controversy dramatized the issue of affordable housing in a growth environment. Speakers appeared in general agreement that one of the lessons to be learned from such a controversy is that the foreseeable impact of a particular zoning decision should be considered carefully before the decision is made.

What to do about affordable housing has become a regular topic of discussion in suburban as well as urban and rural America. One of the strongest arguments against urban sprawl, made by this writer as well as many others, is that lower income people are left in the inner cities and suburbs, far from the new jobs being created by the growth, because little or no attention is given to providing affordable housing as a component of that growth.

It does not necessarily have to be that way. St. Charles County and other areas experiencing substantial growth, can take a pro-active approach to affordable housing. Montgomery County, Maryland offers a good example of the possibilities. Twenty-five years ago, Montgomery County enacted its Moderately Priced Development Unit (MPDU) ordinance.³¹ The 1974 ordinance made a series of findings similar to the current situation in St. Charles County: rapid increase in population, inadequate supply of moderately priced housing, large-scale commuting to places of employment, high land costs, and strong private development sector.³²

Based on these finding, the Montgomery County MPDU ordinance requires that all subdivisions of 50 or more dwelling units must include a minimum number (between 12.5% and 15%) of moderately priced units of varying sizes to accommodate different family sizes.³³ Developers are allowed to increase the number of dwelling units to be constructed on a particular site by up to 22% over the allowable zoning density in return for including MPDUs in the

development.³⁴ Single-family MPDUs must have two or more bedrooms and multi-family MPDUs must not be predominately efficiency or one-bedroom units.³⁵

The ordinance is implemented through written agreements, called MPDU agreements, approved by the Director of the County Department of Housing and Community Affairs.³⁶ County officials may not issue building permits unless applicable MPDU agreements have been signed,³⁷ and covenants “running with the land for the entire period of control” that are senior to all permanent financing instruments have been recorded.³⁸

The MPDU ordinance provides some alternative approaches for developers “in exceptional cases.”³⁹ In lieu of the standard MPDU approach, developers may offer to: (1) build “significantly more” MPDUs at one or more adjoining sites within the same or adjoining planning area; (2) convey land suitable “in size, location and physical condition for significantly more MPDUs”; (3) contribute to the County Housing Initiative Fund monies to “produce significantly more” MPDUs; or, (4) any combination of the above.⁴⁰ An offer to follow one of the alternative approaches must be accepted if the Director finds (1) that the original proposal included an “indivisible package of resident services and facilities” for all households that would make the MPDU units “effectively unaffordable,” (2) the alternative proposal by the developer “will achieve significantly more” affordable MPDUs, and (3) the public benefits of the alternative proposal “outweigh the benefits of constructing MPDUs in each subdivision throughout the county.”⁴¹ However, the contribution of land or cash alternatives may not be approved if the developer “can feasibly build significantly more MPDUs at another site.”⁴²

The land transfer provision may be implemented by transferring land to the County. The agreement may be for either (1) finished lots, with the developer being reimbursed for the costs of finishing the lots but not for the cost of acquisition or value of the transferred lots, or (2) unfinished lots or finished lots with the developer waiving reimbursement when no County funds are available.⁴³

In June 1999, a Montgomery County attorney, who practices in this area, reported at a conference I attended that more than 10,000 MPDUs have been constructed in scattered sites throughout the county over the 25-year period since the ordinance first was enacted. These units are designed to be affordable to families whose incomes are between 65 and 85 percent of the county median income. Approximately 1500 of these units have been purchased by the county’s Housing Opportunities Commission for rent to persons who are eligible for public housing or section 8 subsidies. Rents and sale prices of MPDUs are regulated by the county, with a portion of any profits on resale being required to be shared with the county for additional housing. Current sale prices for MPDUs are in the mid \$90,000 range. Over the years, a cottage industry has grown up to build MPDUs under contracts with traditional developers. Most of the MPDUs are townhouses. Some are duplexes dropped within a single-family development and designed to look like single-family homes, the attorney stated.⁴⁴

The 1974 ordinance was a product of a coalition of service workers, fire fighters, police officers, teachers, government workers and the like; the attorney stated. The coalition had to overcome the opposition of bankers, brokers and builders, as well as a veto by the county executive. Because of the success of the Montgomery County program, the state legislature about five years ago specifically authorized all Maryland counties to enact such ordinances. The attorney stated that he was not aware of any other Maryland county creating an MPDU ordinance, and he worried that the current political climate might make such a proposal questionable even in Montgomery County.

The Montgomery County MPDU program is cited frequently as an example of what courageous and imaginative people can accomplish. Could such a coalition be put together today to achieve a similar result in other growth areas around the country?

IV. MANDATORY PLANNING FOR AFFORDABLE HOUSING: THE CALIFORNIA EXPERIENCE

Some states have responded to the increasing concern about affordable housing and homelessness by enacting legislation requiring local governments to engage in formal land use planning as a prerequisite to exercising the zoning power delegated to them by the state.⁴⁵ Such legislation typically requires communities to analyze their housing situation and determine whether or not there is an unfilled demand for affordable housing in that community.⁴⁶

Affordable housing in this context is housing that is affordable by the range of income levels within the community, particularly persons and families of low and moderate income.⁴⁷ Affordable housing may or may not require governmental subsidies. The essence of the affordable housing concept in a land use context is that the community's land use regulations should not impose artificial barriers to the development of housing affordable to a wide range of economic levels.

California is an example of a state that has adopted such laws. Section 65589.5 of the California Government Code requires local governments to approve affordable housing development proposals unless the government makes one of six specified findings. In order to disapprove a housing development project that is affordable to low and moderate income households, or condition approval in the manner which renders the project infeasible for low and moderate income households, the local government must first find, based on "substantial evidence," one of the following:

- (1) the development is not needed to meet the fair share obligation of the jurisdiction;
- (2) the project would have "specific adverse impact" on public health and safety and there is "no feasible method to satisfactorily mitigate or avoid the specific adverse impact;"
- (3) denial or imposition of conditions was required in order to comply with specific state or federal laws and there is no feasible method to comply with these laws without making the development unaffordable to low and moderate income households;
- (4) approval of the development project would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of low income households and there is no feasible method of approving the development at a different site without rendering the development unaffordable to low and moderate income households;
- (5) the development project is proposed on land zoned for agriculture or resource preservation which is surrounded by at least two sides by land being used for agricultural or resource preservation or which does not have adequate water or waste water facilities to serve the project; or
- (6) the development project is consistent with the jurisdiction's general land use designation as specified on the date the application was deemed complete and the jurisdiction has adopted a housing element in accordance with the statute.⁴⁸

The California statute defines affordable housing as housing that is "affordable to low and moderate income households which means that 'at least 20 per cent of the total units shall be sold or rented to lower income households and the remaining units shall be sold or rented to either low income households or persons and families of moderate income as these terms are defined in sections 50079.5 and 50093 of the California Health and Safety Code.'"⁴⁹

Local governments denying approval or imposing restrictions on qualified affordable housing developments have the burden of proof to show that their decisions are consistent with required findings described above in any court challenge. If a proposed housing development project

complies with the applicable general plan and zoning and development policies in effect at the time that the project's application was complete, but a municipality seeks to disapprove the project or to reduce the density the municipality must make written findings supported by substantial evidence in the record that both of the following conditions exists: (1) the housing development project would have "specific adverse impact upon the public health and safety" (2) and there is no feasible method to "satisfactorily mitigate or avoid the adverse impact other than disapproval of the development project."⁵⁰

Section 65584(a) of the California Government Code requires communities as part of their mandatory housing planning to identify the housing needs of the community, including people who might be expected to reside there and to identify land and provide assistance to developers. Section 65915 authorizes density bonuses but does not require land to be set aside for affordable housing.

Advocates have generally been disappointed that the law has not been implemented as vigorously as they would believe necessary. In fact wide spread noncompliance has been reported.⁵¹ Court challenges have not been particularly effective.⁵² Advocates submit the statutory language permitting findings that a development may have adverse health or safety impacts or may result in over concentration of low-income housing is "legally amorphous."⁵³

Advocates report, however, that the statutes have been useful in providing a frame of reference for successful settlement of disputes over the location of affordable housing developments. One of the reasons for this is that the local officials usually understand that there is a need for affordable housing within their jurisdiction and may not be totally opposed to a particular development for that reason. The statute offers a frame of reference and an incentive for analyzing what might be appropriate modifications to respond to project-specific problems that may well be legitimate concerns of opposing voices. In some situations the statute may give political cover to local government officials who can pass off the responsibility for the particular decisions to "distant" state officials. In essence, local governments' hands are tied and they simply have to follow the law.

Most importantly, the statutes read together reverse the presumption of validity for decisions regarding the location of affordable housing developments. Under the classic zoning analysis accepted by the court in *Euclid*⁵⁴ and followed in large part since then, most zoning decisions are presumed to be valid and the person who is challenging such a the decision has a heavy burden of overcoming that presumption. The burden is heavy because it is essentially a burden to demonstrate that decision simply could not have been made by rational people.⁵⁵ The California statute reverses that presumption with its requirement that affordable housing development proposals be approved unless the local government shows one of the six specific concerns.⁵⁶

It may take awhile, but over time the shift in that legal presumption can have profound impact on how communities respond to affordable housing development proposals. For example, a Massachusetts statute enacted in 1969 that shifts the legislative presumption regarding affordable housing developments, created a state Housing Appeals Committee, and requires local governments to justify land use decisions rejecting qualified affordable housing proposals,⁵⁷ has been credited with development of over 20,000 units of subsidized housing and with a change in environment that resulted in a 137% increase in the subsidized housing supply over a 30 year period.⁵⁸ The program started slowly, though. Legal challenges lasted four years, followed by ten years in which a positive track record was built painstakingly on a project-by-project, city-by-city basis. Most of the production occurred after this favorable track record of decisions by the Housing Appeals Committee was established.⁵⁹

AFFORDABLE HOUSING ENDOWMENTS

An interesting proposal for financing affordable housing through private “endowments” is offered by an attorney in Irvine, California.⁶⁰ The endowments are essentially transfer fees collected when market rate housing is sold and then resold. Under this proposal, private restrictive covenants and servitudes would be used to provide the funding mechanism. Prior to the sale of a new home, the homebuilder would subject the property to a private covenant and to a lien, which would operate similar to a mortgage. The covenant or servitude would impose a financial obligation secured by a lien on the property requiring an endowment fee to be paid to a designated beneficiary. Beneficiaries would be private not-for-profit organizations. The California proposal calls for a foundation to receive the payments and then distribute the fees on a pro rata basis to other not-for-profit housing providers such as Habitat for Humanity.⁶¹ California has a statutory limitation on “ancient mortgages” of sixty years so the lien would be for that particular term. Current experience in California suggests that ten to twelve transfers would take place during that sixty-year period. Each time the home is sold a transfer fee would be collected. The proposal suggests one-quarter of one percent for which the buyer and seller would be jointly liable.⁶²

The author of the proposal does not believe that this endowment proposal would affect the marketability of the land. In fact he believes that the marketability of the fee itself is a major aspect of its potential success. So long as the housing market is “reasonably strong” the fee is “likely to be discounted entirely,” particularly if it is at a low percentage of the gross sales base. He offers as evidence a community enhancement transfer fee imposed at Ladera Ranch in Orange County, California. A fee of 1/8 of 1% on new home sales and 1/4 of 1% on resale is paid to a not-for-profit corporation that uses the funds to “enhance community relations and social activities in Ladera Ranch.” In addition, he cites the Bridges in Rancho Santa Fe in San Diego County as another example. This “exclusive custom lot development” charges purchasers a transfer fee of 1/2 of 1% of the sale price. At Bridges, the beneficiary is the master developer. The author states that the transfer fee does not appear to have adversely affected sales. He argues that the potential revenue from such a fee is significant. For example, in a 100-lot subdivision of homes selling at an average price of \$400,000, a 1/2 of 1% endowment fee would generate \$200,000 from initial sales. Assuming resale every five years, the affordable housing foundation could realize annually \$40,000 a year for sixty years or \$2.4 million total.⁶³

V. THE SANTA FE COMMUNITY HOUSING TRUST

An increasingly common by-product of job growth is scarcity of affordable housing. For example, Silicon Valley added seven jobs for every new housing unit between 1995 and 1999. Urban Planners advocate a ratio of 1.5 jobs per home to keep the supply and effective demand in line.⁶⁴ Sometimes the high cost of housing is a function of popularity for reasons other than jobs, such as retirement. Santa Fe, New Mexico has experienced such pressures and has responded with an affordable housing strategy based on the community land trust concept.⁶⁵ Community land trusts (CLTs) are not-for-profit organizations, usually organized as tax-exempt corporations dedicated to use of land for community-based purposes such as preservation of open space, small farm agriculture or affordable housing.⁶⁶ The CLT acquires title to land and executes long term ground leases to developers and managers of affordable housing, which often includes housing cooperatives.

The Santa Fe Community Housing Trust (SFCHT), established in 1992 as a program of The Santa Fe Affordable Housing Roundtable,⁶⁷ used the land trust concept to make available for purchase by low income families thirty new homes in an eighty-eight home development near the city center. Through the land trust mechanism, the acquisition costs of the homes were reduced by \$35,000.⁶⁸ The land trust purchasers acquired title to their homes and a leasehold interest in a 99-year ground lease. In addition, they signed contracts giving SFCHT a right of first refusal to buy the homes at fair market value before the owners can sell to other persons.⁶⁹

The separation of ownership of the land from ownership of the house, and the right of first refusal are key elements of the land trust technique. In effect, land is withdrawn from the competitive land market and is retained for a particular purpose, in Santa Fe for affordable housing.

VI. COMBINING INCLUSIONARY ZONING MANDATORY PLANNING AND NEIGHBORHOOD COLLABORATE PLANNING

One of the major proposals to come out of the Building Better Communities Conference is a strong recommendation that local governments “integrate affordable housing into their plans for the development of their cities.” Included in that recommendation is the proposal that neighborhood planning be recognized by ordinance as a “legitimate municipal function” and that the neighborhood be adopted as the “basic area for needs assessment, provision and improvement.”⁷⁰ The planning decisions would thereafter be separated into decisions that have “limited impact on the community as a whole being delegated to neighborhood groups or at least be based on advice received from neighborhood groups primarily affected.” On the other hand, planning decisions affecting the entire community “should not be overly influenced by a single neighborhood’s needs or interests.”⁷¹

Recognition of the neighborhood-planning component is a crucial step to effective implementation of inclusionary zoning programs such as the Montgomery County program, mandatory planning such as the California program and the community land trust technique such as used in Santa Fe. All of these programs assume that there is some entity capable of making the appropriate decisions about the proper location of affordable housing. These programs also assume that an important aspect of affordable housing location decisions is the spread of affordable housing throughout the planning area so that a range of choices for housing will be available in all parts of the community and that housing for low income families or persons with special needs will not be unduly concentrated in limited areas. To achieve these goals, the residents of the communities must feel that they have a stake in the planning process.

Many of the siting disputes over affordable housing involve what might be viewed as “external” impacts of affordable housing developments. The question of who should make the decision about the significance of “external impacts” is often a very difficult one to answer. A serious gap in the decision making process in many communities is the lack of a mechanism for including the concerns of the immediate community. For example, redevelopment of the site of the successful Santa Fe community land trust development had been blocked for ten years by neighborhood opposition to an industrial development proposal. SFCLT overcame the built-in distrust engendered by that conflict by neighborhood meetings, city council hearings and focus group discussions.⁷² Neighborhood planning can provide a missing link to enable the immediate community to express itself in an orderly fashion on this issue.

The process of making siting decisions to maximize the inclusionary rather than exclusionary aspect of those decisions requires an ability to include all points of view in the deliberative process and an ability to resolve disputes through an informal non-adversarial process.

VII. CONCLUSION

Affordable housing has become a controversial topic in an increasing number of communities, both because of the increasing difficulty that lower income families are having in affording affordable housing, and the difficulty that communities are having in deciding where affordable housing development projects ought to be located. Local decision makers and housing advocates have had difficulty agreeing on how best to approach the location question. In part, this difficulty stems from intense competition for use of scarce land in popular urban and suburban areas. In part, this difficulty also stems from fears engendered from spectacular

failures of high-rise public housing projects built in the 1940s and 1950s. In essence affordable housing, in many communities, triggers an immediate NIMBY response. The irony of this is that virtually all Americans likely would agree with the proposition that affordable housing should be OKIMBY (“Okay In My Backyard”) if that housing contributed value to the neighborhood and made it possible for stable families and individuals to live in the neighborhood.

This paper has discussed three techniques in use in various parts of the country for responding to affordable housing concerns. The three techniques, inclusionary zoning ordinances, state mandatory planning legislation, and the community land trust technique have a common denominator: all require effective communication among stakeholders to be successful. Neighborhood planning techniques can foster that communication. Communities that have recognized this are reporting success in resolving disagreements over the type and location of affordable housing. Communities that fail to recognize this are likely going to continue to experience acrimony and controversy over affordable housing proposals. Change is difficult and affordable housing requires change in traditional land use patterns. The change can be for the good particularly if affected parties are given an opportunity to consider the change in an open and non-threatening environment. After all we may be the ones who need that affordable housing sometime in the future.

APPENDIX A

A list of the 35 questions asked of [an] agency by members of the community who supposedly had 250 names on a petition of NIMBY for a [home it] wanted to establish.

1. What is the total number of group homes in our community? Already there are two in our immediate neighborhood, . . . Can you confirm this?
2. Are any of the existing group homes in our community for recovering drug and alcohol abusers? Is this a first?
3. To my knowledge, this would be the third social project in our immediate area . . . How many such projects are [in other areas]?
4. Can we expect more such homes to come to our neighborhood or will they be equally distributed throughout our community?
5. When this project was first contemplated . . . why were the projected neighbors not openly approached and the subject mutually discussed?
6. Group homes in the future, should notify neighborhood residents. Will this happen?
7. What does our community gain by participating in the Federal Community Block Grant Program?
8. Where will the residents of this home come from - our community, elsewhere?
9. Will this home accept patients with a past record of abusive behavior toward their family, neighbors or co-workers?
10. Will this home accept patients with past criminal records?
11. [Do you] have other such homes in our community or is this a first?
12. Are there other such programs in the U.S. or is this a first?
13. Is there a possibility that as the result drugs may come into our neighborhood?
14. What happens when a person fails in their rehabilitation?
15. What is the maximum number of people that under the auspices of the project could live at the home of our community any time? It is our understanding that the number is eight, with a responsible person in charge, making a total of nine persons. What do the zoning laws of our community specify.
16. Will at any time all of the recovering patients be gainfully employed? Full time? Part time?
17. Will all of the recovering patients have the right to have a car and, if so, will they be able to use it any time that they might wish?
18. Could we obtain a ban on personal cars for the residents similar to the other healthcare groups?
19. Will they be allowed to receive visitors any time that they might wish? Any restrictions - number, time of day, days of the week, sleep over, etc.?
20. Will the patients and their visitors be allowed to park their vehicles in front of the residents? We believe that this would be hazardous to the children. Ample off-street parking would be a much safer arrangement.
21. [Have you] signed any kind of an agreement with our community about the upkeep of the property? If so, what criteria will be used to monitor this? (This property is bound to undergo a tremendous amount of wear and tear)
22. Where (to whom - a name) do neighbors turn if they perceive problems?

23. Could [you] provide references (name, addresses and telephone numbers) of citizens living in close proximity to other . . . residences in the . . . area?
24. Was it necessary to authorize exceptions to the existing zoning laws to accommodate the high-density residence in an otherwise single family residential neighborhood?
25. Will the residents be supervised 24 hours a day, 7 days a week?
26. [Have you] had any problems anywhere with their wards in the past? If so, what were they? Please be specific!
27. How long [have you] been in existence?
28. Has our community made a study of how this project will impact traffic patterns in the area, parking, safety in the streets, etc? If so, may we have a copy of it?
29. Has our community made a study of the impact of such residences on the community? If so, could we have the report?
30. Are these people apt to harass their neighbors or will they pretty much keep to themselves? In one instance that has been reported to me, these people tend to spend a great deal of time wandering the streets.
31. Could we get the address of all current and past . . . locations?
32. What percentage of [your] patients are HIV positive? What precautions do we need to take?
33. Surely you have a set of written regulations for their residents. Could we have a copy of it?
34. Could our community arrange a town meeting with [your] representatives where all of our questions would be answered?
35. [The lane] is a dark street. Could additional lighting be installed?

Notes

* I am indebted to Mark Buchbinder, Esq., of Miami, Florida for the terms OKIMBYism, which means “O.K. In My Backyard.”

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1. See, e.g., Mary Williams Walsh, *Boom Times a Bad Time for Poorest, Study Finds*, LOS ANGELES TIMES, Jan. 19, 2000, at A1 (Federal Reserve study reports that net worth of lower income persons fell during 1995-1998 period; a separate study by the Economic Policy Institute and the Center on Budget and Policy Priorities claims the income gap between the top fifth and the bottom fifth widened); NATIONAL LOW INCOME HOUSING COALITION, *Out of Reach: The Gap Between Housing Costs and Income of Poor People in the United States*, available at <http://www.nlihc.org.oor99> (1999) (millions of working families continue to have difficulty obtaining affordable rental housing); Winston Pitcoff, *Millions of Working Americans Still Lack Affordable Housing*, 21 SHELTERFORCE 24 (1999); Department of Housing and Urban Development, *The Widening Gap: New Findings on Housing Affordability in America*, available at <http://www.huduser.org/publications/affhsg/gap.html> (Census Bureau’s American Housing Survey reveals that 8.87 million rental households – twenty-five percent of all renter households – have incomes at or below thirty percent of area median income, but only 36 percent of that total are residing in or have access to affordable rental housing) [hereinafter HUD, *The Widening Gap*]; *Study Asserts Homelessness On Rise Among Working Poor, Lack of Housing Cited as Cause*, 27 HOUS. & DEV. RPTR 266, (1999); *Booming Economy Has Aggravated Low-Income Housing Crisis, According to New HUD Report*, 26 HOUS. & DEV. RPTR 727 (1999) (number of persons and time spent on waiting lists for assisted housing have increased); *Strong Economy Fails to Help Homeless, Says Mayors’ Survey*, 26 HOUS. & DEV. RPTR 519 (1998) (predicting an increase in homelessness despite the strong economy).

The national median family income in 1999 was \$47,800. *Fiscal 1999 Median Income Figures Released by HUD*, 26 HOUS. & DEV. RPTR 630 (1999). Thirty percent of that figure is \$14,340, appropriately \$4000 more than the annual earnings of a person working full time at the current minimum wage of \$5.20/hour.

2. The report accompanying Resolution No. 111, adopted by the House of Delegates of the American Bar Association in 1995 stated in part:

For example, by 1980 the average African-American who resided in one of the ten largest metropolitan areas lived in a

neighborhood that was 80% African-American. See DOUGLAS MASSEY & NANCY DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 161 (1993) Robert Lake, *THE NEW SUBURBANITES: RACE & HOUSING IN THE SUBURBS* 239 (1981) (noting that suburbanization of African-Americans is marked by increasing racial segregation); Phillip Clay, *The Process of Black Suburbanization*, 14 *URB. AFF. O.* 405, 416-19 (1979) (describing the persistence in suburban communities of a racially segmented housing market).

As early as 1970, the poverty rate for African-Americans living in Chicago was 20% while the rate for their Euro-American counterparts was 5%; in Los Angeles, the rates were 22% for African-Americans and 9% for Euro-Americans; and in New York, the rates were 21% for African-Americans and 9% for Euro-Americans. MASSEY & DENTON, *AMERICAN APARTHEID*, *supra*, at 119 (observing that discrimination restricts the residential mobility of African-Americans and thus undermines their social and economic well-being).

Id. at 179 (“No matter what their personal traits or characteristics, people who grow up and live in environments of concentrated poverty and social isolation are more likely to become teenage mothers, drop out of school, achieve only low levels of education, and earn lower adult incomes.”).

(On file with author).

3. In analyzing housing affordability, HUD labels families with incomes at or below 30 percent of area median as “struggling.” HUD, *The Widening Gap*, *supra* note 1, at 2.

4. *Fiscal 1999 Median Income*, *supra* note 1. See also Daryl Strickland, *Housing Prices Close Out ‘99 on High Note*, *LOS ANGELES TIMES*, Jan. 18, 2000, at C1, reporting that median home prices in the Los Angeles area range from \$188,000 in Los Angeles County to \$240,000 in Orange County. With a 3:1 ratio of cost to income rule of thumb, median priced homes in Los Angeles require incomes of \$60,000 to \$80,000 to be affordable.

5. See, e.g., Michael Allen, *Making Room at the Inn: Civil Rights and Inclusive Siting Practices*, 8 *J. AFFORDABLE HOUSING & COMMUNITY DEV. L.* 115 (1999); Anna L. Georgiou, *Nimby’s Legacy – A Challenge to Local Autonomy: Regulating the Siting of Group Homes in New York*, 26 *FORDHAM URB. L.J.* 209 (January 1999).

6. 272 U.S. 365, 394 (1926) (“ . . . [v]ery often the apartment house is a mere parasite. . .”).

7. See, e.g., Peter Hall, *The Turbulent Eighth Decade: Challenges to American City Planning*, 55 *J. AM. PLANNING ASS’N* 275, 281 (1989) (“Hand in hand with these trends, inevitably, goes the multiplication of special interest groups devoted to maintaining and enhancing the quality of environment, but also to stopping further development – the arrival of NIMBYism as the populist political philosophy of the 1980’s.”). See also Michael Heiman, *From ‘Not in My Backyard!’ to ‘Not in Anybody’s Backyard!’ Grassroots Challenge to Hazardous Waste Facility Siting*, 56 *J. AM. PLANNING ASS’N* 359-62 (1990); Michael Dear, *Understanding and Overcoming the NIMBY Syndrome: Not-In-My Backyard*, 58 *J. AM. PLANNING ASS’N* 288-300 (1992); Michael J. Dear & Lois M. Takahashi, *The Changing Dynamics of Community Opposition to Human Service Facilities*, 63 *J. AM. PLANNING ASS’N* 79 (1997).

8. Courts have struggled to balance the interests of local residents and persons who would like to move into single-family neighborhoods. The most famous litigation is the *Mount Laurel* trio of cases decided by the New Jersey Supreme Court. *Southern Burlington County NAACP v. Township of Mt. Laurel*, 336 A.2d 713 (N.J. 1975) (*Mount Laurel I*) (exclusionary zoning violates the state constitutional due process and equal protection guarantees, and developing communities must provide reasonable opportunities for their “fair share” of affordable housing); *Southern Burlington County NAACP v. Township of Mt. Laurel*, 456 A.2d 390 (1983) (*Mount Laurel II*) (reaffirming the principle of inclusion rather than exclusion of “least cost” housing, extending the fair share obligations to all municipalities, and authorizing a range of techniques under the rubric of *builders’ remedy*, including density bonuses and mandatory set asides); and *Hills Dev. Co. v. Township of Bernards*, 510 A.2d 621 (N.J. 1986) (*Mount Laurel III*) (upholding New Jersey’s Fair Housing Act, N.J. STAT. ANN. §§ 52.27D-301 et seq., establishing the state Council on Affordable Housing (COAH) to administer the *Mount Laurel* Doctrine). Twenty-seven years after the *Mount Laurel* case began, construction commenced in the fall of 1998 on a 140-unit rental development in Mount Laurel, despite angry protests from 200 or so prospective neighbors. DAVID CALLIES ET AL., *LAND USE* 485 (3d ed. 1999) (citing Smothers, *Affluent Suburb Approves Building of Homes for Poor*, *NEW YORK TIMES*, Apr. 12, 1997, at 6).

9. The Commission was created by the ABA in 1991 as an expansion of its Representations of the Homeless Project established in 1988 by the ABA Section of Individual Rights and Responsibilities. The Commission has presented policy recommendations to the ABA House of Delegates on a regular basis, including those on such issues as the need for due process in evictions of public housing residents suspected of drug-related activity (co-sponsored with the Standing Committee on Legal Aid and Indigent Defendants and the Section of Criminal Justice) (August 1990), on the need for increased federal housing for the poor (co-sponsored with the Commission on Legal Problems of the Elderly and the Commission on Mental and Physical Disability Law (August 1992), and on the responsibility of financial institutions to make affirmative efforts in their credit practices—particularly home mortgage loans among low-income and minority borrowers (co-sponsored with the Section of Business Law) (February 1991). The Commission has developed a library of resources in the area of housing, including video and written material on the development of low-income housing and on the federal Community Reinvestment Act, and a resource guide to bar association and law school homeless programs. The 1995 directory features 69 pro bono homeless programs in 28 states and the District of Columbia. ABA COMMISSION ON HOMELESSNESS & POVERTY, *GUIDE TO HOMELESS PROGRAMS* (1995). The guide highlights the outstanding work of many programs and illustrates how lawyers can ameliorate the plight of homeless individuals and families.

10. This resolution, No. 111, was adopted by the House of Delegates on August 8, 1995 at the ABA Annual Meeting in Chicago. The author was Chair of the Commission and principal drafter of the report and resolution. The Recommendation provided:

BE IT RESOLVED, that the American Bar Association supports the adoption of creative and comprehensive measures to

address homelessness by eliminating illegal residential segregation, increasing the availability of affordable transitional and permanent housing and improving the accessibility of such housing to employment, schools, transportation, and human services. Such efforts should include:

(a) stronger enforcement of existing laws designed to eradicate discrimination in housing based on race, color, gender, disability or the presence of children in the family;

(b) affirmative plans to increase and preserve the supply of adequate affordable housing for low and moderate-income families;

(c) regional initiatives to provide affordable housing that are accessible to employment and schools, transportation, and human services;

(d) programs to integrate communities by race and income to the greatest extent possible;

(e) provision of incentives and rewards such as incentive zoning and density bonuses to private builders and operators to encourage the planning and development of affordable housing in integrated communities;

(f) enactment of state and local laws (i) giving development proposals that comply with the standards of an approved affordable housing plan a presumption in favor of approval, (ii) creating special appeals processes to resolve disputes regarding affordable housing development proposals, including the use of mediation and conciliation services, and (iii) requiring regulatory agencies to establish that any denial of approval to such an application is based on health or safety factors that override the need for affordable housing.

(On file with author).

11. Dear & Takahashi, *supra* note 7, at 79.

12. *Id.*; see also Michael B. Gerrard, *The Victims of Nimby*, 21 *FORDHAM URB. L.J.* 495 (1994).

13. Commission on Homelessness and Poverty: ABA Steering Committee on Unmet Legal Needs of Children and Commission on Homelessness and Poverty, *Nimby: A Primer For Lawyers and Advocates* (1999) [hereinafter Commission on Homelessness and Poverty].

14. See generally DANIEL MANUS PINKWATER, *THE BIG ORANGE SPLIT* (1977).

15. Commission on Homelessness and Poverty, *supra* note 13, at ix-x.

16. For a discussion of these conflicting interests, see Peter W. Salsich, Jr., *Group Homes, Shelters and Congregate Housing: Deinstitutionalization and the NIMBY Syndrome*, 21 *REAL PROP. PROB. & TRUST J.* 413 (1986).

17. The NIMBY syndrome includes a wide variety of concerns, as illustrated by an email sent to the BBCN network by a group homes provider in suburban Chicago. See Appendix A (e-mail copy on file with author).

18. In order to bring focus to the benefits of inclusive community for all, the Network offers a unique and concerted program of dialogue, advocacy, technical assistance and training in support of civil renewal and improving the quality of life of all. The Network supports the growth and stability of inclusive communities by working with all stakeholders, including residents and users of services, neighbors, housing and service providers, advocates and elected officials, and supports their efforts to promote healthier communities. Unlike many other organizations focused on creating housing or providing legal or financial assistance, the Network focuses exclusively on deepening the bonds of community and helping neighbors and community institutions collaborate and respond to the housing and service needs of people who are poor, homeless or who have disabilities.

Building Better Communities Network, *Statement of Principles and Action Agenda* (April 19, 1999) [hereinafter BBCN Draft Statement]; see also Jean Duff, *Building Better Communities: A National Dialogue on Collaborating for Successful Siting of Housing and Social Programs* (1998). BBCN's website is at <http://www.bettercommunities.org>.

19. BBCN Draft Statement, *supra* note 18.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. Email from Michael Allen, Senior Staff Attorney, Bazelon Center for Mental Health Law in Washington, D.C., to the BBCN Network (Dec. 4, 1998) (on file with author).

25. *Id.*

26. See generally F. KAID BENEFIELD, MATTHEW D. RAIMI & DONALD D.T. CHEN, *ONCE THERE WERE GREENFIELDS: HOW URBAN SPRAWL IS UNDERMINING AMERICA'S ENVIRONMENT, ECONOMY, AND SOCIAL FABRIC* (1999); Clint Bolick, *Subverting the American Dream: Government Dictated "Smart Growth" is Unwise and Unconstitutional*, 148 *U. PA. L. REV.* 859 (2000). Examples of public debate over sprawl are found in Steve Schmidt, *Brawl Over Sprawl*, *SAN DIEGO UNION TRIBUNE*, Feb. 29, 2000, at A1; Lyn Riddle, *South Carolina Confronts Sprawl*, *NEW YORK TIMES*, Dec. 26, 1999, at 42Y; Ken Lieser & Ingrid Perez, *Study Criticizes Unchecked Suburban Growth*, *ST. LOUIS POST DISPATCH*, Oct. 3, 1999, at E3; J. Philip Bloomer, *Sprawl vs. Space*, *THE NEWS-GAZETTE* (Champaign-Urbana, IL), May 2, 1999, at A-1.

27. MYRON ORFIELD, *ST. LOUIS METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY* 19 (1999).

28. *Id.* at 5 n.11 (reporting that studies have been completed or are in processes in 22 other metropolitan areas).

29. *Id.*

30. An earlier version of the St. Charles County discussion appeared as an OP-Ed piece. See Peter W. Salsich, Jr., *Counties Could Require Developers to Include Affordable Housing*, *ST. LOUIS POST-DISPATCH*, Dec. 3, 1999, at C21.

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31. MONTGOMERY CTY, MD., CODE § 25A (Housing, moderately priced).
 32. *Id.* at § 25A-1.
 33. *Id.* at §§ 25A-2(5) and 25A-5(b)(3).
 34. *Id.* at § 25A-5(b)(3).
 35. *Id.* at § 25A-5(a)(2) & (3).
 36. *Id.* at § 25A-5(a).
 37. *Id.* at § 25A-5(h).
 38. *Id.* at § 25A-5(k).
 39. *Id.* at § 25A-5(e)(1).
 40. *Id.* at § 25A-5(e)(1)(A)-(D).
 41. *Id.* at § 25A-5(e)(2).
 42. *Id.* at § 25A-5(e)(2)(C).
 43. *Id.* at § 25A-5(f)(1).
 44. Remarks of Kenneth B. Techler, Esq. at ABA Forum on Affordable Housing and Community Development Law Annual Meeting, Washington, D.C., June 4, 1999.
 45. See CALLIES ET AL., *supra* note 8, at 485.
 46. See, e.g., CAL. GOV'T. CODE § 65583.
 47. See, e.g., CAL. HEALTH AND SAFETY CODE § 50093 (low and moderate income means income that does not exceed 120 percent of area median income).
 48. CAL. GOV'T CODE § 65589.5(d) (1-6).
 49. *Id.* at § 65589(h).
 50. *Id.* § 65589(i)(j).
 51. Ben Field, *Why Our Fair Share Housing Laws Fail*, 34 SANTA CLARA L. REV. 35, 44 (1993).
 52. See, e.g., *City Defeats Housing Element Challenge in State Court of Appeal*, MALIBU SURFSIDE NEWS, Jan. 20, 2000, at 3 (reporting on unsuccessful challenge to city of Malibu's housing elements). *But see* Hoffmaster v. City of San Diego, 55 Cal. App. 4th 1098, 64 Cal. Rptr. 2d 684 (1997) (city did not substantially comply with legislative mandate to identify sites). See Field, *supra* note 51, at 54-61 (discussing court reluctance to use enforcement powers).
 53. Richard Judd, *California's Response to NIMBY*, 17 NIMBY REPORT 2 (1999).
 54. *Euclid*, 272 U.S. at 365.
 55. *Id.* at 388 ("If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to . . . control.").
 56. See Judd, *supra* note 53.
 57. MASS. GEN. LAWS CH. 40b.
 58. Citizens' Housing and Planning Ass'n, *Using Chapter 40B to Create Affordable Housing in Suburban and Rural Communities of Massachusetts* 15 (Oct. 1999).
 59. *Id.* at 8-10.
 60. F. Scott Jackson, *Affordable Housing Endowments*, 18 AM. COLLEGE OF REAL ESTATE LAWYERS NEWSLETTER 15 (Dec. 1999).
 61. *Id.*
 62. *Id.*
 63. *Id.*
 64. William Fulton & Paul Shigley, *Death Valley*, 66 PLANNING 4, 4-5, 7 (July 2000).
 65. *Santa Fe Nonprofit Uses Land Trust to Build Single Family Housing*, 27 HOUS. & DEV. RPTR. 312 (1999) [hereinafter *Santa Fe NonProfit*].
 66. A major advocate of CLTs and provider of technical support is the Institute for Community Economics, 57 School Street, Springfield, MA 01105-1331. Among its publications are COMMUNITY LAND TRUST, ICE MODEL GROUND LEASE (1991); THE COMMUNITY LAND TRUST: AN INNOVATIVE MODEL FOR NON-PROFIT AFFORDABLE HOUSING DEVELOPMENT (1990); THE COMMUNITY LAND TRUST MODEL: QUESTIONS AND ANSWERS (1989). For discussion of the potential of CLTs for affordable housing, see David M. Abromowitz, *Community Land Trusts and Ground Leases*, 1 J. OF AFF. HOUS. & COMM. DEV. L 5 (1992); Stacey Janeda Pastel, *Community Land Trusts: A Promise in Alternative for Affordable Housing*, 6 J. LAND USE & ENVTL. L 293 (1991).
 67. For a brief discussion of SFCHT's early activities, see Peter W. Salsich, Jr. *Thinking Regionally About Affordable Housing and Neighborhood Development*, 28 STETSON LAW R. 577-584, 585 (1999).
 68. *Santa Fe NonProfit*, *supra* note 65.
 69. *Id.*
 70. BBCN Draft Statement, *supra* note 18, at 51.
 71. *Id.*
 72. *Santa Fe NonProfit*, *supra* note 65.

PART III:

PREVENTING HOMELESSNESS

HOMELESSNESS AND HUMAN RIGHTS: TOWARDS AN INTEGRATED STRATEGY

MARIA FOSCARINIS*

Years ago, a volunteer team of lawyers staffed a legal clinic at a shelter in Washington, D.C. Any resident who felt a need for legal counsel could come to the folding table we had set up in the shelter hallway. Quite a few did, bringing a wide range of problems: evictions, benefit denials, unpaid wages. While their circumstances were unusually desperate, these clients presented routine legal problems. Others had more complicated stories involving the CIA, radio waves and thought control. These problems we did not generally think of as legal: we referred these clients to the social workers thinking, almost certainly mistakenly, that there was a mental health treatment program for them.

Then there was the third, large category of people who came to the clinic, explaining that they had lost their job, or could not find housing they could afford on their welfare checks or their wages as day laborers. From their perspective, at least, these were problems that lawyers might be able to help address. But for us, these were the cases that were the most frustrating and unsettling: existing sources of aid—such as subsidized housing and jobs programs—were generally filled beyond capacity. As lawyers seeking redress within existing laws, there was not much that we could do.

I. INTRODUCTION

Lawyers and legal advocacy have played a crucial role in addressing homelessness since it became a major social problem in the United States in the 1980s. Lawyers have sought to bring the power, influence and strategies of the law and legal profession to bear in bringing about solutions to homelessness. This advocacy has resulted in important gains: it has raised public awareness, informed policy and decision makers, and provided concrete aid that has alleviated suffering and helped people move out of homelessness.

At the same time, however, legal advocacy has been circumscribed by the traditional parameters and constraints of the US legal system. The most important elements of solutions—long-term and immediate—to homelessness are housing, jobs and medical care.¹ But there is little or no constitutional basis for protecting or creating access to these necessities; nor are there broad statutory guarantees of access to them. Statutory schemes have been restricted to particular categories of persons in need, limited by funding levels significantly lower than need, or both.² Indeed, our legal system is commonly described as one that protects civil and political rights, but not economic or social rights.³ As a result, legal advocacy to address and redress homelessness proceeds on a somewhat ambiguous foundation. In some important ways, there is an imperfect fit between the problem and the legal tools currently available to address it.

In the face of this disconnect, lawyers have been creative in devising legal strategies to effectively pursue solutions. Litigation, legislative advocacy and regulatory advocacy have all been successful in bringing some relief. Through such strategies, lawyers have also engaged in efforts to overcome or compensate for the limitations of current law by pressing for new laws, by establishing the political rights that might create the constituency to support them, and by advocating for access to larger systems of aid and the broader coalitions of political support they carry. But the limitations of these strategies have also resulted in some paradoxical remedies, misguided legal and policy debates, and unclear directions for the future.

This essay considers whether and how human rights principles can help resolve these tensions, adding to efforts to end homelessness. To establish a context, it begins with an overview of litigation and legislative advocacy to date, briefly reviewing major strategies, cases, and statutes; it also discusses limitations of these approaches, and some impacts of these limitations. The essay then considers relevant human rights principles, approaches and instruments, and whether they can be useful aids in addressing homelessness in the US. The essay concludes with examples of potential uses of human rights and describes some current strategies to begin implementing them.

II. LEGAL ADVOCACY TO DATE: SUMMARY OVERVIEW

Legal advocacy on behalf of homeless people over the past two decades has employed a wide range of strategies and focused on multiple substantive areas. Legal strategies to date have included litigation to enforce existing laws, legislative and regulatory advocacy to create new laws, and subsequent litigation to enforce those new laws. Substantively, these strategies have focused on a range of issues and goals: from meeting immediate and longer-term needs for food and shelter, to opening access to “mainstream” programs, to establishing political rights, to challenging efforts to “criminalize” homelessness.

Initially relying on litigation under existing laws, advocates expanded their efforts to include legislative and regulatory advocacy in order to move beyond the limitations of existing laws. The successes of this approach led to more litigation to enforce the new laws. Local monitoring of compliance with and implementation of laws has been crucial to that follow-up process, and outreach to inform local advocates and potential beneficiaries of legal rights has been essential. Through this effort, the importance of local partnerships and collaborations has also become apparent, giving rise to further options for advocacy. Currently, successful advocacy often depends on the integration of a wide variety of different strategies.⁴

It is, however, possible to identify some overall trends over the past two decades of legal advocacy on behalf of homeless persons. In broad outline, early legal advocacy focused on addressing immediate basic needs of homeless persons, such as shelter and food, through both litigation and then legislation. Later legal advocacy focused on prevention, such as discharge planning and transitional housing, and on establishing political and civil rights, again through both legislation and litigation. Current legislative efforts are focused on longer-term solutions, such as housing and access to mainstream programs; current litigation is focused on access to mainstream programs as well as challenges to efforts to “criminalize” homelessness.

In general, the overall direction of advocacy can thus be characterized as a movement from emergency to longer-term solutions. Both sorts of solutions are necessary, and generally part of advocacy agendas; emergency aid is typically easier to achieve. In light of this progression, the appearance of the criminalization trend is not surprising: the emergency solutions that have been achieved to date have been almost by definition insufficient to solve the problem, while giving the impression to policymakers and the public that solutions are in place. As the problem nonetheless continues to grow, simply criminalizing it has become increasingly easier to justify.⁵

To date, however, what is missing from these efforts is an articulated, specific commitment to underlying rights to basic subsistence. While advocacy organizations often subscribe to basic principles of social justice that incorporate such rights, these may be difficult to integrate into legal advocacy strategies. Including human rights law and principles in such strategies may be one way to bridge this gap, strengthening legal advocacy and providing a clearer direction and firmer basis for moving forward.

The Right to Shelter and Other Immediate Basic Needs

Probably the most significant early legal advocacy was that focused on establishing a right to shelter in New York City. In *Callahan v. Carey*, a New York State trial court held that homeless plaintiffs had a reasonable likelihood of succeeding on their claim that state constitutional and statutory requirements that the city care for the needy included an obligation to shelter the homeless.⁶ Following that ruling, plaintiffs and the city entered into a consent decree obligating the city to provide overnight shelter and food to every needy homeless man and detailing minimum shelter standards.⁷ Several subsequent cases resulted in the establishment of similar rights to shelter in other parts of the country under state statutory provisions, either by court ruling⁸ or consent decree,⁹ under a federal statute,¹⁰ and by ballot initiative.¹¹

At the national level, funds for emergency food and shelter through the federal disaster relief program were appropriated for homeless persons on an *ad hoc* basis beginning in 1983.¹² In 1986, legislation creating and funding “demonstration” shelter and housing programs for the homeless was enacted.¹³ Also enacted in 1986 was the Homeless Eligibility Clarification Act, which removed permanent address requirements from a series of federal benefit programs.¹⁴ In 1987, the first major federal legislation addressing homelessness, the Stewart B. McKinney Homeless Assistance Act, was passed, incorporating shelter, transitional housing and a small permanent housing program as central elements;¹⁵ and creating some property rights to unused federal properties for groups serving homeless people.¹⁶ Following passage of the legislation, advocates initiated monitoring efforts to determine whether its programs were being properly implemented, and followed up with successful litigation to correct non-compliance.¹⁷

Since these early efforts, advocacy to meet homeless persons’ immediate needs has evolved and changed. In New York City, while the Callahan decree initially resulted in significant legal and practical success in requiring the provision of emergency shelter, advocates expended much effort in attempting to ensure government compliance with the right to shelter,¹⁸ and city officials imposed restrictions narrowing the right.¹⁹ In Washington, D.C., in the face of repeated contempt orders,²⁰ city officials sought changes in the law to undermine the basis for the right. The result was the elimination of the right.²¹

Changes at the federal level have been more positive. Funding for the McKinney shelter and housing programs has increased somewhat significantly. In 1987, appropriations for these programs stood at \$190 million; currently, for 2001, they are \$1.26 billion. The McKinney Act programs have also changed substantively, with increased emphasis on long-term, not just emergency, solutions.²² At the same time, there has been increased emphasis on creating collaborative local processes to address the needs of homeless people. For example, the HUD McKinney programs are now distributed through a “Continuum of Care” process that brings together local government and non-profit providers, through a process aimed at collaboratively devising a plan to meet the needs of homeless persons in the community.²³

Limitations of this Approach

Legal advocacy that is focused on the right to shelter and other immediate basic needs has a built-in limitation: it seeks a temporary solution. If the problem were simply short-term, this would not matter: for instance, where homelessness results from flood, hurricane or other natural disaster, and not from poverty, emergency solutions may be appropriate and effective. In those cases, once the sudden emergency is addressed, its victims are generally able to return to housing stability. Where the cause is poverty-related—such as the inability to find affordable housing, get a job at wage sufficient to pay for housing, or to obtain mental-health care or substance abuse treatment—then emergency shelter is not a sufficient solution to homelessness: once the emergency need is met, there is nowhere to go. While shelters when available can provide

important immediate relief, they are not appropriate as a long-term solution. It is important to emphasize that currently there is not nearly enough emergency shelter available to meet the need, and shelters regularly turn away requests for help.²⁴

On a practical level, emergency shelters also raise safety, privacy, and health concerns for homeless people. The rules and restrictions shelters impose in order to operate efficiently—such as the lack of private telephone access, curfews that require clients to leave very early in the morning or return early in the afternoon or evening—may compromise the ability of homeless persons to look for employment or housing.²⁵ Moreover, shelters typically impose time limits, ranging from a few days to several months. But without sufficient permanent, affordable housing—and without permanent supportive housing for those who need it—there may be nowhere to move to upon leaving shelter accommodations.²⁶

One result is that some homeless people may reject staying in a shelter in these circumstances and instead “choose” to live in public places, encampments or abandoned buildings. Because there is little public understanding of the limitations of shelter and the lack of long-term housing options, these homeless people may then be perceived to have “chosen” the homeless “lifestyle.”²⁷ Debates ensue about freedom and whether it is appropriate to force someone to accept help, diverting attention away from the nature and availability of that help.

In a further paradox, because of the lack of permanent housing, shelters tend to become permanent, and those who do use them on a longer-term basis may become dependent and “institutionalized,” rather than self sufficient.²⁸ Shelter may also become acceptable in the public eye as housing of last resort, defining societal notions of acceptable minimum safety net standards downward. At the same time, the limitations of shelters mean that homelessness remains unsolved—and people remain on the street or in other public places—and the problem begins to be perceived as “intractable.” The result is further loss of public will to address it, opening the way to simply blaming or demonizing homeless people.²⁹ Completing the cycle, homeless people are then seen as not only not “like you and me” but completely “other.”³⁰ This may lead to divisiveness, hostility and in some cases even violence.³¹

Advocates seeking to counter these characterizations may then find themselves arguing for a view of homelessness that honors homeless persons’ agency and self-determination.³² From a completely different perspective, such advocates may also be neglecting or minimizing the important realities of homelessness: the lack of resources—housing, income, services, and shelter—that do force many people to live in public places. But calling homelessness “involuntary” does not need to be interpreted as diminishing anyone’s capacity for self-determination. Nor is recognizing that homeless people suffer disproportionately from physical and mental disabilities and illnesses necessarily patronizing.

While acknowledging the significance of respect, it is important to remember that facts sometimes are just facts.³³ In fact, there is not enough housing, or employment opportunity, or healthcare. Indeed, stepping back from this sort of debate suggests that it is at least to some extent a byproduct of a legal strategy aimed at securing emergency shelter. If instead we focus our attention on the need for longer-term solutions to homelessness—such as housing, jobs and health care—then many of these issues become irrelevant. For example, if there were sufficient housing, jobs and healthcare, homeless people would not be forced to choose between emergency shelter and autonomy.

Homelessness Prevention

Legal advocacy to prevent homelessness seeks to engage these underlying causal factors. Such advocacy has generally focused on persons in a variety of state programs or custody arrangements who are at risk of homelessness. For example, advocates have successfully argued that, under state law, state psychiatric institutions must address housing in planning for the

discharge of patients,³⁴ and that state-determined welfare benefit levels must be sufficient to allow recipient families to maintain their own housing.³⁵ In these cases, the focus was on persons who were wards of the state or beneficiaries of government aid; thus, advocacy to prevent homelessness could build on already-established government duty. Along similar lines, in 1986 federal legislation established a pre-release program to allow institutionalized persons to apply for food stamps and SSI benefits prior to their release, in order to prevent their becoming homeless upon release.³⁶

State legislation has created special programs to prevent persons from becoming homeless through the loss of their own housing due to some sudden emergency event. For example, the Homelessness Prevention Program in New Jersey provides a pool of funds that those at risk of homelessness through eviction or foreclosure can borrow from in order to avert that risk; several other states have adopted similar programs. While successful, however, these programs are limited in scope: the New Jersey program, among the largest, can aid only a fraction of families that seek its help.³⁷ This type of program does not represent a right or entitlement, but rather a limited sum of money set aside for a specific purpose.

A different prevention-oriented approach focuses on gaining access for homeless people to “mainstream” entitlements that could provide resources to help them out of homelessness.³⁸ For example, the McKinney Act protects the right of homeless children to enroll in and attend public school and pre-school, and sets forth special procedures to accommodate their circumstances and ensure their ability to exercise this right.³⁹ Legislation also protects the right of homeless persons to receive SSI, veterans and Medicaid benefits despite their lack of a permanent address.⁴⁰ Similarly, legislative and regulatory advocacy led to the removal of IRS language that required applicants for the Earned Income Tax Credit to be living in a “home,” thus expanding eligibility to the large percentage of homeless people who work.⁴¹

Limitations of this Approach

Much of this prevention-oriented advocacy, while effective, has been and is constrained by the limited resources available to implement remedies when they are won—as well as to carry out the advocacy itself. In part, this is because of limitations in the legal system, and the difficulty in compelling government agencies to spend additional funds to carry out court rulings. Advocacy is limited by political constraints: the absence of a powerful constituency means that programs and policies created to prevent homelessness lack a strong base of support, and typically remain too limited in scope to meet anything approaching the entire need. More fundamentally, though, here too there is a built in limitation: resources are typically spent according to specific allocations, and not according to need.⁴²

Partly in response to resource limitations, some advocacy has focused on targeting, setting aside, or prioritizing resources to meet the needs of homeless people, which are presumably most urgent. Precisely because resource allocation amounts are not tied to need, however, this can lead to paradoxical results. On a practical level, by taking resources away from low-income housing for the poor, it increases the risk of homelessness for the overall poverty population. On a policy level it can lead to proposals to create substandard housing—despite health and other concerns that led to its demise originally—as a resource-conserving solution of last resort.⁴³

Ensuring access to “mainstream” benefits is not alone a sufficient solution to homelessness. The low levels of many public benefits programs may contribute to homelessness to begin with; indeed, a significant number of homeless persons do receive welfare and other benefits, yet because those benefits are so low relative to housing costs, they remain homeless. However, if undertaken in coalition with other anti-poverty groups—and coupled with advocacy for higher assistance levels—it can lead to more meaningful change. Indeed, in some cases advocates have

sought to address this underlying problem through advocacy to increase benefits to reflect housing costs. However, the legal basis for such advocacy is limited.

These advocacy efforts can have mixed effects on public perceptions as well. Preventive—or emergency—programs that meet only a small portion of the need provide crucial help to those who are assisted. They also focus attention on the issue, the need and—in the case of preventive measures—the causes of homelessness. But without concerted, properly framed public education efforts, they also risk conveying the impression to policymakers and the public that solutions are in place. Then, the fact that the problem remains may be attributed to the perceived individual failings of those who are in fact left out.

Political Rights

A series of advocacy efforts has focused on homeless persons' political rights. In a court case challenging the denial of registration to vote to homeless persons, the court held that homeless persons could not constitutionally be denied their fundamental right to vote simply because they lacked an address.⁴⁴ Instead, the court held that homeless voters should be permitted to show residency in a particular voting district by designating a particular place where they regularly return and intend to remain for the present—be it a park bench or shelter. In essence, the court required that traditional methods of establishing and documenting residence in a particular district be adjusted to accommodate homeless persons' circumstances.

Following passage of the National Voter Registration Act, the Federal Election Commission promulgated regulations specifically providing for registration of persons with “non-traditional” residences;⁴⁵ FEC comments to the regulation make clear that this includes “those living on city streets.”⁴⁶ Outreach by national advocacy organizations to state and local advocacy and service groups has aimed to help them inform their homeless clients about their rights to vote, and to help them register. Such outreach efforts have also aimed to help local groups organize campaign forums focused on homelessness, housing, jobs and other important issues, in an effort to inject issues relevant to homeless people into electoral campaigns. Get out the vote efforts organized locally with national support have attempted to help homeless people actually exercise these rights.⁴⁷

Related to this advocacy are efforts to counter the exclusion and under representation of homeless persons in the decennial U.S. census. Directly relevant to political representation, as well as to funding allocations dependent on poverty data, the Census Bureau in 1990 adopted a process that expressly excluded large numbers of homeless people. After advocates challenged the legality of this process, the Bureau issued a disclaimer, included as part of its official data, acknowledging that they were not a “count” of the homeless population.⁴⁸ This provided some victory and relief; however, subsequent litigation to secure further relief was unsuccessful, and no full accounting of the homeless population occurred.⁴⁹

Limitations of this Approach

Advocacy on behalf of homeless people's political rights is important: it advances their rights as well as advocacy for solutions to homelessness. Homeless people are widely perceived as non-voters, and this perception is often true; the resulting political weakness of homeless people as a constituency hampers advocacy, especially in legislative arenas. Thus, establishing political rights appears in some ways a promising advocacy avenue: in addition to vindicating rights that are inherently valuable, it also is the basis on which political pressure could be exercised, building a more potent constituency. But in practice, while this work is valuable, it is also limited.

While political rights are of course extremely important, they are in fact often secondary to the basic survival needs that homeless people face by virtue of their circumstances. Further, beyond the difficulty homeless people face in simply establishing and then exercising their political rights, organizing into a constituency on issues specific to homelessness is even more elusive. Isolation and lack of access to communication and transportation systems, severe and urgent material needs—all of the factors that impede the establishment and exercise of voting rights to begin with—also make it extremely difficult for homeless people to come together in organized groups, formulate joint positions, and mount letter-writing and telephone campaigns.

In short, the traditional mechanisms by which ordinary citizens participate in the political process—and which are assumed to be available to all in our democratic system—are generally not available to homeless people, simply because they are homeless. Without some minimum level of material stability, the exercise of political rights becomes highly problematic, if not impossible. Poor people in general are often marginalized from traditional political processes; homeless people, however, are marginalized in ways that are deeper and more extreme in both nature and degree. A fixed address is an essential aspect of membership in contemporary American society; without it, participating in any organized process or system is very difficult.

Countering the “Criminalization” of Homelessness

In the last decade, the criminalization of homelessness has been a growing trend. Cities have enacted new laws or resurrected old laws that regulate the use of public space, imposing criminal sanctions for conduct such as sleeping or begging in public places. This trend has been fueled by city concern over the growing presence of homeless people in public places such as parks, sidewalks and transportation stations, and their use of such sites as living spaces. Laws enacted or enforced as part of this trend have been aimed specifically at homeless people, or have had their primary impact on them.⁵⁰

In response, litigation has challenged this trend, typically on federal constitutional grounds, and such litigation has recently dominated legal advocacy on homelessness.⁵¹ Some courts have held that where there is no alternative but to sleep in public—where the number of shelter spaces is smaller than the number of homeless persons—then criminal laws that prohibit homeless persons from sleeping in any public place are unconstitutional.⁵² Similarly, courts have held that broad restrictions on begging in public spaces may violate the First Amendment and possibly the Equal Protection Clause.⁵³ In these cases, courts have generally viewed begging—or solicitation—as speech protected by the First Amendment. Homeless persons’ privacy and belongings have also been held to be protected by the Fourth Amendment in some cases, and traditional Fourth Amendment analysis adjusted to reflect the reality that they are living in public: reasonable expectations of privacy have been expanded to protect public areas where those areas are in fact someone’s home.⁵⁴

Other courts have rejected such challenges, however.⁵⁵ Moreover, in the wake of successful litigation, many cities have taken steps to try to make their laws “litigation proof.” Most commonly, they adopt narrower public space restrictions that do not prevent sleeping in all public spaces or at all times, thus eliminating much of the basis of or making much more difficult the constitutional challenge.⁵⁶ Similarly, they have altered the restrictions on begging, broadening them to cover all forms of solicitation while also focusing them more tightly on specific conduct, again limiting the possibility of constitutional challenge. In many cases, these are and should be taken as victories; in some cases, they simply move the battle to the enforcement arena.⁵⁷

Limitations of this Approach

By definition, countering criminalization is a reactive approach: it fights what is a very negative, destructive and even dangerous trend.⁵⁸ As such, it tends to focus advocacy efforts and energy away from solutions to homelessness. Further, it risks framing the issue in terms of the assertion of “negative” freedoms; for example, the “right” to sleep on the street and other public places. Nevertheless, this is not a necessary result; indeed, advocates can instead use criminalization efforts positively and proactively.⁵⁹

Taking advantage of city concern with the problem of homeless people sleeping in public places, advocates can focus attention on the lack of indoor alternative places—shelter and housing—and argue that additional resources should be directed at those alternatives, rather than at use of the criminal justice system. They can also reach out to the business community to lend its political support to efforts to increase resources. In the shorter term, outreach by social service agencies, drop in centers, training and education of local police forces, can all be used to foster a more constructive approach, and to build a larger constituency of concerned and informed members of the public.

Countering the criminalization of homelessness may in fact form the basis for effective, proactive advocacy, provided it is framed properly. Taking advantage of city and business interest in addressing the problem of people living in public, advocacy can focus attention on the causes of and solutions to this problem. In some ways this is an opportunity to rethink advocacy and, informed by the experience of the past, as well as new information and models now available, place it on a firmer footing.

Legal advocacy on homelessness has been a creative patchwork of approaches and substantive lines of attack. Pulling together bits and pieces of statutes, federal and state constitutional provisions, and new legislative frameworks, advocacy has led to some new rights, benefits and legal protections for homeless people. It has resulted in concrete benefits: emergency shelter, food and services, transitional and some permanent housing. It has provided specific relief to homeless men, women and children, created and defined rights and processes to protect and accommodate them and, in some cases, led to recognition of important rights.

However, it has also been insufficient, and led to some contradictory and unintended consequences. Emergency aid, while critically important, does not solve the problem. Access to “mainstream” programs, also important, does not address the underlying substantive inadequacies of those programs. Civil and political rights remain largely unexercised, as meeting basic survival needs takes priority. And prevention, while obviously the key, has no dependable, broad-based legal or political hook.

Meanwhile, largely unhelpful debates and policy initiatives flourish. Commentators and scholars wonder why homeless people “choose” not to use shelters, and argue whether forcing them to accept help is legally and morally appropriate. Others debate homeless persons’ “freedom” to live in parks and on sidewalks versus the general public’s interest in clean and attractive public spaces. Policymakers grapple with the need to revitalize the inner city by attracting businesses and more affluent residents versus the interests of those seeking to establish housing and services for the poor. While all of these debates have some substance, they all also are missing some important point.

III. INCORPORATING A HUMAN RIGHTS APPROACH: CAN IT HELP STRENGTHEN ADVOCACY?

On a fundamental level, each of these advocacy approaches may also unintentionally reinforce the isolation of the poor and homeless. Focusing on providing help to homeless people can set them apart from others, even though in fact all members of society benefit from help of

some kind: businesses benefit from tax incentives, homeowners benefit from tax deductions, non-profits benefit from tax exemptions, for example. Advocacy focusing specifically on the needs of some, and government obligation to meet those needs, may skew our perspective and further isolate homeless people from the rest of what are in fact interdependent societal structures.

Advocating for others' rights as if they are separate from "our" rights can not only lead to divisiveness, albeit the more benign sort fostered by charity, but also to a narrow base of support. One of the reasons it is so difficult to build support—political or financial—for advocacy on homelessness and poverty is because those seen as the direct beneficiaries are poor and powerless. In contrast, civil liberties groups have built a far broader base of support founded on the notion that everyone's civil rights are jeopardized whenever anyone's rights are violated.

Incorporating a human rights approach into domestic advocacy may help broaden our focus and support by laying a foundation that is more universal in its reach. Such an approach does not necessarily imply dramatic change; it is no magic bullet. Recognizing a right to housing would not immediately or necessarily solve the problem of homelessness. Nor is it antithetical to a collaborative, process-oriented approach; indeed, the human rights approach includes and emphasizes attention to process and inclusion. Rather, it may help us conceptualize what it is that advocacy aspires to, and provide some legal content to those concepts.

Human Rights: Relevant Documents

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, provides that "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability. . . or other lack of livelihood in circumstances beyond his control. . . ." In addition, the Declaration provides that everyone has this right, "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."⁶⁰ In addition, the Universal Declaration recognizes and protects civil and political rights.⁶¹

Initially, one comprehensive human rights covenant was planned to elaborate and flesh out the provisions of the Universal Declaration. Ultimately, however, the provisions were divided and a pair of subsequent conventions adopted to elaborate on the Universal Declaration: The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.⁶² The ICESCR elaborates further on the meaning of an adequate standard of living and its component elements.

States parties to the ICESCR "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." The ICESCR also commits the states parties to "take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operations based on free consent."⁶³ The committee in charge of the ICESCR's interpretation and enforcement have defined the right to consist of seven elements: legal security of tenure; availability of services, resources and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. The obligation on states consists of four "layers:" to respect, protect, promote and fulfill the right.⁶⁴ Further, certain components of the right that can be immediately carried out, such as the non-discrimination provisions, are immediately effective. Others are subject to "progressive realization."⁶⁵

Recent documents, in particular, the Vancouver Declaration on Human Settlements, and the Habitat Agenda, documents resulting from the Habitat I and II Conferences in 1987 and 1996, respectively, elaborate further on these concepts.⁶⁶ The Habitat Agenda incorporates the right to

housing, reaffirming the commitment to the right to housing “as set forth in the UDHR and as provided for in the” ICESCR, the CERD, ICEDW, and the CRC, “taking into account that the right to housing, as included in the above mentioned international instruments, shall be realized progressively.”⁶⁷ The Agenda also elaborates further on the definition of the right, stating for instance that: “Adequate shelter means more than a roof over one’s head.”⁶⁸ It includes provisions to link housing to employment opportunities, transportation and other basic services, to ensure access to financing, and to create participatory processes. It addresses the need for government regulation and legal frameworks to enable markets to work, and directly to assist vulnerable and disadvantaged groups, which may be otherwise excluded by the market. It includes provisions to prohibit discrimination in housing, including that based on property, combat exclusionary practices, and to protect persons from forced evictions.⁶⁹

The Habitat Agenda contains provisions specifically focused on the very poor and homeless, in no small part due to the active participation of non-governmental organizations in drafting the document. In addition to direct assistance to disadvantaged and vulnerable groups—including homeless persons⁷⁰—it specifically commits governments to promote supportive services for homeless and other vulnerable groups, to ensure that homeless persons are not penalized for their status, and to give “special attention” to the “circumstances and needs of people living in poverty, people who are homeless. . .and those belonging to vulnerable and disadvantaged groups” in implementing all of the document’s commitments. In addition, it includes commitments to “[p]romot[e] shelter and support[] basic services and facilities for education and health for the homeless” and to address “the specific needs and circumstances of children, particularly street children.”⁷¹

The document also includes a provision that homeless persons not be penalized for their status. This latter provision was sponsored and successfully promoted by the US delegation, at the request of US NGOs, to address the trend towards the “criminalization” of homelessness in many US cities. It was inserted in the section addressing “forced evictions,” on the theory that the current “sweeps” of homeless encampments are the US counterpart to the forced evictions of squatters living in tent cities in other parts of the world.

The Agenda embeds the provisions on homelessness and adequate housing in a broader policy and legal framework. It defines the concept of adequacy broadly to include proximity to work, social services and transportation. Placing housing in the larger context of economic and community development it emphasizes the need for links between housing and jobs. The document also makes clear, consistent with developing international jurisprudence, that government recognition of the right to housing is not tantamount to government obligation to provide a home free of charge to everyone.⁷² Rather, the obligation of government is to pursue and promote policies that are will promote housing rights through a mix of market and government forces.⁷³

The human rights documents create a balanced conceptual framework for rights and responsibilities and for integrating individual with societal needs. For example, the Universal Declaration recognizes basic rights to housing, food, medical care; but it also incorporates the responsibility of the individual: assistance is foreseen only when needed due to disability or other circumstances beyond the individual’s control.⁷⁴

The Agenda incorporates and promotes openness (“transparency”) and community participation, especially by those most immediately affected, in carrying out these policies. It also adopts and incorporates an “enabling” approach, in which the national government brings together and “enables” the collaboration of different actors, including the private sector, non-profit organizations, local governments and labor unions. However, within this approach, the Agenda imposes a special responsibility on governments to protect members of disadvantaged and vulnerable groups.⁷⁵

The Habitat Agenda is the most recent and comprehensive elaboration on the meaning of the human right to housing in the contemporary world. While not a treaty, the Agenda was agreed to and the Istanbul Declaration was signed by 171 countries, including the United States.⁷⁶

Using Human Rights in the US: Approaches and Limitations

Substantively, each of the documents described above is highly relevant to addressing homelessness in the United States. However, legally their applicability in the domestic context is by no means clear. Moreover, the status of each document is not the same.

The UDHR is not a treaty, but rather a declaration; as such, it is arguably not binding law.⁷⁷ Nevertheless, many scholars believe that as a result of consistent practice of states and the international community, the UDHR has become part of “customary international law,” and has thus become binding international law.⁷⁸ Moreover, some argue that even though it may not be sufficiently accepted to be binding customary law, it is binding by virtue of states’ adoption of the UN Charter.⁷⁹

Numerous subsequent treaties and conventions, which are binding international law, recognize and elaborate on the right to housing as well as other related economic rights. The most detailed and relevant to housing rights, the ICESCR, was signed by the United States in 1972 but has not yet been ratified.⁸⁰ The Convention on the Rights of the Child, which includes recognition of children’s right to housing, has been ratified by 191 nations, but not by the U.S. However, the Convention on the Elimination of All forms of Racial Discrimination, which includes at least an acknowledgement of the right to housing, has been signed and ratified by the U.S. Likewise, the International Covenant on Civil and Political Rights has been signed and ratified by the U.S.⁸¹

In any case, ratification of a treaty does not automatically incorporate it into US law. While the U.S. Constitution accords treaties the same status as federal statutes,⁸² they have typically been ratified with reservations that provide that they are not “self-executing,”⁸³ and courts have upheld such reservations.⁸⁴ Not self-executing means that the treaty provisions are not judicially enforceable in the U.S. absent passage of implementing legislation by Congress.⁸⁵

None of the human rights treaties is self-executing, and none has been implemented legislatively. However, the Supreme Court has held that whenever possible, federal statutes must be interpreted so as not to conflict with international law.⁸⁶ This principle, which applies to ratified treaties whether self-executing or not, and to customary international law, injects human rights law into US law as an interpretive tool in cases where US law is unclear and capable of more than one interpretation.

Thus, despite significant limitations, international human rights law can be a useful supplement to legal advocacy on homelessness. First, it can serve as an interpretive tool in litigation where federal or state law is unclear. Second, it can serve a “standard setting” function in policy advocacy. And third, it can help reframe and re-conceptualize advocacy, placing it on a firmer foundation: away from charity and dependence and towards justice and interdependence. Moreover, such a redefining of the issues may also help broaden the advocacy constituency: human rights are universal; as such, their assertion benefits all, not merely those in need. This section looks at some of these potential uses; rather than a comprehensive discussion, it is an outline meant to stimulate thought, discussion and, potentially, action.

Human Rights Law as an Interpretive Guide

According to established Supreme Court precedent, “an act of congress ought never to be construed to violate the law of nations, if any other possible construction remains.”⁸⁷ Indeed, according to later court decisions and commentators, courts must interpret ambiguous domestic

law in general so that it is consistent with binding international law, whether derived from treaty or custom. Moreover, courts in their discretion may rely on non-binding international law—such as declarations, treaties that have not been ratified, and practices that have not become customary law—to interpret ambiguous domestic law.⁸⁸

The Supreme Court has looked to international law as well as the laws and practices of other nations in analyzing whether a particular punishment offended civilized standards of decency, and was thus “cruel and unusual” under Supreme Court the Eighth Amendment to the U.S. Constitution.⁸⁹ Similar analyses have been used by the Court in applying the Due Process Clause.⁹⁰ However, more recent signs from the Court are less than clear. In a 1988 death penalty case, a four-Justice plurality cited human rights treaties and international comparative information in applying Eighth Amendment analysis.⁹¹ The following year, in another death penalty case, the plurality was reversed, and rejected the argument that other countries’ practices are relevant to that analysis.⁹²

Nonetheless, in a 1997 decision concerning the constitutionality of a state law banning assisted suicide, Justice Rehnquist, writing for the Court, cited the practices of other countries (in particular, “Western democrac[ies]”).⁹³ The Supreme Court’s views on the status of human rights law and international comparative information may thus be somewhat unclear—and in particular, may depend on the nature of the case at issue. Currently, at least, it is difficult to consider human rights law and comparative analysis a reliable basis for argument. However, at the same time, it is clear that both remain significant and potentially relevant.⁹⁴

A number of lower court decisions, federal and state, have referred to or cited human rights law in potentially relevant contexts. Two cases in the Second Circuit relied in part on international documents in analyzing prison conditions under the Eighth Amendment;⁹⁵ in another case, a federal district court cited human rights law in ruling that the children of illegal aliens had a right to an education under the Equal Protection Clause.⁹⁶ A state court relied in part on international law in protecting the right to travel within a state;⁹⁷ and another state court cited the Universal Declaration of Human Rights in interpreting a state statute setting a minimum subsistence standards for welfare benefits.⁹⁸

According to one state supreme court judge:

It is a potentially powerful argument to say to a court that a right which is guaranteed by an American constitutional provision, state or federal law, surely does not fall short of a standard adopted by other civilized nations. It is a much more difficult, and riskier, argument to tell a court that it must displace some law of a state or of the United States, with an external international standard.⁹⁹

This approach has potential applications in legal advocacy on behalf of homeless persons in various areas. For example, challenges to “criminalization” laws and policies sometimes rely on a right to intrastate travel, which has not been explicitly recognized as a constitutionally protected right by the Supreme Court, or a right to “freedom of movement” under the Due Process Clause, which is not always clearly articulated. The ICCPR, however, guarantees the “right to liberty of movement,” and freedom to choose one’s residence “within the territory of a state.”¹⁰⁰ Similarly, while education is not recognized as a fundamental right in the federal constitution, a number of state constitutions protect it; international law on children’s right to an education may be relevant to interpreting such provisions.¹⁰¹ Perhaps most importantly, while a right to housing seems difficult to construct in the U.S. constitutional context, some movement in that direction may be possible.¹⁰²

While it is sometimes stated that the U.S. Supreme Court has held that there is no constitutional right to housing,¹⁰³ in fact this is not quite the case: the Court held, in the context of a landlord-tenant dispute over habitability, that there is no right to housing of a particular quality.¹⁰⁴ Thus, in theory the question remains open, although not likely given current trends in the Court and its jurisprudence to be resolved in favor of such a right. However, as several

commentators have noted, numerous federal statutes recognize the importance of housing and provide funds, albeit insufficient, towards making it available to all.¹⁰⁵ Moreover, federal law protects some housing rights, such as the right to be free from discrimination; additional rights are guaranteed in state and local law.¹⁰⁶ While incorporating the entire right may be an elusive and far-off project, using elements of the human right to housing to help interpret housing rights that are protected may be feasible.¹⁰⁷

Standard Setting

Even if they do not create binding legal rights, international documents create standards that nations endorse and to which they may be held. By adopting the Universal Declaration, for example, the US publicly committed itself in the world community to abide by the norms it articulates. Regardless of whether or not the Declaration constitutes binding international law, it defines and sets a standard that the US has recognized and adopted. Similarly, while the Habitat Agenda—or Istanbul Declaration—is not a binding treaty, it is at a minimum a statement of understanding as to internationally accepted norms and standards. By its terms, it is a commitment made to and before the international community to carry out a series of steps to abide by and conform to those standards.

Standard setting can be translated into a useful tool for policy advocacy in the US. According to the Habitat Agenda, a special session of the UN General Assembly is scheduled for June 2001 to follow up on Habitat II. In preparation for the session, known as Habitat II + 5, signatory states are to collect information and report to UNCHS on the status of their implementation efforts. While this is an obligation on national governments, there is also provision in the Agenda for monitoring by other entities, including “communities.” This is an opportunity for national and local community groups and advocacy organizations, as well governments, to conduct their own evaluations of implementation to date.

The UN Commission on Human Settlements (“UNCHS” or “Habitat”), the UN body responsible for the implementation and oversight of the Agenda, has developed a set of “indicators” designed to measure implementation of the 20 key provisions of the Habitat Agenda by the states-signatories. These indicators identify key elements of the commitments that are measurable, and seek quantifiable data relevant to them. The major Habitat II commitments covered by these indicators include the following, of particular relevance to US advocates on homelessness and housing.¹⁰⁸

Provide Security of Tenure

The two indicators designed to measure compliance with this commitment concern tenure types and evictions. With respect to tenure types, the relevant data is: “percentages of woman and man-headed households in the following tenure categories: (a) owned; (b) purchasing; (c) private rental; (d) social housing; (e) sub-tenancy; (f) rent free; (g) squatter no rent; (h) squatter rent paid; (i) other, including homelessness. With respect to evictions, the relevant data—for developed countries—focuses on evictions for non-payment of rent; however, it also includes evictions during large public works projects [presumably from public places].¹⁰⁹ Significantly, in the section on forced evictions, the Habitat Agenda specifically states that homeless persons are not to be penalized for their status.¹¹⁰

Promote the Right to Adequate Housing

Within this area, UNCHS identifies a qualitative data set, including “yes/no” questions regarding whether the constitution or national law promotes housing rights, and protects against eviction. This area also includes an indicator focused on the housing price to income ratio.¹¹¹

Promote Social Integration and Support Disadvantaged Groups

The indicator measures numbers of poor households, according to the poverty line. While these indicators are quite general, they can be used by advocates both locally and nationally to place the US in an international context and to place homelessness and housing in human rights context. For example, advocates can incorporate these concepts in their advocacy to local city councils, using for instance the Habitat Agenda language on forced evictions, which specifically admonishes against penalizing homeless persons for their status as part of their argument against sweeps. The indicators system, and the monitoring and oversight mechanisms it is tied to, allows advocates to argue that cities pursuing such policies are violating the Habitat II commitments, lessening US compliance with this international norm.

Some US cities have adopted resolutions identifying themselves as human rights cities. In particular, three California cities—San Francisco, Berkeley and Oakland—have passed resolutions affirming the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights and pledging to oppose any legislation or actions that infringes on those rights.¹¹² Though these resolutions are non-binding, they can give particular meaning to monitoring efforts in those particular cities: a city that has adopted such a resolution has a particular obligation to respect the human rights of homeless people.¹¹³

The Habitat Agenda provides that indicators may be modified as appropriate to a nation’s particular circumstances, and this may be useful for US advocates as well. Developing minimum standards that cities must follow with regard to their homeless residents, within the Habitat context could create a specific objective against which cities are measured and which they work to meet. For example, meeting minimum human rights criteria on homelessness in the criminalization context could mean no sweeps without adequate indoor spaces.

Reframing

In addition to litigation and policy advocacy tools, an international human rights approach offers an opportunity to reframe the underlying policy analysis and public debate. This reframing is critical, especially given hostile and punitive assumptions about poor and homeless people that are pervasive in current policy and discussion, and that drive and underlie much policy and law.¹¹⁴ Reframing can also provide a context for lawyers working on behalf of homeless people, and on behalf of solutions to homelessness, that motivates and gives meaning to their effort.¹¹⁵ Analyzing homelessness within a human rights framework offers several possibilities for reframing the issue.

First, human rights are universal. These are not rights granted only to the poor or needy; they are not welfare benefits or even entitlements granted out of the largesse of the more fortunate, or associated with a particular political party. Rather, they are rights inherent in all human beings by virtue of their status as such. In this sense, they are inclusive and unifying.¹¹⁶ While homeless people and other “vulnerable groups” are accorded special protection, this is done within a wide context: these are groups excluded from the normal housing markets. This articulates a basis for this protection rooted in circumstance. As such, it suggests at least a possibility for seeing that protection as part of a larger scheme of structural dynamics that may not allow all members of a society to engage actively or successfully in the market economy.

Human rights provide the basis of a safety net to fall back on in the event of such exclusion—for all.

This universal approach is more consistent with a view oriented towards justice rather than charity. If these rights belong to all, then their denial should be a concern of all: the phrase “it could happen to anyone” takes on some real meaning. The denial of some type of right to anyone is a real, not simply theoretical possibility.¹¹⁷ The protection of these rights thus should be of concern to all; it should not be left to happenstance or to the vagaries of individual conscience and charity.¹¹⁸ At the same time, however, human rights principles include the notion of individual responsibility as well as rights, and this too is more consistent with justice rather than charity. These principles provide that those who are able to will work, and concern themselves with the availability of jobs and the adequacy of wages. But they also provide that those unable to work due to circumstance beyond their control will not be left destitute and homeless. Thus, this approach focuses attention on issues such as job availability and wage adequacy rather than on issues such as dependency, laziness and “cultural” inadequacies.

Second, and relatedly, the human rights approach injects a different sort of authority into debate about poverty and homelessness. On one level, the appeal to international norms places debate outside the US and current political climates. By invoking the world stage, it appeals to US policymakers to consider a bigger perspective. How will the US be perceived? How are its national policies affecting its international standing? How can homelessness and dire poverty be tolerated in a country with our resources? An international perspective encourages us to look at the US reality from a stranger’s perspective, one in which these questions may appear more starkly.

On another level, the appeal to human rights as a higher, or more fundamental, authority may allow for a different type of discussion: By assuming the inherent value and worthiness for all individuals, it may obviate debate over the worthiness—or lack thereof—of particular recipients of aid, while at the same time also assuming their complementary obligation to reciprocate. At a time when national debate has focused much attention on the responsibilities of the poor and homeless, human rights analysis provides a framework that has a built in balance between rights and responsibilities, as well as grounding in external realities.

For example, welfare reform has required work, and sanctions failure to comply with myriad requirements designed to instill a sense of responsibility. But it does not address the issue of job availability or adequacy (wage, transportation or child care) or indeed protect the right to work at a living wage. Thus, to the extent that advocacy simply focuses on opposing the punitive aspects of the policies it risks advocating for dependency: a welfare check, not a job. Similarly, efforts to impose “quality of life” laws that in effect criminalize homelessness argue that homeless people should be subject to the same standards of behavior as everyone else. To argue otherwise, they say, is to “enable” bad behavior. Advocates opposing these efforts risk appearing to advocate for a right to sleep on the street. A human rights approach can place the issue in larger context: the lack of alternatives, in particular the gross violation of the right to housing which requires people to live in public places and invariably accompanies concerted efforts to punish homeless people for being in public.

IV. CONCLUSION

The globalization of national economies places new focus on international dependency and also on human rights. Habitat II brought particular focus and debate to housing rights, culminating in a document with particular attention to the housing needs and rights of the poor and homeless. It also created a mechanism for ongoing monitoring and reporting, with a major, five-year follow-up UN conference scheduled for June 2001. In this context it is appropriate that advocates for poor and homeless people become familiar with basic human rights concepts.

These concepts directly address issues of concern to advocates: issues such as housing, jobs and health care. While they may not currently be legally binding, human rights principles can be integrated into advocacy strategies so as to enhance and add to them.

Let us return to the legal clinic at the shelter with which this essay began. Will a human rights approach add anything to our legal team's ability to aid those who seek legal help simply because they cannot find a job that pays enough or housing they can afford? Most likely, it will not add much that is immediately helpful. But it will add something that is important: a framework of rights and obligations within which this group of people belongs. As such, it also adds an understanding of justice to aspire to and work towards, and a legal structure to which to attach it. Translating these concepts into concrete tools and relief can only happen incrementally.

Nevertheless, as the world continues to shrink and global interdependence becomes more apparent, there is a real opportunity to make human rights more meaningful in the US. Advocates should not wait but rather be proactive in adding this advocacy tool to the mix in advocating to protect the rights of homeless Americans and to bring an end to homelessness in America.

Notes

* Executive Director, National Law Center on Homelessness & Poverty; A.B. Barnard College (1977); M.A. Columbia University (1978); J.D. Columbia University (1981). I wish to acknowledge Michael Willis and Bobby Le for research assistance drawn upon for this article.

1. MARTHA BURT, *OVER THE EDGE* 120-26 (1992); United States Conference of Mayors, *A Status Report on Hunger and Homelessness in America's Cities*, at 66 (2000).

2. Further, systems that have been put in place have been eroded, as with the repeal of welfare benefits for needy families as an entitlement.

3. In theory, the former should ensure a democratic process in which everyone's interests in the latter can be addressed. Nevertheless, whatever the merits of this theory, the current reality is that for some significant number of Americans basic needs are not met, in the most extreme cases resulting in homelessness. Further, homeless Americans are often—and by virtue of their status—excluded from the political process as well.

4. Litigation is limited by the constitutional and statutory context in which it occurs; in many ways, legislative advocacy has attempted to fill the gaps and redress the limitations of litigation.

5. See Maria Foscarinis, *Beyond Homelessness: Ethics, Advocacy and Strategy*, 12 ST. LOUIS PUB. L. REV. 37 (1993), for a discussion of some of the considerations, trade-offs and consequences of advocacy for short- and long-term solutions.

6. *Callahan v. Carey*, No. 79-42582 (N.Y. Sup. Ct. Dec. 5, 1979) (ruling on a motion for preliminary injunction), *reprinted in* N.Y.L.J., Dec. 11, 1979, at 10. The constitutional provision the court relied on states: "The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine." N.Y. CONST. art. XVII, § 1. The state statute provides that "each public welfare district shall be responsible for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance and care which he is unable to provide for himself." N.Y. SOC. SERV. LAW § 62(1).

7. *Callahan v. Carey*, No. 42582/79 (1981). Subsequent cases expanded this right to women, *Eldredge v. Koch*, 459 N.Y.S.2d 960 (N.Y. Sup. Ct. 1983), and families, *McCain v. Koch*, 484 N.Y.S.2d 985 (N.Y. Sup. Ct. 1984), 502 N.Y.S.2d 720 (1986).

8. See, e.g., *Maticka v. Atlantic City*, 524 A.2d 416, 418-19 (1991) (relying on state statute providing that "[i]mmediate public assistance shall be rendered promptly to any needy person by the director of welfare of the municipality"); *Hodge v. Ginsberg*, 303 S.E.2d 245 (W.Va. 1983) (required state to provide shelter, food and medical care to homeless persons, relying on state adult protective services statute requiring aid to "incapacitated adults" who by reason of physical, mental or other infirmity [are] unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health).

9. See, e.g., *Graham v. Schomehl*, No. 854-00035 (Mo. Cir. Ct. 1985).

10. See *Koster v. Webb*, 598 F. Supp. 1134 (E.D.N.Y. 1983) (federal emergency assistance to families program, optional program within the Aid to Families with Dependent Children program, required states opting in to it and agreeing in their state plans to provide emergency shelter to actually do so). Subsequent litigation also established some procedural rights to notice and an opportunity to be heard before shelter could be withdrawn, *Williams v. Barry*, 708 F.2d 789, 790 (1983) and a right to have some procedures in place, *Russell v. Barry*, 1987 WL 15697 (D.D.C. 1987).

11. D.C. CODE ANN. § 3-601(1988) (repealed 1994).

12. Emergency Job Appropriations Act of 1983, Pub. L. No. 98-8 (1983). *See also* Foscarinis, *Beyond Homelessness*, *supra* note 5, at 44-45 & n.34.

13. In the mid-1980's, a coalition of advocates developed proposed legislation to address homelessness. The Homeless Persons' Survival Act of 1986 contained three titles: emergency aid, preventive measures, and long-term solutions. It was introduced in both the House and Senate in 1986. H.R. 286, 99th Cong. (1986); S. 2608, 99th Cong. (1986). In 1987, much of the emergency title was enacted as the Stewart B. McKinney Homeless Assistance Act.

14. Homeless Eligibility Clarification Act, Pub. L. No. 99-570 (1986).

15. The Homeless Housing Act, passed in October 1986, created two "demonstration" programs, to fund emergency shelter (at \$10 million) and to fund transitional housing (at \$5 million). Pub. L. No. 99-500, 100 Stat. 1783 (1986). Both were incorporated, in greatly expanded form, as programs of the Stewart B. McKinney Act in 1987. 42 U.S.C. §11411 (Supp. 1987).

16. 42 U.S.C. § 11301(a)(1),(6). Section 501 of Title V of the McKinney Act, created a right of first refusal for state and local government and non-profit entities providing services to homeless people. *Id.* at §§ 11411-12; *see also* National Coalition for the Homeless v. Veteran's Administration, 695 F. Supp. 1226 (D.D.C. 1988); National Law Center on Homelessness & Poverty v. Veterans Administration, 736 F. Supp. 1148 (1990); 765 F. Supp. 1 (D.D.C. 1991), *aff'd*, 964 F.2d 1210 (D.C. Cir. 1992), *modified*, 819 F. Supp. 69 (D.D.C. 1993).

17. *See* National Coalition for the Homeless v. Pierce, No. 87-2640 (D.D.C. filed Sept. 28, 1987) (suit to require HUD to distribute emergency shelter funds timely); National Coalition for the Homeless v. Veteran's Administration, 695 F. Supp. 1226 (D.D.C. 1988); National Law Center on Homelessness & Poverty v. Veterans Administration, 736 F. Supp. 1148 (1990); 765 F. Supp. 1 (D.D.C. 1991), *aff'd*, 964 F.2d 1210 (D.C. Cir. 1992), *modified*, 819 F. Supp. 69 (D.D.C. 1993), 98 F. Supp. 2d 25 (D.D.C. 2000) (permanent injunction requiring five federal agencies to comply with McKinney Act program to make unused federal property available for programs to aid homeless; subsequent enforcement orders); *see also* Senior Resources v. Cuomo, No. 97-1445 (D.D.C. 1998).

18. *See, e.g.*, McCain v. Koch, 117 A.D.2d 198 (1986).

19. *See, e.g.*, McCain v. Guliani, 252 A.D.2d 461 (1998), *appeal dismissed*, 93 N.Y. 21 848 (1999).

20. *See, e.g.*, Aitchenson v. District of Columbia, 585 A.2d 150,151 (1991).

21. District of Columbia Emergency Overnight Shelter Amendment Act of 1990, D.C. LAW 8-197, 37 DCR 4815 (1990) (codified as D.C. CODE ANN. § 3-206.9a).

22. *See* Interagency Council on Homelessness, *Priority Home!* (1994); Maria Foscarinis, *The Federal Response: The Stewart B. McKinney Homeless Assistance Act*, in HOMELESSNESS IN AMERICA (J. Baumhol, ed. 1996).

23. Later amendments and legislation added to the McKinney Act. For example, special legislation addressed the use of closed military bases, removing their disposition from the McKinney Act property program and creating a new legislative process that addresses their conversion to civilian use more broadly, but requires that process to address the needs of homeless persons and include their representatives. Rather than a rights-based approach, however, this is a process-oriented scheme.

24. *See, e.g.*, U.S. Conference of Mayors, *A Status Report on Hunger and Homelessness*, in AMERICAS CITIES 61 (2000) [hereinafter *A Status Report*].

25. For a description of such difficulties, *see* National Law Center on Homelessness & Poverty, *Broken Contract: Failing the District of Columbia's Welfare Recipients* (1999) (Describing barrier homeless families living in transitional housing facilities face in complying with welfare law's work requirements).

26. *See, e.g.*, *A Status Report*, *supra* note 24.

27. *See* Kim Hopper & Jim Baumhol, *Held in Abeyance: Rethinking Homelessness and Advocacy*, 37 AM. BEHAV. SCIENTIST 522 (1994) (for a discussion of unintended but harmful consequences of emergency aid in "framing" homelessness as a problem separate from poverty and its systemic sources).

28. *See id.* at 537 (discussing "shelterization" of homeless).

29. Often, the result is charity-style, emergency aid to meet immediate needs, or structuring aid designed to correct the assumed character or moral defects.

30. A recurring debate has centered on whether homeless people are "just like you and me," as sometimes stated by advocates, *see* Burt, *supra* note 1, at 21 (rather suffer from personal "pathologies," as claimed by some commentators); *see, e.g.*, ALICE S. BAUM & DONALD W. BURNES, *A NATION IN DENIAL* 153 (1993).

31. *See* discussion of "criminalization" of homelessness, *infra* notes 50-57 and accompanying text.

32. *E.g.*, Wes Daniels, "Derelicts," *Recurring Misfortune, Economic Hard Times and Lifestyle Choices: Judicial Images of Homeless Litigants and Implications for Legal Advocates*, 45 BUFF. L. REV. 687 (1997).

It also does not necessarily imply individual helplessness. The shortage of affordable housing means that some set of persons will be left out; this fact does not depend on individual choice. Which individuals fall into that set is, to some extent, dependent on individual choices, actions or circumstances. *Klostermann v. Cuomo*, 481 N.Y.S.2d 580 (1984). *See also* *Palmer v. Cuomo*, 503 N.Y.S.2d 20, 22 (1986).

33. Instead of trying to change, rename or reinterpret them, we may be better off examining the theoretical and practical structures in which they play out. Why isn't there sufficient permanent affordable housing? Why isn't there even enough shelter? And why isn't that shelter geared towards helping people into self-sufficiency and housing? If the answer is again that there is a lack of affordable housing and supportive housing, then debate—and action—is better focused on those issues.

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34. Klostermann, 81 N.Y.S. 2d. at 580. *See also* Palmer, 503 N.Y.S.2d at 20 (court required New York state welfare agencies to provide services to youth “aging out” of foster care to prevent them from becoming homeless).
35. Massachusetts Coalition for the Homeless v. HHS, 511 N.E.2d 603 (Mass. 1987).
36. 42 U.S.C. § 1383(m) (1992); *see also* National Law Center on Homelessness & Poverty, *Abandoned to the Streets* (1992).
37. Department of Community Affairs, Division of Housing and Community Resources, State of New Jersey, *Annual Performance Report*, at 6 (1999) [hereinafter *Annual Performance Report*]; U.S. Government Accounting Office, *Homelessness: Too Early to Tell What Kind of Prevention Assistance Works Best* (1990).
38. Because most government systems assume that applicants and recipients have fixed addresses, homeless persons are often excluded from their aid, and thus driven deeper into poverty and isolation; advocacy to remove and address such barriers can help people out of homelessness. *See* General Accounting Office, *Homelessness: Barriers to Using Mainstream Services* (2000).
39. Subsequent litigation established the enforceability of homeless children’s right to education. *Lampkin v. District of Columbia*, 27 F.3d 605, 612 (1994).
40. Homeless Eligibility Clarification Act, Pub. L. No. 99-570, 100 Stat. 3207-167 (1986) (codified as amended at 7 U.S.C. § 2011 (1988)).
41. Advocates initially obtained committee report language in a tax bill acknowledging that significant numbers of homeless people worked, and urging the IRS to explore using outreach programs to educate these homeless workers about the EITC. Following the inclusion of such language by Congress, advocates were able to persuade the IRS to revise its instructions to remove a requirement that EITC claimants have a “home.” *See* Omnibus Reconciliation Act of 1993, Pub. L. No. 103-66, § 13131, 107 Stat. 312, 433-35 (1993) (codified as amended at I.R.C. § 32) (1988 & Supp. V 1993).
42. Sources of prevention funds are generally not “entitlement” programs. This means that a fixed amount of funds are allocated by the legislature, and when those funds are spent, no more can be given out, even if eligible applicants for the funds remain. As a result, some programs, including the New Jersey Homelessness Prevention program, stop taking new applications before the end of the year. *See Annual Performance Report*, *supra* note 37.
43. *See, e.g.*, CHRISTOPHER JENKS, *THE HOMELESS*, at 19-20, 70-74, 113-117 (1994) (suggesting revival of old “cage” hotels prevalent in Chicago’s skid row before the 1960’s).
44. *Pitts v. Black*, 608 F. Supp. 696 (1984).
45. 11 C.F.R. § 8.4(a)(2) (1995).
46. *See, e.g.*, Margaret Sims, *Voter Registration for the Homeless*, 17 FEC J. ELECTION ADMIN. at 7 (1996).
47. National Coalition for the Homeless and National Law Center on Homelessness & Poverty, *You Don’t Need a Home to Vote, 2000 Voter Rights Registration Packet* (2000).
48. *Nat’l Law Center on Homelessness and Poverty v. Kantor*, 91 F.3d 128 (D.C. Cir. 1996).
49. *See id.*
50. *See generally* Maria Foscarinis et. al., *Out of Sight, Out of Mind? The Continuing Trend Toward the Criminalization of Homelessness*, 6 GEO J. ON POVERTY L. & POL’Y 145 (1999); National Law Center on Homelessness & Poverty, *Mean Sweeps: A Report on Anti-Homeless Laws, Litigation and Alternatives in 50 United States Cities* (1996); National Law Center on Homelessness & Poverty, *Right to Remain Nowhere* (1993); National Law Center on Homelessness & Poverty, *Go Directly to Jail* (1991); Maria Foscarinis, *Downward Spiral*, 14 YALE L. & POL’Y REV. 1 (1996).
51. Foscarinis *Downward Spiral*, *supra* note 50, at 1.
52. *Id.* For example, in *Pottinger v. Miami*, 810 F. Supp. 1551, 1563 (S.D. Fla. 1992), the court held that the city’s policy of arresting homeless persons for sleeping in any public place when there were only 700 shelter spaces for some 6,000 homeless persons violated the Eighth Amendment, the right to travel, the Equal Protection Clause and the Due Process Clause. *Id.* at 1551. The remedy proposed by the judge—but never actually implemented by the parties—was the creation of two “safe zones,” public areas in which homeless persons could sleep without danger of arrest. *See also* *Johnson v. Dallas*, 860 F. Supp. 344 (N.D. Tex. 1994), *rev’d*, 61 F.3d 442 (5th Cir. 1995) (on grounds that plaintiffs had not shown they had actually been convicted and thus lacked standing); *Church v. Huntsville*, No. 93-C-1239-S (N.D. Ala. Sept. 23, 1993); *vacated* 30 F.3d 1332 (11th Cir. 1994) (on grounds that plaintiffs had not shown that challenged actions were part of official city policy).
53. *E.g.*, *Loper v. New York City Police Dept.*, 999 F.2d 699 (2d Cir. 1993); *Benefit v. Cambridge*, SJC-07341 (Mass. May 14, 1997); *Patton v. Baltimore*, Civ. No. S-93-2389 (D. Md. Aug. 19, 1994); Helen Hershkoff & Adam Cohen, *Begging to Differ*, 104 HARV. L. REV. 896 (1991).
54. *See, e.g.*, *Connecticut v. Mooney*, 588 A.2d 145 (Conn. 1991).
55. *E.g.*, *Joyce v. San Francisco*, 845 F. Supp. 843 (N.D. Cal. 1994), *appeal dismissed as moot*, 87 F.3d 1320 (9th Cir. 1996).
56. *E.g.*, *Roulette v. Seattle*, 78 F.3d 1425 (9th Cir. 1996).
57. A related and also increasingly important area of advocacy concerns zoning laws that exclude housing and services for homeless persons from certain areas. Just as with criminalization, there has been a recent trend in some cities to enact new laws or more stringently enforce existing laws so as to exclude or severely limit housing or service providers. Legislative advocacy at the local level has been aimed at defeating or modifying such zoning laws, and in some cases has succeeded; in addition, litigation has established some rights of service providers and their homeless clients to be sited.

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58. In addition to criminalization, recent years have seen an increase in violence aimed at homeless people. National Coalition for the Homeless, *No More Homeless Deaths* (1999). The convergence of these trends is probably not coincidental: private violence likely reflects, at least in part, public hostility.
59. Unlike advocacy to counter criminalization, successfully countering exclusionary policies can directly result in new resources for homeless people through the siting of housing or service programs. However, this advocacy strategy is dependent on the existence of such programs or proposed programs—and the funds on which they are predicated.
60. Universal Declaration of Human Rights, Dec. 10, 1948, U.N.G.A. Res. 217 (III) (1948).
61. *Id.* at art. 1-21.
62. See Scott Leckie, *From Housing Needs to Housing Rights: An Analysis of the Right to Adequate Housing Under International Human Rights Law*, INTERNATIONAL INSTITUTE FOR ENVIRONMENT AND DEVELOPMENT, at 10 (1992).
63. *Id.*
64. *Id.* at 112-113, 113 n. 27.
65. Other treaty documents also elaborate on the right to housing and elements of it. See, e.g., the Covenant on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of Discrimination Against Women (CEDAW).
66. See NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, HABITAT II AND U.S. IMPLEMENTATION: BACKGROUND AND OVERVIEW 4 (1998) (Habitat I was held in 1976 in Vancouver, and resulted in the Vancouver Declaration). See also National Law Center On Homelessness & Poverty, *Habitat II and U.S. Implementation: Background and Overview, Agenda* (1998) [hereinafter *Habitat Agenda*].
67. *Habitat Agenda*, *supra* note 66, at para. 26.
68. *Id.* at para. 60. The *Habitat Agenda* uses the terms shelter and housing interchangeably.
69. See generally Janet Ellen Stearns, *Voluntary Bonds: The Impact of Habitat II on U.S. Housing Policy*, 16 ST. LOUIS PUB. L. REV. 419 (1998).
70. The document includes homeless and poor people within “vulnerable groups.” See, e.g., *Habitat Agenda* para(s). 34, 61(c)(iv).
71. E.g., *Habitat Agenda*, *supra* note 66, at para(s). 38; 40(1); 61(b); (c)(iv); 71; 97(a).
72. See Scott Leckie, *Towards an International Convention on Housing Rights: Options at Habitat II*, AMERICAN SOCIETY OF INTERNATIONAL LAW (1994); see also *Habitat II and U.S. Implementation: Background*, *supra* note 66, at 7-8.
73. See, e.g., *Habitat Agenda*, *supra* note 66, at para. 61.
74. Universal Declaration of Human Rights, Dec. 10, 1948, U.N.G.A. Res. 217 (III) (1948), at art. 25(1); see also *Habitat Agenda*, *supra* note 66, at para. 32.
75. E.g., Istanbul Declaration, at para. 12; *Habitat Agenda*, *supra* note 66, at para. 45, 181-82.
76. During that process, the US raised serious objections to the inclusion of the right to housing; however, eventually, the right was included and the US participated in the process and signed the document. See, e.g., Philip Alston, *The U.S. and the Right to Housing—A Funny Thing Happened on the Way to the Forum*, 2 EUR. HUM. RTS. L. REV. 120 (1996).
77. See Leckie, *From Housing Needs to Housing Rights*, *supra* note 62, at 15.
78. *Id.*
79. *Id.*; See also RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 701 (1985), reporter’s note 4.
80. The Rights of the Child treaty similarly has not been ratified. Arguably, the signing of the treaty has some significance: Under article 18 of the Vienna Convention, signatories are obliged to “refrain from acts which would defeat the object and purpose of a treaty.” See also American Declaration of the Rights and Duties of Man, art. 11 (obligation of state to provide for health and basic necessities).
81. Signed by President Johnson in 1966.
82. U.S. CONST. art. VI, § 2; art. 2 § 2.
83. See Foster v. Nielson, 27 U.S. (2 Pet.) 253, 314 (1829); Carlos Manuel Vazquez, *The Four Doctrines of Self-Executing Treaties*, 89 AM. J. INT’L. L. 695 (1995).
84. See *Foster*, 27 U.S. at 314.
85. However, this limitation does not apply to customary international law—law derived from the long-standing and consistent practice of nations—and it requires no implementing legislation to become binding law. See *The Paquete Habana*, 175 U.S. 677 (1900). Customary international law is federal common law, binding on states through the supremacy clause. See *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964). A practice becomes binding customary law when two conditions are met. First, the practice is regularly repeated. Second, the repetition results from a generally accepted belief that the practice is required by law. See BARRY CARTER & PHILIP TRIMBLE, INTERNATIONAL LAW 143-44 (1995).
86. See *Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804).
87. *Id.* at 118.
88. See *Oyama v. California*, 332 U.S. 633 (1948), *Thompson v. Oklahoma*, 487 U.S. 815 (1988).
89. See, e.g., *Trop v. Dulles*, 356 U.S. 86 (1957) (plurality); *Enmund v. Florida*, 458 U.S. 782 (1982); *Coker v. Georgia*, 433 U.S. 584 (1977); *Estelle v. Gambelle*, 429 U.S. 97 (1976).
90. See, e.g., *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963).
91. *Thompson v. Oklahoma*, 487 U.S. 815, 830 (1988).

92. *Stanford v. Kentucky*, 492 U.S. 361 (1989). Nonetheless, a reconciliation of these decisions is possible. The question of the relevance of laws and practices of other nation' arose in the context of determining whether the execution of a minor violated "evolving standards of decency," one of the standards established in Supreme Court jurisprudence for analyzing Eighth Amendment claims. By positing that "it is *American* conceptions of decency that are dispositive," and then embarking on a review of what he considered to be those standards, Justice Scalia removed the possibility of looking to international law or information, which would come into play as an interpretive guide only if there was ambiguity in domestic law.

93. *Washington v. Glucksburg*, 521 U.S. 702, 710 n.8, 718 n.16, 734 (1997).

94. Most recently, in a dissent from a denial of certiorari in this death penalty case, Justice Breyer cited numerous decisions by foreign courts, noting that while they were obviously not binding they were nonetheless relevant. *Knight v. Florida*, 120 S. Ct. 459, 462-64 (1999) (mem.). At a minimum, this suggests that even in the Eight Amendment context, the issue of the relevant of comparative analysis is still alive.

95. *Detainees v. Malcom*, 520 F.2d 392 (2d Cir. 1975); *Lareau v. Manson*, 507 F. Supp. 117, 1188 n.9 (D. Conn. 1980), *aff'd in part*, 651 F.2d 96 (2d Cir. 1981).

96. *Plyler v. Doe*, 458 F. Supp. 569 (E.D. Tex. 1978), *aff'd*, 628 F.2d 448 (5th Cir. 1980), 457 U.S. 202 (1982).

97. *In re Barbara White*, 158 Cal. Rptr. 562, 567 (Ct. App. 1979).

98. *Boehm v. Superior Court*, 178 Cal. App. 3d 494 (1986).

99. Hans Linde, *Comments*, 18 INT'L LAW 77, 77-78 (1984) (Oregon Supreme Court judge). *See also* *Caballero v. Caplinger*, 914 F. Supp. 1374, 1379 (E.D. La. 1996); *Fernandez v. Wilkinson*, 505 F. Supp., 787, 795-97 (D. Kan. 1980).

100. International Covenant on Civil and Political Rights, art. 12.

101. *See, e.g.,* Connie de la Vega, *The Right to Equal Education: Merely a Guiding Principle or Customary International Legal Right?* 11 HARV. BLACK LETTER L.J. 37 (1994).

102. For example, in considering a zoning ordinance that required all household residents to be members of a family, the court cited the Universal Declaration of Human Rights for the proposition that there is a right to privacy within the home, not just within the family. *City of Santa Barbara v. Adamson*, 610 P.2d 436 (Cal. 1980).

103. *E.g.,* Chester Hartman, *The Case for a Right to Housing*, 9 HOUSING POL'Y DEBATE 223, 234 n.19 (1998).

104. *Lyndsey v. Normet*, 405 U.S. 56 (1972). *See also* Florence Wagman Roisman, *Establishing a Right to Housing: An Advocate's Guide* (1991); Marc-Olivier Herman, *Fighting Homelessness: Can International Human Rights Law Make A Difference?*, 2 GEO. J. ON FIGHTING POVERTY (1994); Cheryl P. Derricotte, *Poverty and Property in the United States: A Primer on the Economic Impact of Housing Discrimination and the Importance of a U.S. Right to Housing*, 40 HOWARD L.J. 689 (1997).

105. *E.g.,* Peter Salsich, *A Decent Home for Every America: Can the 1949 Goal be Met?* 71 N. CAROLINA L. REV. 1619 (1993).

106. *E.g.* Hartman, *supra* note 103, at 234-35.

107. *See* Edelman, *The Next Century of Our Constitution: Rethinking Our Duty to the Poor*, 39 HASTINGS L.J. 1 (1987).

108. *See* UNCHS, Guidelines for Collecting and Analysing Urban Indicators Data; *see also* UNCHS's Urban Observatory System, available at <http://www.urbanobservatory.org/network>.

109. For developing countries, the indicator refers mainly to squatter evictions. Tellingly, in the U.S. "evictions" of homeless people are typically more akin to the conditions in developing countries.

110. *Habitat Agenda*, *supra* note 66, para. 61 (b).

111. Other qualitative questions concern barriers to home- and land-ownership by women.

112. *See* Resolution No. 74206 C.M.S., Resolution of the Oakland City Council on Economic, Sical and Cultural Human Rights, Apr. 28, 1998; Berkeley City Council, Resolution Supporting the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.

113. *See* San Francisco Coalition on Homelessness, "Mouthing 'Human Rights' Won't Cover Up Wrongs," STREET SHEET, Mar. 1999 (noting contradiction between city policy and actions).

114. *See* Edelman, *supra* note 167.

115. *See* Melanie B. Abbott, *Seeking Shelter Under a Deconstructed Roof: Homelessness and Critical Lawyering*, 64 TENN. L. REV. 269 (1997) (importance of underlying principles and beliefs in motivating lawyers on behalf of homeless people).

116. In contrast, welfare and other benefits specifically for the poor, particularly in recent years, have often been perceived, and resented, as special treatment for the needy.

117. In fact, housing rights of others are protected. For example, the federal tax code grants homeowners deductions; some benefit programs take into account housing costs in setting levels of assistance; and of course, the Constitution protects property ownership. Incorporating these protections into a framework that recognizes housing rights as human rights available to all helps clarify that defending the housing rights of one set of people—such as the homeless—advances the interests of all. Of course, in practice these interests may at times be at odds. For instance, low income housing groups have argued that housing for homeless people could be paid for through a cap on the homeowner's mortgage deduction, *see also* Hartman, *supra* note 103, at 239. But placing both in the context of the right to housing may help frame the conflict as one over priorities, opposed to conflict between two groups of people.

118. Moreover, to the extent that a human rights approach also includes the principle that human rights are indivisible—namely, that civil and political rights and economic and social rights are interdependent and cannot exist without each other—then this universalism becomes stronger.

DISCHARGES TO THE STREETS: HOSPITALS AND HOMELESSNESS

SIDNEY D. WATSON*

INTRODUCTION

Imagine the children's game of musical chairs, but played with both an individual aim to keep a chair and a collective goal to keep everyone seated. Imagine, as well, that in this game not only are seats gradually removed, but the number of players is progressively increased.

At the start of the game, adjustments are made easily enough, and for a short time the collective goal is achieved. True, the number of seats decreases and the pool of individuals competing for them gets bigger, but those sitting down accommodate the others by sharing their chairs or allowing them onto their laps. The seats are small, however, and there are limits to how much weight people can bear. Inevitably, some people find themselves standing, their number growing as time passes.

As the game continues, many small dramas unfold. Some of those seated on laps are pushed off, then allowed back again. Seats are periodically relinquished, and the appearance of an empty seat precipitates a scramble among those outside the circle. Indeed, many people move back and forth between standing up and sitting down, but the total number of people standing continues to grow, and the collective goal of the game becomes untenable.

Who gets left standing is not determined merely by chance. Some players are fast and strong; some are impaired. Some are unpleasant and disruptive, and others are very heavy: these players are unlikely to be invited onto an occupied chair. Some are timid and ashamed to enlist help, or perhaps just don't know any of the other players. Still others don't understand the rules of the game and wander through the scene.

The grossly disadvantaged are the first to lose their seats and the least likely to grab replacements; they are disproportionately present among those on their feet.¹

Musical chairs paints a graphic picture of homelessness in America. At its root, homelessness is about a lack of affordable housing: too few houses for too many people. Anyone who is poor is at risk of becoming homeless, and many poor people move in and out of homelessness, doubled up housing, and transient shelters. However, the most vulnerable among the poor—those with mental illness and substance abuse, single, minority men with little education, and those without family and friends—are at increased risk of losing housing and being unable to ever regain it. Those with multiple vulnerabilities fall out of housing first.²

This article is about those most at risk of homelessness because of mental illness and substance abuse. In the game of musical chairs, they tend to fall, or be shoved, off the chairs. Often, their chairs are health care institutions—state psychiatric hospitals, acute care hospitals and detoxification programs. Repeatedly, these caring institutions push people into the streets and emergency shelters.

The homeless who are mentally ill are not anonymous street people wandering from doorway to shelter. They are frequent inpatients—at state psychiatric hospitals, short-term acute care hospitals, and detox programs. Too often, these institutions treat and stabilize mentally ill and

substance—using homeless people only to discharge them to streets and shelters where they begin another downward spiral of illness that ultimately ends in another inpatient admission, jailing, or worse.

Part I explains the programs and services that can successfully treat people with severe mental illness and substance abuse. Homelessness is not the necessary byproduct of either condition. Parts II and III describe how and why health care institutions discharge people who are mentally ill and substance abusers to the streets and into homelessness. Part IV outlines how hospitals and detox programs can design discharge planning programs to break the cycling of people from institutions to homelessness and back again. Part V develops the concept of a right to discharge planning—legally enforceable statutes, regulations and managed care contracts—that mandate good discharge planning and prohibit release to the streets and shelters.

I. MENTAL ILLNESS, SUBSTANCE ABUSE, AND HOMELESSNESS: TREATMENT THAT WORKS

Researchers have consistently documented high rates of severe mental illness and substance abuse among the homeless. Two-thirds of homeless persons report current problems with mental illness, alcohol, or substance abuse.³ Estimates of the prevalence of current, major mental illness among homeless people range from 25 to 50 percent, with the most frequently reported figure being 33 percent.⁴ Substance abuse is even higher. Estimates are that 50 percent of homeless people have had a diagnosable substance abuse problem.⁵ Moreover, many homeless people have dual diagnoses, suffering from both mental illness and substance abuse. In one study of drug abusers, 40 percent were also diagnosed as having mental illness, and half also had alcohol abuse problems.⁶

The relationship between homelessness and alcohol is variable. For some, drinking is the cause of homelessness.⁷ Others use alcohol to self-medicate the anxiety and depression that tends to accompany the trauma of becoming homeless.⁸ Still others may be “environmental alcohol users” adapting to a culture that encourages drinking.⁹

Similarly, the causal relationship between homelessness and mental illness varies: mental illness can contribute to homelessness, and homelessness can contribute to mental illness. Some illnesses result in people becoming homeless, the most frequent being schizophrenia.¹⁰ Major mental illnesses like schizophrenia are unlikely to result from the trauma of being homeless. These conditions cause a level of disability and impaired social functioning that in the absence of treatment and support can lead to homelessness.¹¹

On the other hand, homelessness can exacerbate less severe mental and emotional problems like depression. Becoming homeless is a psychologically traumatic event that commonly is accompanied by anxiety and phobic disorders. People with these symptoms—both homeless and housed—sometimes try to “medicate” these feelings away with alcohol and drugs.¹²

Thus mental illness, substance abuse, and homelessness cycle around each other, each exacerbating the other. Ultimately, it does not matter where it begins, the cycle remains. The challenge becomes to break the cycle, and it can be broken.

Although mentally ill and substance abusing people who become homeless present special treatment challenges, they can be successfully treated and housed in the community.¹³ New medications for mental illness offer clinicians a wider range of treatment options and help many who did not respond to, or experienced severe side effects from, previous generations of psychotropic drugs. Innovative, integrated mental health and substance abuse services that address both problems simultaneously show real promise in helping those dually diagnosed with mental illness and substance abuse problems.¹⁴ Aggressive outreach combined with treatment and rehabilitation can reach those who may otherwise hide from care.¹⁵

“Client-centered” programs that address both mental illness and substance abuse have succeeded in engaging people resistant to conventional treatment.¹⁶ Psychosocial clubhouses operate on a self-help model. They provide day support and socialization activities to help members develop life skills.¹⁷ Assertive Community Treatment (ACT) Teams use a mobile team of paraprofessionals, nurses, and psychiatrists to bring a range of services—medical and psychiatric treatment, case management, drug counseling, transportation and vocational training—to the client in the community.¹⁸

ACT Teams are now recognized as one of the most effective treatment modes for severely mentally ill people at risk of homelessness.¹⁹

Moreover, an impressive array of models successfully combine housing with treatment for mental illness and substance abuse.²⁰ Supervision and services range from heavy to light: group homes with 24 hour supervision, single room occupancy units (S.R.O.’s) with caseworkers and psychiatric support on the premises, and rent subsidized apartments with visits from a case manager or ACT team.²¹ Among the least restrictive models are those that provide housing to homeless mentally ill people who have long resisted treatment and who continue to drink, do drugs, and resist medication. Residents are assigned a case manager who sees them regularly and makes sure their mental health and substance abuse problems are reasonably under control.²²

The key to successful treatment is that different approaches work for different people: one size does not fit all. Researchers consistently find that successful programs are ones which match not only the individual’s needs, but also his or her treatment preferences.²³ Consumers must be involved in developing their treatment plans and choosing their housing. Options need to be available to appeal to different people.

Homelessness need not be the necessary byproduct of mental illness and substance abuse. Community treatment can succeed. Regrettably, though, hospitals and detox programs discharge homeless mentally ill and substance abusing patients to emergency shelters and streets where, because of their vulnerabilities, they just get worse.

II. DISCHARGING TO THE STREETS

Julia is 28 years old. Atlanta Regional Hospital, a public, short-term psychiatric facility in Atlanta, Georgia, has admitted and discharged her 92 times. Most recently, the discharges have been to homeless shelters. As Julia explains, “I have a personality disorder, a substance abuse problem and feel very depressed. Tranquilizers and anti-psychotic drugs do not really help any of these things. They give them to me when I am suicidal or lose control but as soon as possible, I am put back into shelter, which is no way to live.”²⁴

The homeless who are both mentally ill and substance abusers are thought of as anonymous street people wandering from doorway to doorway, shelter to shelter. They are not. Such people are known—generally, well known—to state psychiatric hospitals, short-term acute care hospitals and detox programs.²⁵ About 30 percent of homeless persons are just out of inpatient detoxification.²⁶ Roughly one-quarter have been released from inpatient mental care.²⁷

Treatment facilities discharge people into homelessness in two ways. Some hospital and detox discharge sheets literally release mental health and substance abuse treatment patients “to the streets.”²⁸ Others give the about-to-be released patient the name and address of a homeless shelter that may or may not have a bed available. The discharge sheet may include instructions to the patient about on-going medication and follow-up at a community mental health clinic, but few homeless people have the financial and emotional resources to follow through.²⁹

Discharge “to the street” is a prescription for relapse, readmission or worse.³⁰ The streets are dangerous places. Not only is life uncomfortable and unhealthy, but violence—assault and rape—are commonplace.³¹ The stress of life on the street invites backsliding. For those trying to continue recovery after detoxification, the streets are an invitation to relapse with their easy

access to drugs and liquor, and the temptation to use the only easily available “medicine” to blunt the harshness of reality.

Discharge to a shelter can be as bad a prescription as discharge to the streets. Hospital discharge planners may be under the mistaken impression that shelters provide care that takes over where inpatient care ends; they do not. Shelters are not funded or staffed to provide ongoing psychiatric and substance abuse treatment. Shelters provide an emergency place to sleep for the night, but daytime means a return to the street. In street parlance, most shelters provide a “cot and a hot”: a place to stay for twelve hours and a meal. When 6:00 or 7:00 a.m. rolls around, everyone must leave. Discharge to a shelter means twelve hours a day out on the street.³²

Moreover, discharge with the name and address of a shelter does not guarantee a bed for the night. Many shelters take whoever arrives first each day, requiring a daily queuing to get a bed for the night. If the shelter is full, the discharged patient spends the night on the street.

Moreover, shelters can be as frightening and uncomfortable as the street. Many are crowded with ten or more people in a room with no privacy. The crowd, noise, and confusion can be as nightmarish as the street. Thus, some homeless discharged patients bypass them, returning directly to the street, the back alley, or the bridge upon release.

Most mentally ill and substance abusing patients released to shelters and the streets regress.³³ They become unstable, disruptive or endanger themselves until they are either re-hospitalized, jailed or dead. When patients leave inpatient care stable their mental illness is controlled by medication, and alcohol and drugs are purged from the system. They may have a prescription for medication and a referral to a mental health clinic but no insurance or money and no inclination to follow through. Without a continuous supply of medication and regular psychiatric appointments their mental conditions deteriorate. In one study, nearly 40 percent of mental patients discharged from acute care hospitals to homelessness were re-admitted for hospital care within six months.³⁴ Others end up re-institutionalized in the prison and jail systems instead of the hospital ward after being arrested for sleeping in the park, panhandling, vagrancy, public drunkenness or disorderly conduct.³⁵

For some, discharge to the street or shelter is a death sentence. Thirteen homeless people died on Boston streets between late 1998 and early 1999. All were discharged by health care institutions to shelters or the streets just weeks before their deaths.³⁶ All had been in inpatient detox within two weeks of their deaths.³⁷

Others become long-term shelter users. Homeless people who have severe mental illness and substance abuse problems, particularly those who have been admitted for detox programs and mental health treatment, tend to become chronic shelters users—spending years on the street and in shelters in between hospital admissions.³⁸ A full 80 percent of all shelters users are transitional, using shelters for two weeks or less, typically because of some emergency, and then moving on to more permanent housing. Chronic shelters users, although they comprise only 20 percent of those who use shelters, use most of the shelter services. Chronic shelters users, unlike transitional users, find it hard, if not impossible, to move from shelters into permanent housing. Thus, the point of institutional discharge offers a unique opportunity to help people who are especially vulnerable to long term, intractable homelessness to make the transition into permanent housing and stabilized lives.

In many areas of the country, the extent to which hospitals discharge to homelessness is unknown because states and localities do not have good data about who is using emergency shelters. Shelter providers are reluctant to ask their guests too many questions for fear they will discourage them. Hospitals do not compile and report data about mental health and substance abuse discharges. Stories of people like Julia, the woman in Atlanta who appears at the beginning of this section, are compelling. However, better data is needed to determine whether,

in a particular community, discharge into homelessness is a sporadic problem or a systemic issue. Massachusetts offers a model for developing such information.

In Massachusetts, the Massachusetts Housing and Shelter Alliance, a statewide advocacy group,³⁹ worked with shelter providers to develop an accurate picture of who was using emergency shelters. Shelters throughout the state began asking each guest where he or she had just come from. Running tallies were compiled for the year, and a state shelter census was developed. For the first time, figures were available describing who was using Massachusetts shelters.⁴⁰ The figures confirmed what the anecdotes suggested: in 1998, Massachusetts detox programs discharged 1,557 people into homelessness, while public and private hospitals in Massachusetts discharged 806 mental health patients into homelessness.⁴¹ As a result of these statistics, advocates, state policy makers, and health care providers have focused renewed attention on discharge planning.⁴² Convinced of the need for better information about discharges from inpatient care, Massachusetts is implementing a computer database, the Automated National Client-Specific Homeless-Services Recording System (ANCHoR) developed by the University of Pennsylvania. ANCHoR collects three sets of data from shelters and other service providers: (1) an unduplicated count of shelter use; (2) a breakdown of shelter users by demographic characteristics and by services used; and (3) information on people who use multiple services, including people who move between other programs and institutions, and the emergency shelter system.⁴³ The ANCHoR system can produce accurate, quantitative data to help target discharge planning efforts more effectively.

Similarly, in New York City, concern about hospitals discharging people to the street has prompted a number of empirical studies and reports. New York City's Urban Justice Center, an advocacy group, has released two reports. One, *The Revolving Door: Repeated Psychiatric Hospitalizations of the Homeless*, substantiates the connection between poor hospital discharge planning and homelessness and recommends policies and practices to reduce the problem.⁴⁴ The second, *Prisons and Jails: Hospitals of Last Resort*, focuses on the effects of the lack of discharge planning for the mentally ill incarcerated in New York's jails and prisons.⁴⁵ The City of New York Health and Hospitals Corporation, the agency that operates the city's public hospitals, released a report examining hospital discharge and admission records that confirms that people are bouncing back and forth between hospital inpatient care and the streets.⁴⁶ Finally, the state of New York compiled a comprehensive study of the state's mental health services, including statistics on the lack of discharge planning and its consequences.⁴⁷ All four reports serve as blueprints for state policy and budget discussions.

Discharge from inpatient care does not have to signal the end of treatment and the beginning of a downward spiral into relapse. Community based models exist for helping people successfully transition from inpatient care into the community. Nevertheless, available data suggests that hospitals and detox centers persist in discharging mentally ill and substance abusing patients to shelters and the streets.

III. THE PRESSURES TO DISCHARGE TO THE STREET

Hospitals and detox programs discharge patients to streets and shelters because this country has no health care system. Hospitals, detox centers, outpatient clinics and home health services all provide care, but it tends to be medicalized and disjointed: no overarching system of care exists. Moreover, care providers must operate under increasing cost pressures without the community treatment resources and step-down services needed for recovery and escape from the street.

American medicine is based on a medical and scientific model characterized by a narrow focus on individualistic, procedure-oriented care to "fix" illness rather than a public health

approach that seeks to prevent disease.⁴⁸ We spend immense amounts of money on sophisticated diagnostic tests, drugs and inpatient treatment but tend to ignore the political, social and behavioral context of illness and injury.⁴⁹ Charles Rosenberg's description of the transformation of New York's Hospital for the Ruptured and the Crippled captures the contrast between medicalized care and public health care.

James Knight, the leading spirit in [the hospital's] founding and its surgeon-in-chief from 1863 to 1887, was a physician who assumed a holistic—and paternalistic—attitude toward his patients and the hospital's work generally. He placed little emphasis on operative procedures and a great deal on diet, exercise, fresh air, bandages, and appliances. Knight saw local lesions [dysfunctions, deformities] as aspects of more general conditions, just as he saw the child as potential citizen of a larger society and concerned himself with his little patients' moral education and future job prospects. Knight lived in the hospital and served as father of an extended family. By 1898, Knight had become an anachronism. He was succeeded by Virgil Gibney, a youthful and energetic orthopedist. Numbers of operations increased rapidly and lengths of stay decreased. Gibney himself lived outside the hospital. The surgeon was no longer content to guide and monitor, to negotiate a multi-dimensional path to physical and social health. Aseptic surgery had far more to offer many patients than the bandages, regimen, and braces of mid-century, but the new-model surgery construed its responsibilities in increasingly narrow and procedure-oriented terms.⁵⁰

Good patient care is not an either-or phenomenon: it requires attention to both scientific medicine and public health. Dr. Gibney was right; many illnesses can be corrected and improved by surgery and other specific medical interventions. Schizophrenia, manic depression, and other major psychiatric illnesses can be alleviated—although not cured—by medication. Dr. Knight, however, was also correct. Good health outcomes do not depend exclusively on a medical “fix.” The patient's life and situation after hospitalization is also important.

Sadly, American medicine tends to embrace Gibney's technical world view, while ignoring Knight's concern about the patient's social context.⁵¹ American hospitals treat the patient's medical illness or disease; they are not staffed or funded to deal with the patient's social problems like homelessness. Medical residents are routinely taught that their role is to fix the homeless person's trauma, varicose veins, mental illness, or substance abuse, and then discharge the patient to a shelter or, if none is available, “to the streets.” As the residents learn, the “medical system” cannot fix all of society's ills. Rather, medical professionals help within their training, by diagnosing the medical program and fixing it as best they can, leaving the social work to others.⁵²

Regrettably, “medicalized” inpatient medical care is an inadequate bandage for what ails the homeless who are mentally ill and substance users. Lisbeth Schorr tells of a severely ill, homeless man who was admitted to the intensive care unit. Near death, he was given state of the art care, and his life was saved. A few days and \$35,000 worth of treatment later, the man was discharged to the street without even a blanket to keep him warm.⁵³ Medical care saved the man's life but then sent him back to life on the streets and circumstances that were likely to expose him to another bout of life-threatening illness. As this story illustrates, care is not only medicalized, it is also fragmented.

Our fee-for-service medical reimbursement system has encouraged a hodge-podge of separate, distinct health care institutions. Acute care hospitals, mental hospitals, nursing homes, and detox programs provide different types of inpatient care. Medical clinics and mental health clinics provide outpatient care in office settings, while home health agencies do home-based care. While specialized care can contribute to better outcomes, no system exists to coordinate the many pieces of the complicated health care puzzle.

Moreover, since medical care focuses on fixing illness, medical reimbursement does not pay for non-medical services like shelter, food, and blankets. The Access to Community Care and

Effective Services and Supports (ACCESS) demonstration project, funded by HHS and HUD, seeks to integrate fragmented public mental health services to end homelessness by integrating services and fostering partnerships among medical and social service agencies. ACCESS projects have lowered the number of days of homelessness for seriously at risk individuals by as much as 75 percent over a 12 month period proving the need and worth of creating systems of care.⁵⁴

While many hoped that the move to managed care and capitated medical reimbursement would result in a more integrated health care delivery system that would provide a broad array of medical and social services, few communities have a real system of care that coordinates inpatient, outpatient and recuperative medical care with social services. The result is that many, including homeless, mentally ill persons, flounder, lost in the complexities of a non-system with no one to guide them through the maze.

Regrettably, the advent of managed care has intensified pressures on inpatient facilities to shorten inpatient admissions and discharge patients who a few years ago would have stayed in the hospital to recuperate.⁵⁵ Ten years ago, detox programs lasted 30 days; the average stay is now less than a week.⁵⁶ Inpatient mental health treatment has gone from a norm of 30 days to less than 21 days.⁵⁷ Managed care views hospitals and other inpatient care facilities as unnecessarily expensive places to provide recuperative and follow-up care. However, in our fragmented health care system, homeless people often have nowhere to go to recuperate or continue treatment.

Convalescent services are limited.⁵⁸ Upon discharge from inpatient care many people need what is referred to as a respite or step down bed—a place to rest, recuperate and gain physical and emotional strength following discharge. Respite facilities, unlike shelters, provide a quiet place for bed rest, 24 hour nursing care, and adequate nutrition.⁵⁹

Community mental health clinics and outpatient substance abuse programs are in short supply.⁶⁰ Even where they exist, they often do not offer a broad enough range of treatment programs to meet consumers' different needs and preferences.⁶¹ Most communities have a shortage of both transitional and long term supportive housing. Recovery housing for those trying to quit drugs and alcohol is limited.⁶²

Some model programs exist, offering respite care and other services to patients discharged from psychiatric and detox facilities—and funding is available for others.⁶³ Christ House in Washington, D.C. offers medical respite care for the mentally ill, those recovering from substance abuse, and those with a dual diagnosis providing patients a bed, 24-hour medical care, case management, housing placement and other supportive services. The program also has permanent housing for men who need continued support for their recovery from drugs or alcohol but who cannot work full-time because of chronic medical problems.⁶⁴ In Denver, Samaritan House offers respite care for people suffering from mental illness.⁶⁵ The Veterans Administration (VA) provides patients who are most at risk of becoming homeless the option to stay until adequate housing is found, and some VA medical centers have facilities on hospital grounds that provide residential treatment for veterans leaving inpatient programs but still looking for more permanent housing.⁶⁶

While programs like these are exemplars, they reach only a tiny percentage of those who are homeless.⁶⁷ Most homeless people get their services from mainstream safety net providers which remain medicalized, fragmented, and accosted by cost cutting measures. The pressure, and the temptation, is to discharge patients from inpatient psychiatric care and detox to streets and shelters in hopes that someone else can take care of their outpatient medical, social services and housing needs. Yet, all the studies, statistics and anecdotal evidence confirm that discharge to streets and shelters is a prescription for relapse, readmission or worse. Something ought to be done, and the reality is that the point of discharge offers a unique opportunity to help people who

are especially vulnerable to long term, intractable homelessness to make the transition into permanent housing and stabilized lives.

IV. DISCHARGE PLANNING AS HOMELESSNESS PREVENTION

After 92 admissions to Atlanta Regional Hospital and numerous discharges to homeless shelters, Julia is now living in a supervised group home where a special “personality disorder” consultant leads daily group sessions. A case manager helps assure that she gets the medical, financial and social services she needs to avoid slipping into homelessness again. This time, instead of sending Julia to a shelter, Atlanta Regional Hospital developed a comprehensive, on-going plan for community care and housing before discharging her.⁶⁸

All hospitals and detox centers do discharge planning; it is standard operating procedure. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) standards specify not only that institutions provide discharge planning for those patients who need it, but that they identify patients, like those who are homeless, for whom planning is critical.⁶⁹ Hospital discharge planners routinely arrange transportation, home health and rehabilitation services. A problem arises, though, because hospital discharge planners are less likely to be familiar with the community housing and long term support programs that severely mentally ill and substance abusing people need to stay housed.

Cognizant of the role that inadequate discharge planning plays in exacerbating homelessness for those suffering from serious mental illness and substance abuse, the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services has provided research, education and funding to improve discharge planning, including convening a working conference and issuing a report on Exemplary Practices in Discharge Planning.⁷⁰ The recommendations stress that discharge planning for homeless people is about “community re-entry,” connecting the about-to-be discharged patient with community resources,⁷¹ and that making these linkages requires institutions to enter into active collaborations with community providers.⁷² Discharge planning needs to be conceived as a team effort that includes the patient, the institution, someone knowledgeable about community resources and a community case manager or other person responsible for following up with the consumer to ensure the implementation of the discharge plan.⁷³

The most important element of good discharge planning is consumer participation.⁷⁴ Long term plans for treatment and housing are much more likely to succeed when the consumer is involved in the planning process so it meets his or her treatment and living preferences. Consumer buy-in and participation are crucial.

The discharge planning process also needs to include input from those knowledgeable about community resources.⁷⁵ Some discharge planning teams include a community-based housing specialist. In New York City, the Urban Justice Center, an advocacy group with an encyclopedic knowledge of community housing and social services programs for the homeless, provides training, a community directory and technical assistance to hospital discharge planners.⁷⁶ In Massachusetts, hospital discharge planners will soon have access to a web site which includes information about community programs.⁷⁷

The crux of good discharge planning, though, is that one person—often a community-based case manager—needs to be responsible for following up with the consumer after discharge.⁷⁸ Someone needs to assure that the discharged patient is getting the services prescribed in the plan, and that the services are meeting the patient’s needs. It is too easy for vulnerable people to get lost in the maze of government agencies and health care bureaucracies. Discharged patients may be unable to navigate public transportation, medication may get lost or stolen and outpatient appointments may be missed. Follow-up alerts the support staff if a Medicaid application is denied or if a patient living alone begins to deteriorate. In short, discharged patients need

genuine follow-up to ensure that the linkages with housing, public benefits and aftercare services hold.

The person responsible for follow-up can be a community-based case manager, Assertive Community Treatment (ACT) team, social worker or supportive housing personnel. Funding is always an issue, but a variety of programs will pay for case management for patients discharged from mental health and substance abuse treatment. States have the option of offering Medicaid reimbursement for case management services either as a separate service⁷⁹ or as part of an ACT Team.⁸⁰ Federal McKinney Act funds for Continuum of Care services are available to fund community case managers. In New York City, the Urban Justice Center, an advocacy group, receives funding from HUD's Supportive Housing Program for an interdisciplinary legal and social work team to follow-up with discharged mentally ill patients.⁸¹

For a discharge plan to succeed, though, it must not only link the patient with housing, health care and other treatment, it must also assure that the patient has a source of income and health insurance.⁸² Supportive housing and group homes are more likely to accept residents with an income. While some free clinics exist, most medical providers require payment, either private insurance, Medicaid or Medicare.⁸³

Before the patient leaves the institution, an application for Medicaid and other benefits should be on file and pending, if not already in place. In theory, people with serious, chronic mental illnesses are eligible for Supplement Security Income (SSI) or, if they have a work history, Social Security Disability benefits.⁸⁴ Unfortunately, proof of eligibility based upon a mental illness, particularly for those who also suffer from alcoholism and substance abuse, is often difficult to prove.⁸⁵ Starting the process before the person leaves the institution shortens the waiting period and eases the ability to gather and submit hospital medical records supporting the claim.⁸⁶

Finally, the discharge plan must do more than simply prescribe appropriate services: it needs to make sure that services are in place before the patient leaves the hospital. Each patient should have safe and appropriate housing already arranged, be it a respite bed, small group home, supportive housing, or apartment. Ongoing medical care should include a clear plan for how and where to get on-going psychiatric and substance abuse treatment, a scheduled outpatient appointment and sufficient medication to last until that appointment. Patients who are particularly vulnerable to relapse should be introduced to their aftercare providers before discharge.⁸⁷

Hospitals and detox centers can break the crash and burn cycle of mental illness and substance abuse by replacing discharges to streets and shelters with discharge planning to link the about-to-be discharged patient to medical, social and housing resources. As part of this discharge planning process, hospitals and detox centers need to begin working with outpatient mental health providers, housing programs and social services agencies to create a network of care that helps the patient move from inpatient treatment to community living—in a home, rather than in an emergency shelter or on the street.

V. A RIGHT TO DISCHARGE PLANNING

Atlanta Regional Hospital discharged Julia to a group home rather than a homeless shelter because she called a legal services lawyer who filed a complaint in Probate Court challenging Julia's treatment and discharge plan as inadequate. The hospital settled the case, developing a comprehensive discharge plan for Julia that, for the first time, connected her with a community-based, supportive housing program designed to address her particular medical and psychological needs.⁸⁸

It is bad medicine—and probably malpractice—to discharge mental health and detox patients to the street.⁸⁹ The standard of care is spelled out in the JCAHO accreditation standards, the federal government's report on Exemplary Discharge Planning Practices and other statements of

good discharge planning: patients treated for mental illness and substance abuse should be released to appropriate housing and services, not sent to emergency shelters and the street.⁹⁰ Poor discharge planning also fails to comply with federal Medicaid and Medicare requirements for discharge planning services.⁹¹ Repeated hospitalizations because of poor discharge planning may also violate the Americans with Disabilities Act because it unnecessarily institutionalizes and segregates people who can be housed and treated in the community.⁹²

Moreover, many patients treated for mental illness and substance abuse have a legally enforceable state law right to discharge planning and aftercare.⁹³ Some states have literally outlawed hospital discharges to streets and shelters.⁹⁴ Others are using managed care performance standards to create financial incentives to reduce and eliminate discharges to streets and shelters.⁹⁵

State mandates vary considerably, but they tend to require “discharge planning” or a “plan for aftercare services.”⁹⁶ Many are similar to Massachusetts’ which requires that:

“[p]rior to a patient’s discharge from the facility, the treatment team and other appropriate facility personnel shall take such steps as necessary to assist the patient in his or her return to the community, including but not limited to employment counseling, communication with the patient’s legally authorized representative, communication with family, if appropriate, assistance in finding housing, and assessment of and communication with available community and/or educational resources.”⁹⁷

These provisions not only require discharge planning, but also list the types of care the plan should address, including the patient’s housing, case management and financial needs.⁹⁸

Other states’ laws simply require discharge or aftercare planning without detailing specifics.⁹⁹ Certainly, adequate discharge planning for mentally ill and substance abusing people does not include discharge to shelters and streets. Few discharge planning statutes, though, specifically prohibit such discharges.

Nevertheless, courts seem willing to hold that discharge planning statutes create an enforceable right to adequate discharge planning which forbids discharges to shelters.¹⁰⁰ For example, in *Heard v. Cuomo*¹⁰¹ and its companion case *Koskinas v. Buford*,¹⁰² the New York courts held that the state’s discharge planning statute prohibits New York City public hospitals from discharging mental health patients to the streets or shelters. New York’s discharge planning statute dates from 1975, yet for over twenty years, New York City’s public hospitals routinely discharged mental health patients to shelters and streets.¹⁰³ Now, a court order requires that the hospitals: (1) prepare a discharge plan which includes prescribing adequate and appropriate housing and necessary support services; (2) locate the housing and support services described in the discharge plan prior to discharge; and (3) provide follow up services to assure that the discharge patient reaches the housing and is, in fact, receiving the social and medical services prescribed in the discharge plan.¹⁰⁴ Public hospitals may not simply refer a discharged patient to a detox program or group home. Rather, public hospitals are legally obligated to work with community agencies to make sure the released patient gets to the services he or she needs.¹⁰⁵

The New York litigation has had a rippling effect. Every New York public hospital now has discharge workers, dubbed “Koskinos workers” after the class action litigation.¹⁰⁶ The litigation has sparked ongoing data and research about the role of hospital discharges in creating homelessness and increased awareness of the need for discharge planning as a homeless prevention technique.¹⁰⁷ Finally, in a city which suffers from a severe shortage of housing options for the mentally ill, the litigation has helped build public support for a joint city-state project to build 5,225 units of housing for the homeless mentally ill.¹⁰⁸

In at least one other state, the regulatory agency responsible for mental health care is strengthening its discharge planning mandate to codify what the New York courts were willing

to order—explicit bans on discharges to shelters. The impetus is a recognition that legal mandates focusing on the discharge planning process may not send a clear enough message that discharges into homelessness are prohibited.

In Massachusetts, the Department of Mental Health recently adopted a “zero tolerance” policy prohibiting state-run mental institutions from discharging patients to emergency shelters and the street.¹⁰⁹ Massachusetts’ discharge planning provision, quoted earlier, is a regulatory requirement which applies to all facilities licensed to provide in-patient psychiatric care. However, a 1998 census of the state’s emergency homeless shelters reported over 800 illegal discharges from hospital psychiatric care to shelters.¹¹⁰ In response to these numbers, the department adopted a new, explicit policy prohibiting state run hospitals from discharging patients to streets and shelters.¹¹¹ The result was an immediate reduction to almost zero in the number of people entering emergency shelters directly upon discharge from state psychiatric care.¹¹² However, the state’s private hospitals continued to discharge mentally ill patients to shelters and streets, accounting for over 650 discharges to shelters in 1999.¹¹³ In light of its experience with a zero tolerance policy for state hospitals, the department has proposed extending it to all licensed psychiatric facilities.¹¹⁴

Massachusetts is also experimenting with using managed care contracts to reduce discharges to shelters.¹¹⁵ In Massachusetts, as elsewhere, managed care cost pressures are pushing patients out of the hospital and into the street. In 1998, Massachusetts’ shelter census showed that half the patients discharged to streets and shelters were Medicaid enrollees receiving mental health care from the Massachusetts Behavioral Health Partnership (MBHP), a for-profit managed care entity that receives a capitated payment rate to provide mental health and substance abuse treatment services to Medicaid enrollees.¹¹⁶ In response to these numbers, the Massachusetts Medicaid agency included a number of performance standards relating to homeless prevention and discharge planning in its 1999 contract with MBHP.¹¹⁷

Massachusetts is a leader in using managed care performance standards in its Medicaid contracting. Performance standards are tied to financial bonuses and penalties: if the contractor meets or exceeds a performance standard, it is rewarded financially. These standards are particularly appropriate in the managed care setting which relies on financial incentives to encourage and change old, ingrained patterns of behavior.

The 1999 performance standards, which were intended to reduce inappropriate discharges to shelters and streets, require MBHP to work with the Massachusetts Housing and Shelter Alliance and other advocates to develop and present a half-day training to MBHP discharge planners and to track discharges into homelessness, including attempts at more appropriate community placements.¹¹⁸ MBHP satisfied the performance standard—it worked with advocates, developed and presented a training session, and instituted a record keeping form, Attempt to Divert from Discharge to Shelter.¹¹⁹ However, discharges to shelters continued at a substantial rate. In 1999, MBHP providers discharged 1656 people into homelessness.¹²⁰

Massachusetts’s experience confirms what others are learning about managed care performance standards: changing the process by which care is provided does not necessarily change the outcome. As a result of the managed care performance standard, MBHP is learning how to do better discharge planning for mentally ill homeless people. However, that learning has not yet translated into better discharges for patients. As states (and other purchasers of health care) become more sophisticated in their managed care contracting, many are moving to performance standards based on outcomes rather than inputs and process. In the discharge planning context, an outcome-based performance standard provides a financial incentive for the managed care entity to reduce the number or percentage of patients discharged to streets and shelters. Like zero tolerance policies, outcome-based performance standards send a clear and unequivocal message about the goal, leaving the details to those who run the institution. Many,

in Massachusetts and elsewhere, are advocating for just such outcome-based performance standards for discharge planning.¹²¹

In the meantime, with each round of managed care contracting, Massachusetts is working with MBHP to improve its discharge planning through outcome measures and process standards. The year 2000 MBHP performance standards continue to provide financial incentives to encourage the managed care plan to work with advocates and conduct more discharge planning training sessions.¹²² It rewards MBHP if it develops a web site with information on discharge planning and community services and pays MBHP if it works with shelters and detox centers to enroll homeless people in Medicaid.¹²³

The year 2000 MBHP performance standards also include two outcome standards, that while not directly addressing discharges to shelters, are likely to reduce such discharges. One outcome standard rewards MBHP if more than 80 percent of discharged patients receive community services within seven days of their release.¹²⁴ Since research shows that it is unrealistic to expect patients discharged to shelters to keep their follow-up appointments, this standard is likely to discourage discharges to shelters.¹²⁵ The second rewards MBHP for creating and using an ACT team to deliver community based services.¹²⁶

While managed care carries with it a plethora of potential problems, possibilities abound in the contracting process. States can identify the services and outcomes they want and use financial incentives—rather than law suits or protracted administrative wrangling—to get them.

Thus, law can play a significant role in reducing discharges to streets. A substantial body of law already exists outlawing such discharges. Innovative new approaches—including zero tolerance policies and managed care contracts—are on the horizon. In some states, statutes need to be enforced. In others, regulatory and statutory provisions need to be strengthened to make their messages ring out more clearly.

CONCLUSION

The last time Julia was in Atlanta Regional Hospital she thought she would never get out or get out only to be sent once again to a homeless shelter. Terrified, Julia suffered a “conversion paralysis,” an acute physical reaction to her emotional trauma, that left her entire body paralyzed. Once Julia learned she would soon be discharged to a residential group home, her body gradually began to lose its paralysis. On the day she left the hospital for her new home, she was dancing.¹²⁷

It is bad medicine to discharge mentally ill and substance abusing patients to the street. A stay in a psychiatric hospital or detox center gives the patient a chance to become stabilized, a necessary foundation for successful treatment. Long term stability can be maintained if a continuum of care begins as the person leaves the hospital or detox to reenter the community.

A legal mandate to do adequate discharge planning and to prohibit discharges to streets and shelters is not an onerous obligation. Standards and recommendations abound that explain how to provide discharge planning for patients who are mentally ill and have substance abuse problems. Funding is available for community case managers and to build the community resources that discharged patients need.

The biggest challenge may be that good discharge planning requires that hospitals and detox¹²⁸ centers become part of a larger network of community caregivers and patients. They must break out of the fragmented work of medicine and join in a community effort. The role of advocates is to help show institutions how to become part of this larger community.

NOTES

* Professor of Law, St. Louis University School of Law. This work was supported by a Mercer University School of Law faculty research grant. My thanks to Nateesha Gupte (St. Louis University, Class of 2001) and Laura Bedingfield (Mercer University Class of 2002) for their help with research and ideas. Thanks to Patsy Tye of the Mercer Law Library for help locating source material. I am grateful to Ray Brescia, Mary Eden Hombs, and Sue Jamieson for their advocacy and for the time they spent with me discussing these issues.

1. Paul Koegel et al., *The Causes of Homelessness*, in HOMELESSNESS IN AMERICA 24 (1996).
2. Koegel, *supra* note 1, at 24-25.
3. See HOMELESSNESS: PROGRAMS AND THE PEOPLE THAT THEY SERVE 24 (1998). Thirty nine percent of homeless people say they have had indicators of mental illness, 36 percent report alcohol problems, and 26 percent report drug use programs [hereinafter HOMELESSNESS: PROGRAMS AND THE PEOPLE]. *Id.*
4. COMMITTEE ON HEALTH CARE FOR HOMELESS PEOPLE, HEALTH AND HUMAN NEEDS 51-52 (1988) [hereinafter HOMELESSNESS, HEALTH & HUMAN NEEDS].
5. Koegel, *supra* note 1, at 31. Alcohol abuse is more prevalent among the homeless than is drug abuse. One half of homeless people studied abused alcohol, while one third abused other drugs. See also HOMELESSNESS: PROGRAMS AND THE PEOPLE, *supra* note 3, at 24. Thirty six percent of homeless people report alcohol abuse within the last month. Less is known about other drug use because most estimates combine alcohol and drug use under the rubric of substance abuse. However, a recent study reports that 26 percent of homeless people report drug use programs during the previous month. *Id.*
6. HOMELESSNESS, HEALTH & HUMAN NEEDS, *supra* note 4, at 65. Among drug abusers, 42 percent of the men and 41 percent of the women could also be classified as mentally ill, 59 percent of the male clients and 46 percent of the female clients who abused drugs also evidenced a problem with alcohol.
7. HOMELESSNESS, HEALTH & HUMAN NEEDS, *supra* note 4, at 62.
8. *Id.*
9. *Id.*
10. HOMELESSNESS, HEALTH & HUMAN NEEDS, *supra* note 4, at 40. Other health problems that tend to lead to homelessness are disabling physical conditions that cause a person to become unemployed, or any major illness that results in massive treatment costs.
11. *Id.* at 51.
12. *Id.*
13. Homeless people are likely to present special treatment challenges. They have often had negative experiences with the mental health system and are determined not to be involved in further treatment. Some have suffered unpleasant side effects from medications. Some do not believe they need treatment, while others do not trust the system to deliver appropriate and humane care. Homeless people often do not have a support system of family and friends, and are distrustful of authority figures, including those in the health care delivery system. *Id.* at 58.
14. HEATHER BARR, PRISONS AND JAILS: HOSPITALS OF LAST RESORT 7-8 (1999). Traditionally, the mental health and substance abuse fields have been separate and, at times, even antagonistic. The result was often that mentally ill substance users received treatment for only one of their problems, or at best, received mental health and substance use treatment from separate providers who did not work together or even communicate to create a joint treatment plan. Research shows that integrated services are more effective than mental health and substance use treatment offered separately or sequentially, and a number of integrated treatment modalities show real promise treating mentally ill substance abusers. *Id.*
15. HOMELESSNESS, HEALTH & HUMAN NEEDS, *supra* note 4, at 59. See generally MICHAEL ROWE, CROSSING THE BORDER (1999). The author discusses different experiences while participating in doing outreach to persons who are homeless and mentally ill and substance abusers.
16. BARR, *supra* note 14, at 7, 11.
17. For examples on discussion for the psychosocial rehabilitation services see Cumberland Mountain Community Services Board Website, at <http://www.cmcsb.com/mentalhealth.htm>.
18. Michael F. Hogan, *Medicaid and Mental Health Care: Can This Relationship Thrive?*, 57 POLICY & PRACTICE OF PUBLIC HUMAN SERVICES, 1999 WL 16094012, at *1520. ACCESS, a five year, federally funded demonstration project showed real success in providing services to those with serious mental illness and substance abuse. All sites provided service integration through assertive community treatment (ACT) teams, outreach, and case management. ACT teams work with clients who are housed but who also have great service needs and are generally unable to access necessary services without assistance. See also MASSACHUSETTS HOUSING AND SHELTER ALLIANCE, PREVENTING HOMELESSNESS: POLICY, PROTOCOLS, AND PRACTICES FOR DISCHARGE AND AFTERCARE PLANNING 6-7 (1999) [hereinafter PREVENTING HOMELESSNESS].
19. Hogan, *supra* note 18, at 1520. Not only has the federal government approved Medicaid payment for ACT services, but it is encouraging states to reimburse for ACT under their Medicaid programs. Letter from the Director of the Center for Medicaid and State Operations, Health Care Financing Administration (HCFA) to State Medicaid Directors (June 7, 1999), at <http://www.hcfa.gov/medicaid/smd60799.htm>. These letters notified states that Medicaid will pay for ACT Teams and that given its

effectiveness as a treatment approach, states Medicaid programs should cover it. *See also* NATIONAL ALLIANCE FOR THE MENTALLY ILL, *Using Medicaid to Expand Programs of Assertive Community Treatment* (1999), at <http://www.nami.org/update/unitedpact.html>.

20. Deidre Oakley & Deborah Dennis, *Responding to the Needs of Homeless People with Alcohol, Drug and/or Mental Illness*, in HOMELESSNESS IN AMERICA 179, 183-184 (Jim Baumohl ed., 1996); Micheal Winerip, *Bedlam on the Streets*, N.Y. TIMES, May 23, 1999, at 42.

21. Winerip, *supra* note 20, at 42.

22. *Id.* At the Pathways to Housing Program in Harlem and Queens New York, among residents who had been homeless for more than 10 years before entering the program, 88% remained housed at Pathways for five years. *See, e.g.*, Virginia Shubert & Mary Ellen Hombs, *Housing Works: Housing Opportunities for Homeless Persons*, 29 CLEARINGHOUSE REV. 741-751 (1995) (discussing housing for formerly homeless HIV positive people who continue to drink).

23. Oakley & Dennis, *supra* note 20, at 183-184.

24. THE ATLANTA LEGAL AID SOCIETY, THE MENTAL HEALTH LAW PROJECT, *available at* <http://www.law.emory.edu/PI/ALAS/mental.html> [hereinafter THE MENTAL HEALTH PROJECT]. “Julia” is a pseudonym adopted for this article.

25. PREVENTING HOMELESSNESS, *supra* note 18, at 2.

26. Eric N. Lindblom, *Preventing Homelessness*, in HOMELESSNESS IN AMERICA 188 (Jim Baumohl ed., 1996). Up to half the poor people in inpatient alcohol or drug treatment are people without homes.

27. *Id.* at 188. Roughly one-quarter of all homeless people were previously in mental institutions.

28. *See* Jolayne Houtz, *Back on the Streets Right After Giving Birth*, THE SEATTLE TIMES, Mar. 11, 1994, at B1.

29. *See* Lynda Richardson, *Helping the Mentally Ill Return to the World*, N.Y. TIMES, Mar. 21, 1993, §1, at 35.

30. *See* Lindblom, *supra* note 26, at 188-9; *see also* MENTAL HEALTH PROJECT URBAN JUSTICE CENTER, THE REVOLVING DOOR: REPEATED PSYCHIATRIC HOSPITALIZATIONS OF THE HOMELESS 2 (1999) [hereinafter THE REVOLVING DOOR]. Dennis Culhane et al., *Impact of Continuity of Care on Recurrence of Homelessness Following an Acute Psychiatric Episode* (1997) (unpublished paper, on file with the University of Pennsylvania).

31. Life on the streets both causes illness and exacerbates poor health. It increases the risk of trauma, especially from rape and assault. *See also* HOMELESSNESS, HEALTH & HUMAN NEEDS, *supra* note 4, at 43-44.

32. Marsha McMurray-Avila, *Medical Respite Services for Homeless People: Practical Models* (March 2000), at <http://www.nhchc.org/respites.html>. There are a number of reasons that shelters do not allow guests to remain during the day. Some expect their clients to be looking for employment. Others do not have the resources to staff their program during the day, or use daytime hours to perform maintenance of the facility. *Id.*

33. PREVENTING HOMELESSNESS, *supra* note 18, at 4-5; REVOLVING DOOR, *supra* note 30, at 2; Culhane, *supra* note 30, at 3-4.

34. *See* THE REVOLVING DOOR, *supra* note 30, at 2, 8, 11 n.3. Thirty-eight percent of discharged patients were re-admitted within six months. Celia Dugger, *Follow-up Care for Mental Patients is Criticized*, N.Y. TIMES, Apr. 29, 1993, at B5 (citing the State Commission on Care for the Mentally Disabled). One in four patients received no outpatient services. On average, patients received only an hour and a half of service per month. One in ten had spells of homelessness. None of the ten patients who abused drugs or alcohol received services designed for those with both mental illness and addiction. All patients had elaborate discharge plans but no follow-up was done. In New York City, eight percent of mental health patients discharged from public hospitals were readmitted to the same hospital within 30 days of discharge. The readmission rate would be higher if admissions to other hospitals were included.

35. BARR, *supra* note 14, at 4.

36. PREVENTING HOMELESSNESS, *supra* note 18, at 3-4.

37. *Id.*

38. Culhane, *supra* note 30. *See also* Randall Kuhn, Center for Mental Health Policy and Services Research: *Applying Cluster Analysis to Test Typology of Homelessness by Pattern of Shelter Utilization: Results from the Analysis of Administrative Data* (Univ. Of Pennsylvania) (Feb. 19, 1996).

39. The Massachusetts Housing and Shelter Alliance (MHSA) is a stateside coalition of seventy groups and agencies committed to reducing and ending homelessness. Its members include providers of permanent housing, transitional programs, emergency shelters, health care, employment and day drop-in resources for homeless people.

40. MASSACHUSETTS HOUSING AND SHELTER ALLIANCE, COMPARISON OF EMERGING SUBPOPULATIONS IN MASSACHUSETTS' EMERGENCY SHELTERS (1997, 1998, and 1999).

41. Philip Mangano, *Prevention: Populations at The Front Door*, in PREVENTING HOMELESSNESS 4-5 (1999).

42. *See, e.g.*, HOMELESSNESS IN MASSACHUSETTS: ARE STATE-FUNDED RESOURCES AND SERVICES ALLOCATED AND COORDINATED EFFECTIVELY? HOMELESSNESS POLICY RESEARCH TEAM, MASSACHUSETTS EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE 25 (Dec. 20, 1999) [hereinafter HOMELESSNESS IN MASSACHUSETTS]. *See also* Mangano, *supra* note 41, at 5.

43. HOMELESSNESS IN MASSACHUSETTS, *supra* note 42. In the ANCHoR system, shelter operators and other providers transmit uniform data reports to a central server which produces aggregate data reports.

44. THE REVOLVING DOOR, *supra* note 30.

45. BARR, *supra* note 14. The report explains how prisons and jails are replacing hospitals for the mentally ill. It documents how thousands of people with mental illness are incarcerated for petty crimes, revolving between the jail and prison systems and life on the

streets because of inadequate or non-existent diversion programs and discharge planning. While incarcerated, mentally ill people receive basic mental health services, including medication. Upon discharge, they are driven to Queens Plaza and released between 2 and 4 a.m. with three subway tokens. Generally, discharged inmates get no referral to community treatment and have no income, insurance or housing. The report recommends mechanisms to divert criminal defendants with mental illness into mental health services, strategies to create a continuum of care for people with mental illness as they move between the criminal justice system and the community, and the components necessary to provide comprehensive discharge planning to help ex-offenders with mental illness integrate into the community.

46. THE REVOLVING DOOR, *supra* note 30, at 2, 11 n.3. This study found that 8 percent, 1,099 of 13,666 patients discharged from public hospitals, were readmitted to the same hospital within 30 days of discharge, and that the readmission figure would be even higher if the agency were able to track re-admissions to different hospitals.

47. NEW YORK STATE OFFICE OF MENTAL HEALTH, STATEWIDE COMPREHENSIVE PLAN FOR MENTAL HEALTH SERVICES 1997-2001 (1997).

48. See PAUL STARR, THE SOCIAL TRANSFORMATION OF AMERICAN MEDICINE 180-97 (1982).

49. RAND ROSENBLATT ET AL., LAW AND THE AMERICAN HEALTH CARE SYSTEM 7-8 (1997).

50. CHARLES E. ROSENBERG, THE CARE OF STRANGERS 149-50 (1987).

51. ROSENBLATT, *supra* note 49, at 8.

52. See generally PEDRO JOSE GREER, JR., WAKING UP IN AMERICA (1999) (for the moving story of a physician trying to change medical education's view of the world and its place in it).

53. LISBETH B. SCHORR, WITHIN OUR REACH: BREAKING THE CYCLE OF DISADVANTAGE 137 (1988).

54. See Dep't of Health and Human Services on Mental Health Issues: Division of Aging (June 10, 1999), at 1999 WL 19097181 [hereinafter Dep't of Health and Human Services].

55. The force driving this reduction in inpatient stays is the reduction in inpatient reimbursement. In New York, for example, Medicaid pays up to \$700 per day for the first few weeks of treatment. However, as soon as the managed care utilization reviewer deems the patient "stable," a determination that usually occurs around day 21, all reimbursement either ceases, or, at best, drops to \$175 per day, too little to cover the cost of care—even for a stable patient. Winerip, *supra* note 20. The hospital is thus pressured to discharge the patient—even if there is no appropriate place to which the discharged patient can go.

As part of this financial crunch, hospitals are downsizing inpatient units and attempting to provide more services on an outpatient basis. From 1995 to 1999, New York City cut its public hospital inpatient psychiatric beds from 9,902 to 8,029—a 19% decrease. BARR, *supra* note 14, at 34. Demand has not gone down, but beds have. The result is inevitable: a "people pile up" in emergency rooms. With fewer beds and resources, the pressure is to discharge—and quickly.

56. HOMELESS POLICY RESEARCH TEAM OF THE MASSACHUSETTS EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE, HOMELESSNESS IN MASSACHUSETTS: ARE STATED FUNDED RESOURCES AND SERVICES ALLOCATED AND COORDINATED EFFECTIVELY? 17 (1999).

57. See THE REVOLVING DOOR, *supra* note 30, at 7. In New York, the average length of stay in public hospitals was 29.2 days in 1994, but only 23.1 days in 1996. *Id.*

58. See HOMELESSNESS, HEALTH & HUMAN NEEDS, *supra* note 4, at 63. See also McMurray-Avila, *supra* note 32. Health Care Clinicians for the Homeless are also likely to have something at their website.

59. Convalescence requires a safe setting with adequate nutrition, rest and health care professionals to do extended medical and psychiatric evaluations, which are problematic in detox settings. See also HOMELESSNESS, HEALTH, & HUMAN NEEDS, *supra* note 4, at 62-63.

60. When the de-institutionalization movement began, proponents anticipated that 2,500 mental health centers would be constructed throughout the country to provide treatment to discharged mental health patients. To date, a mere 700 have opened. See HOMELESSNESS, HEALTH & HUMAN NEEDS, *supra* note 4, at 97. One reason that the full range of outpatient substance abuse programs is not available is that not all forms of treatment are covered by Medicaid. Medicaid covers only those treatments that are determined to be "medical care" such as medical detoxification and inpatient hospitalization. It does not cover social detoxification programs, residential treatment acupuncture or recovery housing programs. See NATIONAL HEALTH CARE FOR THE HOMELESS COUNCIL MEDICAID AND HOMELESSNESS, POLICY PAPERS (2000), at <http://www.nhchc.org/99papersMcd&hn.html>.

61. The Access to Community Care and Effective Services and Supports (ACCESS) project is producing new knowledge about how homeless people with severe mental illness can be engaged and helped. Funded by HHS and HUD, ACCESS demonstration projects, seek to integrate fragmented public mental health services to end homelessness by using proven integration strategies and fostering partnerships among service agencies. When the right connections are made and maintained, ACCESS-evaluated interventions can lower the number of days of homelessness for seriously at risk individuals by as much as 75% over a 12 month period. See also Dep't of Health and Human Services, *supra* note 54.

62. One reason there is a shortage of these services is that they are not covered by Medicaid. Medicaid covers only those treatments that are determined to be "medical care" such as medical detoxification and inpatient hospitalization.

63. The U.S. Dep't of Health and Human Services, Substance Abuse and Mental Health Services Administrations Funds Projects for Assistance in Transition from Homelessness (PATH). The PATH grant program provides states and territories with money specifically to create programs that serve individuals with severe mental illness who are homeless or at risk of becoming homeless.

PATH provides links to community based health, education, employment and housing services. PATH also provides Supported Housing and Homeless Prevention grant programs. *See* Dep't of Health & Human Services, *supra* note 54.

64. McMurray-Avila, *supra* note 32. For a first hand account of the work of Christ House, *see generally* DAVID HILFIKER, NOT ALL OF US ARE SAINTS (1994).

65. McMurray-Avila, *supra* note 32, at 33.

66. Lindblom, *supra* note 26, at 196.

67. HOMELESSNESS: PROGRAMS AND THE PEOPLE, *supra* note 3. Across the country, 128 locally run Health Care for the Homeless (HCH) projects operate with funding from the Stewart B. McKinney Homeless Assistance Act. These projects provide interdisciplinary, community based care that includes primary care, emergency services, addiction treatment, mental health care and prescription drugs. They use case managers to link homeless people to housing, income and transportation. The programs deliver care where homeless people congregate, including shelters, soup kitchens, clinics, drop in centers and on the street. Some, like Christ House and Samaritan House also offer respite care. These programs can play a pivotal role in helping a person transition from inpatient psychiatric and substance abuse treatment to life in the community. However, they reach only a small percentage of those who are homeless. *See id.*

68. THE MENTAL HEALTH PROJECT, *supra* note 24.

69. 1999 HOSPITAL ACCREDITATION STANDARDS, PE 1.5, Intent of PE 1.5 (1999). According to JCAHO, discharge planning should not focus merely on the patient's medical needs, but "identifies patients' continuing physical, emotional, housekeeping, transportation, social, and other needs, and arranges for services to meet them." *Id.* at CC.6.1, Intent of CC 6.1.

70. 1997 U.S.D.H.H.S., REPORT ON EXEMPLARY PRACTICES IN DISCHARGE PLANNING 2. *See also* INTERAGENCY COUNCIL ON THE HOMELESS, PUB, PRIORITY: HOME! THE FEDERAL PLAN TO BREAK THE CYCLE OF HOMELESSNESS (1994) [hereinafter U.S.D.H.H.S.]

71. U.S.D.H.H.S, *supra* note 70, at 2.

72. *Id.* at 3. "The Working Conference considers discharge planning to be a partnership between local communities and institutions with designated community agencies having the primary responsibility for re-entry." *Id.*

73. *Id.* at 3-4. ("In exemplary discharge planning, a team approach, involving all people with significant discharge and transition responsibilities, is essential. A team approach can facilitate efficient communication and effective use of resources. 1. Teams emerge from partnerships among agencies and institutions which are responsible for the care, support, housing, and treatment of the consumer. 2. Team composition is flexible and can include persons serving in the following capacities: 1. Consumer 2. Family member(s) of other supporters 3. Community case manager* 4. Institutional representative* 5. Community resource specialist (information broker)* 6. Mental health and substance abuse specialists 7. Housing specialist 8. Entitlement/income specialist 9. Criminal justice system representative 10. Health care system representative 11. Pay-or representative 12. Policy maker 13. Advocate 14. Peer supporter (* = Core members of a discharge planning team.). Members of the Working Conference noted that while a team might have many members, not every team member needs to be present at meetings with the consumer.) 3. Team members must have the ability to commit the resources of the institution which they represent. In the case of the Community Resource Specialist, this resource is information." (emphasis deleted)).

74. *Id.* at 6. ("The most important element of the re-entry plan is consumer involvement and buy-in. When the consumer feels a sense of ownership of the plan, the consumer is more likely to follow it. 1. Exemplary discharge plans are developed with consumers and feature the most extensive input possible from consumers. 2. Exemplary discharge plans are written in the form of a contract between the consumer, service providers, institutions, and the community representative. 3. Exemplary discharge plans are culturally competent and consider the important issues in race, ethnicity, religion, gender and sexual orientation. 4. Exemplary discharge plans are conscious of factors such as the relationship between genetics and medication; the role of eye contact, language, social space, and body language in a culture and the relationship of these elements to diagnosis; and the culture's view of mental illness and stigma. 5. Professionals who assist in the development of exemplary discharge plans are culturally competent and achieve a "good fit" between the consumer and the clinician." (emphasis deleted)).

75. *Id.* at 4. The discharge planning team should include someone familiar with community resources. *Id.*

76. Interview with Ray Brescia, Director, Mental Health Project, Urban Justice Center (Mar. 7, 2000).

77. MASSACHUSETTS BEHAVIORAL HEALTH PARTNERSHIP, FISCAL YEAR 2000 PERFORMANCE STANDARDS 3 (1999) [hereinafter MASSACHUSETTS BEHAVIORAL HEALTH PARTNERSHIP].

78. U.S.D.H.H.S, *supra* note 70, at 4. ("The team leader is the person with the primary responsibility for the re-entry of the consumer into the community. In most instances, the team leader will be the community case manager. The team leader collaborates with the other members of the team to ensure that the consumer has the necessary resources and support available to assist with the re-entry.").

79. Medicaid covers case management as a clinic service. *See* 42 C.F.R. §440.90 (1999). Medicaid also covers targeted case management. *See* 42 U.S.C. § 1396n(g). *See also* Hogan, *supra* note 18 (Optional case management and rehabilitation benefits are reimbursable under a clinic option.).

80. Letter from the Director of the Center for Medicaid and State Operations, Health Care Financing Administration (HCFA) to State Medicaid Directors (June 7, 1999), available at http://www.hcfa.gov/medicaid/smd_60799.htm. The letter was to notify states that Medicaid will pay for ACT Teams and that given its effectiveness as a treatment approach, states Medicaid programs should cover it.

See also NATIONAL ALLIANCE FOR THE MENTALLY ILL, USING MEDICAID TO EXPAND PROGRAMS OF ASSERTIVE COMMUNITY TREATMENT (2000), available at <http://www.nami.org/update/unitedpact.html>.

81. Interview with Ray Brescia, *supra* note 76. The UJC represents homeless, mentally ill individuals on the verge of discharge from state and city hospitals. The UJC's interdisciplinary staff of lawyers and social workers, acting at the behest of the patient, his family or a hospital discharge worker, goes into the hospital and represents inpatients. The team works with individual clients to help them articulate their wishes and to make informed choices. They also link clients with housing and services and continue to represent clients for six months after discharge to make sure the discharge plan is implemented, that their care is continuing and that the client's ongoing concerns are addressed. In other words, they assume the responsibility for doing discharge follow-up.

The UJC's individual representation works, in part, because one of its great strengths is its interdisciplinary nature. Lawyers are trained to listen to clients and assert their wishes—not those of the hospitals or the social services system. The lawyer can make sure the client's legal rights are asserted and disentangle the law that so enmeshes itself in poor people's day to day existence by helping with lease provisions, welfare to work contracts, criminal misdemeanors and consumer issues. At the same time, social workers understand and help clients navigate the complex systems for housing, social services and government benefits. Their presence also reminds attorneys that creative problem solving is often the best legal representation and that having a place to live can be more important than winning a point of law.

82. U.S.D.H.H.S., *supra* note 70, at 7-8. (“Exemplary discharge plans encourage consumers to be as independent and self-sufficient as possible. 1. Exemplary discharge plans ensure that consumers receive all the entitlements for which they are eligible. 2. Exemplary discharge plans examine the possibility of employment, education and training. 3. Exemplary discharge plans ensure appropriate management of money and other resources.”).

83. Over 70 percent of people who are homeless have no health insurance. NATIONAL HEALTH CARE FOR THE HOMELESS COUNCIL, HCH CLINICIANS' NETWORK, HEALTH CARE FOR THE HOMELESS APPROPRIATIONS (2000), at <http://www.nhchc.org/99ppapersapps.html>. Most, though, get their care from mainstream health care providers. HOMELESSNESS: PROGRAMS AND THE PEOPLE, *supra* note 3.

84. The disability standard requires that a person be “permanently and totally disabled” and unable to engage in “substantial, gainful activity by reason of any medically determinable impairment [which] can be expected to last for a continuous period of not less than 12 months” or result in death. 20 C.F.R. §404.1505 (1999).

85. Substance abuse no longer qualifies as a disabling condition for purposes of Medicaid, SSI and SSA disability. Those for whom “drug addiction or alcoholism is a contributing factor material to their disability” are disqualified. However a person with a dual diagnosis of mental illness and substance abuse still qualifies as long as mental illness is the contributing factor to disability. Making sure that the medical records explain the significance of each diagnosis is critical.

86. HOMELESSNESS, HEALTH & HUMAN NEEDS, *supra* note 4. Even if a person qualifies for Medicaid as a result of SSI, if the person lives in a hospital, detox or public shelter for more than 3 months in one year he or she loses SSI and thus Medicaid eligibility. *Id.*

87. THE REVOLVING DOOR, *supra* note 30, at 9.

88. THE MENTAL HEALTH LAW PROJECT, *supra* note 24.

89. See, e.g., Jonathon P. Bach, Note, *Requiring Care in the Process of Patient Deinstitutionalization Toward a Common Law Approach to Mental Health Reform*, 98 YALE L.J. 1153 (1989).

90. See 1999 HOSPITAL ACCREDITATION STANDARDS, *supra* note 69, at CC.6.1; HOMELESSNESS, HEALTH & HUMAN NEEDS, *supra* note 4, at 147. See also AMERICAN HOSPITAL ASSOCIATION, COMPLEX DISCHARGE PLANNING: STRATEGIES FOR HOSPITAL, CONSUMER, AND COMMUNITY PARTNERSHIPS (1991).

91. 42 U.S.C. 1395x (ee); see also 42 C.F.R. §482.43. Not only must the hospital prepare a discharge plan for those needing post-hospital services, but it must also arrange for “the initial implementation of the patient's discharge plan” and “must transfer or refer patients, along with necessary medical information, to appropriate facilities, agencies, or outpatient services, as needed, for follow-up or ancillary care.” *Id.* at (b)(3), (d).

92. See *Olmstead v. L. C.*, 119 S. Ct. 2176 (1999). See also Ira Burnim & Jennifer Mathis, *After Olmstead v. L.C.: Enforcing the Integration Mandate of the Americans with Disabilities Act*, CLEARINGHOUSE REV. 633 (2000).

93. See, e.g., ALASKA STAT. §47.30.825(i) (Michie 1999); ARIZ. REV. STAT. §36-511(c) (1999); CAL. HEALTH & SAFETY CODE § 1262 (West 2000); COLO. REV. STAT. §27-1-103 (2000); CONN. GEN. STAT. ANN. §17a-542 (West 1999); D.C. MUN. REGS. tit. 47, § 4221 (1999) (substance abuse); DEL. CODE ANN. tit. 16, §5161 (1999); IDAHO CODE § 66-413 (1999); FLA. ADMIN. CODE 59A-3.2055(1)(e)(2); GA. COMP. R. & REGS. 290-4-2-.17; MASS. REGS. CODE tit. 104, §27.09 (1999); 405 ILL. COMP. STAT. ANN. 5/4-703 (West 1999); IND. CODE ANN. §12-24-12-3 (1999); KAN. STAT. ANN. §39-1610(d) (1999); ME. REV. STAT. ANN., health-general §10-809 (1999); MICH. COMP. LAWS ANN. §330.1209a (West 1999); MINN. R. 9520.0640 (1999); MINN. STAT. 253B.20(4) (1999); MONT. CODE ANN. §53-21-180 (1999); N.J. STAT. ANN. § 30:4-27.18 (West 1999); N.Y. MENTAL HYG. LAW §29.15(f)-(i) (Consol. 2000); N.D. CENT. CODE §25-03.1-30(5) (1999); OHIO ADMIN. CODE §5122-14-11(g) and (h) (1999); OKLA. STAT. ANN. tit. 43A, §7-102(2000); OR. ADMIN. R. 309-031-0215 (2000); 50 PA. CONS. STAT. §4102(2-3) (1999); 50 PA. CONS. STAT. §4301 (1999); R.I. CODE R. 21-28.2-17 (2000). S.C. CODE ANN. REGS. 1976 §44-22-70(c) (1999); S.D. Cod. Laws §27A-12-3.7 (2000); See, Tenn. Code Ann. §33-2-601 (1999); Tex. Health Code Ann. §574.081 (West 1999); see, UTAH CODE ANN. §62A-12-229(2) (2000); UTAH CODE ANN. §62A-12-241 (2000); VA. CODE ANN. §37.1-197.1(A)(3) (Michie 1999); V.I. CODE ANN. tit. 19, §723a (1999); W.VA. CODE §27-2A-

1(b)(1) (1999); WIS. STAT. §51.35(4m) & (5) (1999); WYO. STAT. ANN. §25-10-108(b) (Michie 1999). *See also*, N.M. STAT. ANN. §43-1-9 (2000).

94. *See* MASS. REGS. CODE tit. 104 § 27.09 (1999).

95. *See* MASSACHUSETTS BEHAVIORAL HEALTH PARTNERSHIP, *supra* note 77.

96. While some state discharge planning mandates date from the early 1970's, when the mental health de-institutionalization movement began, others are of more recent vintage and appear to be a response to concerns about homelessness among mentally ill and substance abusing people. *See, e.g.*, MD. CODE ANN., HEALTH-GEN. I §10-809(b)(ii) (1999). "Aftercare services" means services. . .[t]hat enhance the opportunity to maintain a mentally ill individual in the community and to assist in the prevention of homelessness." *Id.* Some mandates are statutory, while others appear in regulatory codes. Some standards apply to all licensed treatment facilities; others apply only to state run institutions. Some provisions apply to all inpatients, while others are limited to patients who are involuntarily committed for treatment. Some apply to patients admitted for either psychiatric treatment and substance abuse; others apply to only one or the other.

97. MASS. REGS. CODE, *supra* note 94, at 104 § 27.09 (1999).

98. S.C. CODE ANN. §44-22-70(c) (Law.Co-Op. 1999) provides:

For patients committed after a hearing by the probate court for the involuntary inpatient treatment for mental illness or chemical dependency, an appropriate and comprehensive discharge plan must be developed. Planning for a patient's discharge must begin within seventy-two hours of admission, must include input from the patient and must address community treatment, financial resources and housing. The facility and community treatment staff must be involved in developing the discharge plan. Representatives of all entities which provide services pursuant to the plan must be consulted and informed about the plan. Based on available resources, the department shall make every effort to implement the discharge plan when the patient, in the opinion of the multi-disciplinary team, is ready for discharge.

99. N.J. STAT. ANN. §30:4-27.18 (West 1999) provides:

A person discharged either by the court or administratively from a short-term care or psychiatric facility or special psychiatric hospital shall have a discharge plan prepared by the treatment team at the facility pursuant to this section. The treatment team shall give the patient an opportunity to participate in the formulation of the discharge plan. In the case of patients committed to short-term care or psychiatric facilities, a community agency designated by the commissioner shall participate in the formulation of the plan. The facility shall advise the mental health agency of the date of the patient's discharge. The mental health agency shall provide follow-up care to the patient pursuant to regulations adopted by the commission. This section does not preclude discharging a patient to an appropriate professional. Psychiatric facilities shall give notice of the discharge to the county adjuster of the county in which the patient has legal settlement.

100. *See, e.g.*, *Heard v. Cuomo*, 610 N.E. 2d 348 (1993) (New York's mental health discharge planning statute requires public hospitals to prepare an individualized, written discharge plan that includes housing and coordinating aftercare efforts). *Koskinas v. Carrilo*, 625 N.Y.S.2d 546 (1 Dept. 1995) (New York's discharge planning statute requires that hospitals insure that homeless, mentally ill patients reach the residences to which they are discharged); *E.H. v. Matin*, 284 S.E.2d 232 (W.Va. 1981) (Right to adequate treatment under state law is violated when, inter alia, staff members do not follow-up to assure compliance with treatment plans); *Arnold v. Arizona Dept. of Health Servs.*, 775 P.2d 521 (Az. 1989) (Both county and state have mandatory, non-discretionary duty to provide a full continuum of community mental health care to chronically mentally ill individuals which is breached when the state hospital fails to provide discharge plans to patients or their guardians).

101. *Heard*, 610 N.E.2d at 348.

102. *Koskinas*, 625 N.Y.S.2d at 546.

103. *See Heard*, 610 N.E.2d at 348.

104. *Heard*, 610 N.E.2d at 349.

105. With the legal obligation comes the threat of tort damages for failure to comply. *See* Jonathon P. Bach, Note, *Requiring One Care in the Process of Patient Deinstitutionalization: Toward a Common Law Approach to Mental Health Care Reform*, 98 YALE L.J. 1153 (1989) (NY tort article). To quell the City's concerns about the limits of its duty to assist discharged mentally ill patients in finding housing, the court specifically found that neither the statute nor the judgment imposes on the City an explicit duty to build, create, supply or fund housing for the mentally ill homeless. *Heard*, 610 N.E.2d at 350. The court also refused to order a specific time period for follow up activities. Rather, it directed the city to develop a follow up program. *Koskinas*, 625 N.Y.S.2d at 547. The plan implemented by the hospitals provides that hospitals will make phone calls over a three-day period to check on patients. The plan includes no contingency plans for situations in which the patient is not receiving services in the community. Lisa W. Foderaro, *Mental Health Care for Outpatients is Often Lax*, N.Y. TIMES, Feb. 21, 1996, at B3.

106. While funding problems plague New York City's hospitals, the Koskinos litigation has highlighted the need for good discharge planning. While Koskinos workers, like other parts of the city's public hospitals system, remain underfunded and undertrained, they are at least in place and have not been cut in the periodic budget crises that sweep the city and state of New York. Interview with Ray Brescia, *supra* note 76.

107. *See* THE REVOLVING DOOR, *supra* note 30; BARR, *supra* note 14; NEW YORK STATE OFFICE OF MENTAL HEALTH, STATEWIDE COMPREHENSIVE PLAN FOR MENTAL HEALTH SERVICES 1997-2001 (1997); *New York City Hospital Discharge Study*, in MENTAL HEALTH PROJECT OF THE URBAN JUSTICE CENTER 2, 11 n.3 (1996).

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108. *To Stop Mental Health's Revolving Door*, N.Y. TIMES, Mar. 21, 1991, at A22 (unsigned editorial).
109. PREVENTING HOMELESSNESS, *supra* note 18, at 4-5. Massachusetts has long had a departmental policy explicitly prohibiting discharges to streets and shelters which was apparently ignored. *See also* MASSACHUSETTS DEPARTMENT OF MENTAL HEALTH, DEPARTMENT POLICY - HOMELESS INDIVIDUALS (Feb. 22, 1983) ("In no instance should a person be discharged from an in-patient facility with directions to seek housing or shelter in an emergency shelter.").
110. MASSACHUSETTS HOUSING AND SHELTER ALLIANCE, INITIATING SOLUTIONS TO END HOMELESSNESS 10 (1999). The 1997 census reported 761 discharges from hospital psychiatric care to shelters. *Id.*
111. Interview with Mary Ellen Hombs, Director of Special Projects, Massachusetts Housing and Shelter Alliance (Mar. 8, 2000) [hereinafter Interview with Mary Ellen Hombs].
112. *See* MASSACHUSETTS HOUSING AND SHELTER ALLIANCE, COMPARISON OF EMERGING SUBPOPULATIONS, *supra* note 40.
113. *Id.* at 9. Six hundred and fifty six individuals were discharged to shelters. *Id.*
114. MASSACHUSETTS DEP'T OF MENTAL HEALTH, TASK FORCE ON HOMELESSNESS 8 (2000). The proposed rule, MASS. REGS. CODE tit. 104, §27.09(1) reads:
- (a) Steps shall be taken to arrange for necessary follow-up clinical services following discharge. Such measures shall be documented in the medical record. (b) Except in the case of competent refusal of alternative options by a patient, discharge to a homeless shelter or the street is inappropriate. The facility shall document in the medical record all efforts made to offer alternative options and shall keep a record of all such discharges and submit it to the Department upon request. Section (c) provides: "When a patient in a facility operated by or under contract to the Department is a client of the Department pursuant to MASS. REGS. CODE tit. 104, §27.09, the service planning process outlined in MASS. REGS. CODE tit. 104, §27.09 shall be initiated prior to discharge."
- See also* MASSACHUSETTS DEPARTMENT OF MENTAL HEALTH, PUBLIC HEARING REGARDING PROPOSED REGULATIONS (2000).
115. *See* MASSACHUSETTS BEHAVIORAL HEALTH PARTNERSHIP PERFORMANCE STANDARDS, *supra* note 77.
116. MASSACHUSETTS HOUSING AND SHELTER ALLIANCE, COMPARISON OF EMERGING SUBPOPULATIONS, *supra* note 40, at 10.
117. Interview with Mary Ellen Hombs, *supra* note 111.
118. MASSACHUSETTS BEHAVIORAL HEALTH PARTNERSHIP PERFORMANCE STANDARDS, *supra* note 77, at 3. ("The Contractor shall continue to collaborate with the homeless advocacy community to identify strategies and resources to facilitate appropriate psychiatric discharge dispositions for homeless adults. . .[and] will also educate certain inpatient mental health providers. . .and develop a mechanism to monitor their performance relative to the identified strategies. The compliance target for this standard shall be the submission of a final compliance report evidencing that by June 30, 1999 strategies and resources were identified, providers were educated and the developed performance tracking mechanisms were implemented.").
119. Interview with Mary Ellen Hombs, *supra* note 111.
120. MASSACHUSETTS HOUSING AND SHELTER ALLIANCE, COMPARISON OF EMERGING SUBPOPULATIONS, *supra* note 40, at 10. Seventy-three percent of a representative sampling of 2,269 of 4,185 shelter beds across Massachusetts. *Id.*
121. *See, e.g.*, Sidney D. Watson, *The Commercialization of Welfare Medicine*, 45 ST. LOUIS U. L.J. 53 (2001).
122. MASSACHUSETTS BEHAVIORAL HEALTH PARTNERSHIP, *supra* note 77, at 3.
123. *Id.* The Division of Medical Assistance instituted two discharge planning initiatives aimed at making it easier for people leaving institutions to enroll in Medicaid. First, the agency adopted a shortened, easy to follow Medicaid enrollment form for homeless people. Second, it offers an enrollment incentive to shelters and detox centers to compensate them for efforts to enroll homeless people. The program receives a \$30 fee for each person enrolled in Medicaid. *See also* Interview with Mary Ellen Hombs, *supra* note 111.
124. MASSACHUSETTS BEHAVIORAL HEALTH PARTNERSHIP, *supra* note 77, at 2.
125. *See* John R. Belcher, *Moving Into Homelessness After Psychiatric Hospitalization*, 14 J. SOC. SERV. RES. 63, 75 (1991).
126. MASSACHUSETTS BEHAVIORAL HEALTH PARTNERSHIP, *supra* note 77, at 17.
127. THE MENTAL HEALTH LAW PROJECT, *supra* note 24.

PART IV:

ECONOMIC SELF SUFFICIENCY

THE NEW LOCALISM IN WELFARE ADVOCACY

MATTHEW DILLER*

Much ink has been spilled examining and critiquing various modes of advocacy that lawyers for the poor use, don't use, or are alleged to use.¹ When it comes to poverty law, it seems that the landscape is filled with arm chair generals, Monday morning quarterbacks and back seat drivers all advising, criticizing and mixing metaphors in a cacophonous din. Accordingly, I hesitate to offer another contribution to this literature. I will restrict myself to a single point—forms of advocacy cannot be considered apart from the legal structure and context of the object of advocacy. This point seems obvious, but observers seldom draw this connection, concentrating instead on issues that are internal to the advocacy process, such as the relationship between advocates and clients. Second, a corollary to this point: As the legal structures shift and evolve, methods of advocacy must also adapt to these changing circumstances.

This essay elaborates on this point and its corollary by examining forms of advocacy in the area of welfare. First, it points out the connection between the advocacy forms favored by poverty lawyers and the structure of the Aid to Families with Dependent Children (AFDC) program. In particular, it shows how AFDC and the class action went hand in hand. The centralized and rule based structure of AFDC made it particularly susceptible to class action litigation. Next, this essay discusses the growing criticism of the class action as a tool for social reform, and the implications of this criticism for welfare advocacy. Finally, this essay examines the structure of welfare as it is emerging from the process of welfare reform and highlights some of the ramifications of these changes for welfare advocacy. As the welfare system becomes increasingly decentralized and fragmented, critical decisions are increasingly made on the local level. Accordingly, effective advocacy must also be structured to influence decisions locally. Successful advocacy will depend on identifying the loci of decision making in the new regime of welfare and exploiting or creating opportunities to exert influence at these points.

I. AFDC AND THE LAW REFORM MODEL

In the 1960s, the law reform model of advocacy emerged as the dominant means used by poverty lawyers to effect social change.² The law reform model posited that social change can be brought about through test cases and class action litigation. Analogizing from the litigation strategy of civil rights activists, poverty lawyers sought to use the courts to establish core principles concerning the rights of people in poverty and to implement and enforce these principles through judicial decree. The test case model was first applied in the poverty law context by Edward Sparer and the Center for Social Welfare Policy and Law.³ As used by its progenitors, the test case model focused heavily on the goal of establishing welfare rights, and many of the most well known cases brought by poverty lawyers dealt with the subject of welfare.⁴

Public benefit programs were a natural fit with this advocacy strategy. First, the programs were run by large government agencies, so that advocacy for systemic change could target a single institution. A change in policy by a welfare agency affects thousands of people. In contrast, in many other areas of vital importance to people in poverty, social conditions can only be altered by changing the conduct of thousands of individuals. In the important areas of health care, housing, and employment, the critical decisions affecting poor individuals and communities are principally made by large numbers of private parties that cannot possibly be subjected to a single court decree. These problems are polycentric, resulting from the interplay of individuals, market forces, and institutional constraints. They fit poorly into the traditional bi-polar rubric of

litigation, which requires one or more similarly situated plaintiffs who are pitted in opposition to no more than a few defendants.⁵ It is by no means clear who one sues in order to create rights to housing, health care or jobs for people in need.

This is not to say that the law reform model could not be used in these fields. The judicial recognition of the warranty of habitability and other rights for tenants shows that the law reform strategy could yield benefits even in these areas.⁶ But the impact of litigation victories in a field such as housing is inherently difficult to ascertain. The task of improving housing conditions in a given city or state depends on changing the conduct of thousands of independent landlords. In housing and other areas, advocates attempted to overcome the problem of polycentricity by concentrating on the portions of the issue in which government is heavily involved. For example, poverty lawyers focused on public housing⁷ and public funding for health care through the Medicaid program.⁸ Although both of these focuses achieved important gains, they provided only a limited perspective on these problems that did not really strike at their heart. In contrast, the welfare system seemed tailor-made for the law reform approach. A lawsuit directed at the administrators of a state AFDC program, or at the Department of Health and Human Services could produce a judicial order requiring, in one swoop, that all applicants or recipients be treated in a new and different manner.

In addition, by the late 1960s the AFDC program became increasingly rule-based.⁹ Prior to that point, the program was administered through a social work model, in which critical decisions were left to the professional discretion of case workers.¹⁰ Thus, even though the programs were administered by single agencies, the agencies themselves relied on comparatively few fixed rules. The increasingly rule-based nature of the welfare system facilitated the reliance on litigation-based advocacy strategies in a number of ways. First, in a rule-based system, agency policies are more easily discerned and therefore more readily challenged in litigation. In the absence of formal rules, the operative policies of a welfare agency cannot be challenged unless they are uncovered and their existence proven, a process often difficult and resource intensive.¹¹

Second, the multiple tiers of authority in the AFDC program resulted in many different layers of rules. Each program was subject to a federal statute and regulations, as well as a state statute and regulations. Conflicts between these many sources of authority provided a fertile source for legal claims that could be exploited in the courtroom to the benefit of recipients.¹² Moreover, the legal claims arising from these conflicts fell well within the ambit of traditional judicial functions. Many of the cases required only the traditional judicial function of statutory interpretation, deciding whether one set of rules complies with another set. AFDC litigation seldom broke new ground at the remedial stage, as ongoing judicial supervision of welfare administration was seldom ordered. In a rule-based system, an injunction generally led to the rescission of one rule and the substitution of a revised version in its stead.¹³ Welfare class actions rarely tested the remedial powers of the courts in the same way as litigation over prison conditions, treatment of residents of long term care facilities, or school desegregation.

Finally, the rule-based structure of the AFDC program facilitated the use of the class action. Because large numbers of individuals could be harmed by a single rule of general applicability, class certification requirements were easily met. The prerequisites of typicality, commonality and numerosity were not difficult to fulfill in such a context.¹⁴

Many have written about the allure of litigation as an apparent “magic bullet” for dispatching social problems.¹⁵ In the context of welfare advocacy, however, the focus on litigation also had some grounding in reality. The structure of the AFDC program made welfare a particularly fertile ground for test case and class action litigation, and poverty lawyers exploited this match the fullest extent that they could.

II. CRITIQUE OF THE LAW REFORM MODEL

Over the years, academics and poverty lawyers have become increasingly aware of the shortcomings of the law reform model. In fact, much of the writing on poverty lawyering consists of a cataloging of the deficiencies in litigation as a vehicle for social change.¹⁶ In the place of litigation based strategies, critics have counseled poverty lawyers to focus on building low income communities by nurturing grass roots activism and helping to build community institutions.¹⁷ This approach seeks to empower poor communities to achieve their own ends, with the lawyer serving principally as a resource of knowledge and expertise.

The critics of the law reform model have focused on the fact that litigation based strategies of necessity place the lawyer in the forefront of the effort.¹⁸ The idea of effecting sweeping change through the vehicle of a class action lawsuit, often rests on the image of the lawyer as hero—a savior who brings justice to the masses. The prominence of the lawyer in this arrangement, however, does not further the development of leadership and organization that is indigenous to the community served.¹⁹ Indeed, some have argued that litigation strategies may have the negative consequence of encouraging reformers to look to the courts for salvation rather than doing the hard work necessary to mount a political or public education campaign.²⁰ Critics have also pointed out that the law reform model favors a focus on issues that can be addressed through litigation, rather than on the needs of the community.²¹ The question of whether there is a legal claim and how strong it is may take precedence over the question of which problem is most urgent or central to the lives of clients.

Inherent in these criticisms is a belief that litigation strategies cannot, or frequently do not, yield results that are sufficiently compelling to outweigh these drawbacks. Accordingly, many critics have also questioned whether litigation can really bring about lasting gains for people in poverty. When courts order the expansion of substantive or procedural rights, adversaries can respond by toughening the system at other points. Litigation for social change can be seen as a battle with Hydra – as one head is stricken off, two more take its place. Examples of this pattern can be readily identified in the area of welfare, where Congress overruled a string of litigation successes by amending the Social Security Act and adding provisions that were even more harsh than those originally challenged.²²

As I have argued elsewhere, these critiques can be overdrawn. Litigation strategies can yield positive results for poor clients.²³ It is difficult to contest the proposition that lawsuits such as *Shapiro v. Thompson*²⁴ and *King v. Smith*²⁵ yielded many rewards for poor families.

More importantly, the drawbacks of litigation must be considered in light of the difficulties that accompany the alternative approaches. Litigation has proven attractive because the political process has often looked bleak.²⁶ In a system dominated by money, it is not surprising that poor communities generally do not fare well in the political arena. Not only do poor people lack the resources to gain political clout, they are frequently targets of blame for many social ills. The focus on litigation can be seen as an attempt to appeal to the arm of government that is least influenced by money and social scapegoating. Although the judiciary is far from immune from either of these influences,²⁷ it strives to appear as a neutral arbiter of the rule of law. Poor people can and do win in court.

Nonetheless, the critique of litigation is not without force, particularly as a caution against an exclusive or reflexive reliance on litigation based strategies. The limits of litigation call for a diversification of approaches, rather than abandonment of the lawsuit as a vehicle for seeking social change.²⁸ This recognition of the limits of litigation based strategies together with growing reluctance of the judiciary to interfere with the administration of public benefit programs has posed a major challenge for advocates working on welfare and other public benefits programs.

This challenge is compounded by the reality that the welfare system has not provided fertile ground for community based advocacy. After the collapse of the National Welfare Rights Movement, the prospects for assisting a grass roots movement aimed at improving the welfare system were slim.²⁹ The principal goal of recipients has always been to leave the rolls rather than to stay and fight to improve the welfare system.³⁰ Moreover, even within poor communities welfare recipients are often marginalized. Poor communities rarely rally around the issue of public benefits, in part, because such a focus may further stigmatize the community. Community leaders are likely to steer clear of issues which suggest that their neighborhoods consists largely of welfare recipients.

Additionally, the structure of the AFDC program was not conducive to a community based approach. Although some important problems with AFDC administration could be addressed at the local level, such as the treatment of applicants or recipients by staff, many of the key program decisions were made at the federal or state level. The Social Security Act contained detailed requirements governing the treatment of income, work expenses, child support payments, and eligibility requirements.³¹ States set the benefit levels and chose among a variety of options left open to them by federal law. Although states were given broader freedom in designing work and training requirements under the JOBS program,³² and this freedom sometimes translated down to localities, such programs never assumed major roles in the operation of the welfare system. At most, only ten percent of adult recipients participated in JOBS programs.³³ Local activism around welfare issues ran up against the reality that the centers of decision making in the AFDC program were, in many respects, not local at all.

Thus, the movement toward community based lawyering has looked principally to issues other than public benefits. Luke Cole, for example, has highlighted the potential of campaigns for environmental justice as a means of both improving life in poor communities and as a vehicle for nurturing community activism.³⁴ Others have stressed the benefits of focusing on community economic development as a means of strengthening critical social and economic institutions in low income communities.³⁵

Advocates working on public benefits have largely been left out of the movement toward community based strategies. Indeed, the calls for a renewed emphasis on community building could have the effect of shifting advocacy resources away from work on public benefits issues in favor of other areas. Given the critical importance of public benefits, however, such a trend would be unfortunate.

III. ADVOCACY IN THE NEW WELFARE SYSTEM

A. The Emerging Structure of TANF

The Temporary Assistance for Needy Families (TANF) program is structured quite differently from its predecessor, the AFDC program.³⁶ The TANF program eliminates most of the federal requirements that governed the AFDC program. It contains no federal definition of eligibility and no federal rules for calculating income and resources. States thus have vast freedom to design their own programs. Indeed, rather than submitting state plans for federal approval, states only need submit "outlines" of their TANF programs for which no federal approval is required.³⁷

Many states are, in turn, delegating significant policymaking authority to localities and are contracting out portions of TANF administration.³⁸ This second order devolution is prominent in states such as California, Ohio, Colorado, and North Carolina in which localities are given explicit policy making authority.³⁹ In California and Colorado, TANF funds are provided to counties as block grants.⁴⁰ In Ohio, counties enter into partnership agreements with the state that constitute the TANF plan for each locality.⁴¹

Even absent these dramatic forms of devolution, many states are granting considerable flexibility to localities. For example, many states require applicants for assistance to undertake job searches while their claims are pending.⁴² In many areas, the nature and contents of these requirements are left up to the localities.⁴³ Similarly, considerable local discretion is often exercised in decisions to pay lump sum amounts to “divert” applicants from the welfare rolls. Localities are also frequently accorded discretion in defining the content of work requirements.

In shifting authority to states and localities, many TANF programs are also according greater discretion to their ground level administrative personnel. In many places, the functions of ground level personnel are being redefined. Eligibility specialists, whose jobs were viewed as clerical, are being replaced by case managers with broad authority to advise, assist and supervise clients.⁴⁴ As one newspaper article put it, the case manager is intended to serve as “a teacher, preacher, friend and cop—an all-purpose partner to guide poor parents into jobs.”⁴⁵

In this new regime, agency personnel operate under many fewer rule based constraints. Instead, program leadership is provided through performance based evaluation systems that link funding and other incentives to measurable outcomes.⁴⁶ This new emphasis on outcomes is intended to replace fixed rules with a set of incentives intended to spur local agencies and contractors to produce particular results.⁴⁷ In such a system, the key policy decisions are reflected in outcome measurements and other performance incentives that give direction to the system as a whole.⁴⁸

In addition to this administrative restructuring of welfare, there have been major substantive shifts, and an infusion of resources. Despite the Family Support Act of 1988,⁴⁹ the AFDC program served principally as a means of income maintenance. The principal function of the program was the payment of benefits to families who were eligible for assistance and who complied with program conditions. In contrast, TANF programs are principally oriented toward getting recipient off the benefit rolls. In some places, this emphasis may amount simply to a push to terminate assistance or to create barriers to entry.⁵⁰ In other areas, greater attention may be paid to placing recipients in employment.⁵¹ Throughout the country, however, the rhetoric of promoting self sufficiency is overwhelmingly dominant.

A final characteristic of the new welfare system is critically important. The new system is simply awash in money. The abundance of resources is the result of a confluence of several factors. First, the formula for which state TANF block grants are set is based on the federal funding levels of the AFDC program in the early 1990s.⁵² These levels were elevated due to the recession in the early part of the decade. As caseloads have fallen, federal funding has remained constant, thus yielding a huge surplus of funds. Although many states have siphoned off a portion of these funds for other purposes,⁵³ there is no lack of money available for assisting low income families. Second, as part of its promise to follow through on welfare reform, the Clinton Administration has goaded Congress into providing money on top of federal TANF funding. The Balanced Budget Act of 1997 provided an additional 3 billion dollars to fund welfare to work programs administered by state and local governments during fiscal years 1998 and 1999.⁵⁴ The funds are intended to assist long term welfare recipients in making the transition to work. Furthermore, the strength of the economy has produced budget surpluses in many states and localities, thus reducing the pressure to take money out of the welfare system.

Finally, the Work Force Investment Act of 1998⁵⁵ consolidated a number of federal job training programs and established a new structure for such programs. Under the Act, recipients of public assistance are given a priority for enrollment in adult job training programs.⁵⁶ The new law stresses local decision making and control, as funds are dispensed through state and local work force investment boards.⁵⁷ In fact, 85 percent of the funding available for training adults is allocated at the local level.⁵⁸ The Workforce Investment Act thus provides an additional source of funds that may be available to provide services to public assistance recipients.

In sum, the TANF program differs from AFDC in at least four critical respects. Decision-making authority is shifted downward, as power is dispersed from the federal government to states, and from states to localities and private contractors. Second, there is a trend toward increasing the discretion of ground level workers. Many important features of TANF are not reflected in written rules of general applicability. Agencies, however, steer the exercise of discretion through performance standards and other forms of incentives. Third, on a rhetorical level, and to a certain extent in practice, the focus has shifted from income maintenance to the promotion of self sufficiency and work. Finally, there is an abundance of funds available to create and sustain new initiatives.

B. Advocacy Opportunities under TANF

These four changes have major ramifications for the nature of advocacy in the welfare system. They further diminish the potential of litigation as a means of effecting broad changes in the welfare system. As the system becomes fragmented, each administering agency is responsible for a smaller piece of the whole. Correspondingly, there is less likely to be a single defendant in litigation who has broad control over the entire system. As functions are devolved and contracted out to private service providers, the welfare system has become increasingly polycentric, characterized by the complex interaction of many players instead of a top-down hierarchy of power. In this sense, welfare has come to resemble issues such as housing and health care.

Moreover, as the discretion of lower level administrative personnel expands, litigation is less likely to be a simple matter of identifying and challenging an unlawful rule. Instead, advocates must uncover and document the defacto policies that are cloaked by the language of discretion and then manage to identify some legal authority upon which to base a claim. The days of bringing litigation by matching up one set of rules with another are largely in the past.

On the other hand, taken together, the changes in the welfare system create new opportunities for community based welfare advocacy. As localities and private contractors play increasingly important roles in the welfare system, advocacy must shift to the local level in order to be effective. There are no fixed prescriptions for effective advocacy on the local level. Advocates in each community need to identify the best means of influencing the administrative and political system in their county or city. To do so, they must identify and, in many instances, create points of access to the key decision-making processes.

In some places, effective advocacy will center around county or municipal legislative bodies. The New York City Council, for example, has played an increasingly active role in shaping policies with regard to workfare and assistance to the homeless.⁵⁹ In other places, effective advocacy may target the executive branches. In Philadelphia, for example, advocates worked closely with the Mayor in shaping the City's implementation of welfare reform.⁶⁰ Programs funded by the Workforce Investment Act are overseen, in the first instance, by local Workforce Investment Boards. Advocates may direct their efforts at influencing both the selection of board members and the decisions of these local boards.⁶¹

In areas where aspects of welfare administration have been contracted out, advocates must seek involvement in the contracting process. Critical decisions are generally reflected in the terms of the contract, such as the specification of contract requirements, the provisions governing payment to providers and the means of government oversight. Together these elements of a contract establish the set of incentives that will, to a large extent, determine the manner in which a program is administered. Unfortunately, there are few formal means of influencing the process by which these terms are established.⁶² Nonetheless, advocacy in a privatized system is not necessarily futile. Advocates can develop creative means of influencing the way in which private contractors provide services.

Public contracting procedures may provide a point of access to decision making under the TANF program.⁶³ Advocates may be able to harness requirements designed to ensure the integrity of government contracting as a vehicle for input into the selection of private providers and, perhaps, as a way of influencing the substance of contracts with such providers. Recent disputes over the process of contracting for welfare services in New York and San Diego illustrate some of the potential of such an avenue of advocacy. In New York, accusations of influence peddling and failure to use competitive bidding derailed a \$100 million dollar contract with Maximus, the large corporation selling welfare administrative services nationwide.⁶⁴ Although the contracts were ultimately upheld in the courts, they have not gone forward as originally planned.⁶⁵ In San Diego recipients and the union of public employees successfully sued to enjoin privatization of case management services.⁶⁶ The court concluded that the county charter prohibited the “wholesale” contracting of discretionary functions such as case management.⁶⁷

In addition, advocates may be able to develop channels of communication with private welfare administrators. Ironically, contractors may have a stronger interest in maintaining a positive public image than many government agencies. The contracting process is frequently political and providers may wish to forestall vocal opposition from client advocates. The large national companies who have recently entered the business of welfare administration may find it bad for business on a national level if they develop reputations for antagonizing local constituencies. Indeed, conglomerates may be concerned that controversy over welfare issues will cut into the good will they have generated in other areas.

For example, in August 1999, the New York Times revealed that Citigroup, the parent company of Citibank, which has been hired to administer the electronic benefits payment system for welfare recipients in 29 states, charged fees and imposed limitations on the use of ATM cards that it does not apply to its other customers.⁶⁸ In anticipation of the article, Citibank officials immediately moved to provide greater access to cash in poor neighborhoods in New York.⁶⁹ It may well be that the ameliorative moves were not significant in this instance,⁷⁰ but the incident suggests that companies which spend millions in advertising to generate good will, may have reasons to respond to advocates for the poor.⁷¹

Advocacy in this new landscape of fragmented and devolved welfare administration is likely to require a new set of skills and technical knowledge. Advocates must become adept at deciphering the gnarled prose of the contracts and agreements that frequently constitute the governing source of authority in the new system. To be effective, advocates must be able to identify the key policy decisions in such documents and must learn to gauge the impact of the various oversight mechanisms that these documents frequently employ. They must develop a concrete agenda of substantive and procedural points that they believe should be included in the instruments that bestow authority on contractors and localities.

As part of this new set of skills, advocates must develop expertise in performance based evaluation. The task of formulating performance measures requires translating a set of policy goals into discrete quantifiable standards. Thus, the amorphous goal of promoting family well-being can be broken down into particular indices such as increases in income and earnings, or broader measures that look to infant mortality rates, school completion rates, eviction rates, levels of homelessness and so forth. In a system centered on performance based evaluation, advocates must identify their goals and reduce them to a specific set of demands. The task is complicated by the reality that agencies subject to performance measures generally look for the easiest means of achieving the measure, which frequently means finding ways to achieve statistical success, rather than attainment of more difficult overall objectives. Programs can look good on paper, while accomplishing little of value. Moreover performance measures that are too broad may be self defeating if their achievement is not within the control of agency that is subject to the standard. Thus, a goal of reducing poverty may sound impressive but yield little

results if the actors that are subject to the goal do not in fact have the means at their disposal to achieve the desired result.

The General Accounting Office has cautioned that many state and local governments do not have adequate experience and expertise to design and utilize performance measures effectively.⁷² For this reason, it is especially important that advocates monitor and participate in the process of formulating performance standards. At the same time, advocates must themselves gain the skills necessary to play a constructive role and to gain credibility.⁷³

The shift in the welfare system from income support to work also requires welfare lawyers to develop new expertise in the problems facing low waged workers. Although the divide between the “working poor” and the “welfare poor” was always artificial, welfare lawyers did not generally focus on workplace issues. Under welfare reform, however, work and welfare have become thoroughly intertwined: Work is now frequently a requirement of benefit receipt and a variety of TANF related benefits might be available to those who work. Events, which jeopardize a client’s job, also jeopardize her benefits case. The need for advocates with expertise in the intersection of welfare and work is acute.

The substantive shift in emphasis from the AFDC to the TANF program may actually invigorate efforts to activate communities around public benefits issues. Lawyers interested in community organizing may be able to focus more directly on the welfare system than in the past. Advocates can demand that welfare systems live up to the rhetoric of welfare reform by providing meaningful assistance to poor mothers in finding and retaining jobs. Moreover, advocates can work to improve the quality of life for mothers pushed into low wage jobs by seeking to use public benefits programs and other funding streams to create social supports for working parents. Issues such as child care, transportation and health coverage are obvious subjects of advocacy.

Advocacy around these issues may be particularly promising because it seeks to coopt the rhetoric of welfare reform, rather than simply serving as an exercise in resistance. These issues may strike a chord in public opinion. After all, welfare reform was billed as a change in the manner and means of helping poor families, not simply as a process of abandonment.

These issues may provide more effective focal points for community advocacy than did traditional income support issues. First, clients may be more likely to organize and agitate around these issues because they reflect the desire of many clients to become self supporting. As noted above, even though income support may have been vital to many families, clients were reluctant to organize around the issue because, individually, their goal was to leave the welfare rolls.

The objectives of securing jobs and the social supports necessary to succeed in the workplace, however, coincide with mainstream American norms. Recipients who organized to assert claims for income support sailed against the tide of social norms and risked being viewed as deviant.⁷⁴ In contrast, recipients who agitate for training, better jobs, child care and so forth do not present claims that are likely to be perceived as threatening to dominant values. For the same reason, leaders of institutions in low income communities may be more willing to champion the cause of welfare recipients, when it is centered on issues such as training, and child care, than when it simply focuses on income support. They are more likely to perceive these issues as projecting positive images of their communities, while claims for income support may be perceived as reinforcing negative stereotypes.

Second, as the locus of decision making is shifted down to the local level, community activism may be more relevant and effective because it is closer to the level at which meaningful programmatic decisions are made. One of the insights of the environmental justice movement is that it is much easier to mobilize people around issues of immediate local concern, such as an undesirable land use in their neighborhood, than around broader more amorphous issues. For

much the same reason, the devolution of welfare is likely to make it easier to organize communities around issues relating to public benefits.

Finally, community based advocacy around these issues is likely to be facilitated by the fact that there is ample money to fund new programs. Thus, demands for new services and social supports present goals that are attainable. Welfare advocates can present a positive agenda that is realistic, rather than simply hoping to forestall cuts while arguing for affirmative measures that are patently beyond realm of possibility.

Advocates can also create new roles for themselves in assisting community based service providers in obtaining government grants and contracts. These groups frequently lack the expertise necessary to tap into sources of available government funding and to comply with the onerous administrative requirements that frequently accompany government funding. Advocates can help to fill these needs. In fact, welfare advocacy may in some instances converge with community economic development work as welfare can serve as a funding stream for neighborhood day care and job training centers.

C. Concluding Caveats and Cautionary Notes

This discussion points to some reasons why the process of welfare reform may help invigorate community activism around welfare issues and identifies some important new roles that advocates can play. These points are subject to two important caveats. First, even in the new system, traditional elements of advocacy continue to be important. Not everything that is transpiring under welfare reform is new. Regulations are still written that violate statutory commands.⁷⁵ Notices still go out that fail to provide proper information.⁷⁶ States still use hearing procedures that fall short of legal requirements.⁷⁷ Program rules may still transgress the limits of constitutionality.⁷⁸ In other words, there will continue to be important issues that demand litigation. Similarly, on many issues state and national advocacy are still vitally important. The TANF program is up for reauthorization in Congress in 2002, a process fraught with opportunities and perils.

Second, although the new system creates greater potential for local activism, emphasis needs to be placed on the term *potential* – as yet, it is far from clear whether the final product of welfare reform will be more open or more closed to input than its predecessor. As I and others have argued elsewhere, devolution cannot be equated with openness or accessibility.⁷⁹ While the process has made a number of traditional advocacy tools less efficacious, devolution does not readily supply alternative means of assuring public input. Instead, the central challenge for advocates is to forge a new set of strategies and tools that reflect the changing structure of public benefits programs. Although this essay outlines a number of possibilities, it is far too early to discern the efficacy of these new techniques.

Despite these caveats, it is clear that the major changes in the structure of the welfare system have profound ramifications for the nature and direction of welfare advocacy. Welfare lawyers can now move from the periphery to the center of the movement toward community lawyering, as important programmatic decisions are increasingly made at the local level. Although the multi-tiered layers of rules that characterized the AFDC program appeared to be dauntingly complex, the absence of rules has created a welfare system that, in comparison, makes the AFDC program look straightforward. The number of players has increased, the arsenal of carrots and sticks used to exert control over recipients has expanded and the ability of the rules to constrain both policy makers and ground level administrators has diminished. Within all this, advocates for people in poverty must identify the pivotal decision points and find or create opportunities to have an impact on the shape and content of the new welfare system.

Notes

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1. For a compilation of scholarly writing about the practice of poverty law, see *Bibliography to the Conference on the Delivery of Legal Services to Low Income Persons: Professional and Ethical Issues*, 67 *FORD. L. REV.* 2731 (1999).

2. See MARTHA DAVIS, *BRUTAL NEED: LAWYERS & THE WELFARE RIGHTS MOVEMENT* (1993); Allen Redlich, *Who Will Litigate Constitutional Issues for the Poor?*, 19 *HASTINGS CONST. L. Q.* 745 (1992).

3. Martha Davis' fascinating history of the Center for Social Welfare Policy and Law provides a thorough examination of how Sparer and his colleagues borrowed and adapted the approach of the NAACP Legal Defense Fund. See DAVIS, *supra* note 2.

4. See, e.g., *Goldberg v. Kelly*, 397 U.S. 254 (1970); *King v. Smith*, 392 U.S. 309 (1968); *Rosado v. Wyman*, 397 U.S. 397 (1970); *Wyman v. James*, 400 U.S. 309 (1971); *Dandridge v. Williams*, 397 U.S. 471 (1970); *Graham v. Richardson*, 403 U.S. 365 (1971); *Shapiro v. Thompson*, 394 U.S. 618 (1969). For a comprehensive discussion of law reform litigation in the area of welfare, see Barbara Sard, *The Role of the Courts in Welfare Litigation*, 22 *CLEARINGHOUSE REV.* 367 (1988). See generally SHEP MELNICK, *BETWEEN THE LINES: INTERPRETING WELFARE RIGHTS* (1994).

5. See Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 *HARV. L. REV.* 1281 (1976).

6. See, e.g., *Javins v. First National Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970) (finding implied warranty of habitability in leases for rental apartments). Cf., *Lindsey v. Normet*, 405 U.S. 56 (1972) (rejecting due process challenge to summary eviction procedure).

7. See, e.g., *Miles v. Metropolitan Dade Co.*, 916 F.2d 1528 (11th Cir. 1990), *cert. denied*, 502 U.S. 898 (1991) (class action challenging housing authority practice of charging tenants for court costs in unsuccessful eviction proceedings); *Durrett v. Housing Authority of the City of Providence*, 896 F.2d 600 (1st Cir. 1990) (approving consent decree in class action challenge to conditions in public housing). I do not mean to suggest the poverty lawyers have ignored issues relating to private sector low income housing, only that they have recognized that a focus on public or subsidized housing can leverage their limited resources.

8. See, e.g., *Boatman v. Hammons*, 164 F.3d 286 (6th Cir. 1998) (class action challenging improper notice of denials of Medicaid assistance for transportation expenses); *Catanzano v. Wing*, 103 F.3d 223 (2d Cir. 1996) (class action challenging reduction in Medicaid home health care); *Alexander v. Britt*, 89 F.3d 194 (4th Cir. 1996) (declining to modify consent decree setting deadlines for processing Medicaid applications).

9. See William Simon, *Legality, Bureaucracy & Class in the Welfare System*, 92 *YALE L.J.* 1198 (1983). It could be argued that the shift to a rule based system was itself the product of poverty law advocacy. Although this point has some validity, in the late 1960s, increasing reliance on rules was a general trend in administration. See Richard Pierce, *Rulemaking and the APA*, 32 *TULSA L.J.* 185, 188-91 (1996). See also KENNETH DAVIS, *DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY* 52-96 (1969) (arguing for increased use of fixed rules as a means of constraining administrative discretion).

10. See Simon, *supra* note 9, at 1201-1203.

11. Agencies frequently claim that less formal means of instruction such as guidelines or training materials do not constitute binding policy statements and thus do not reflect the official position of the agency.

12. See, e.g., *Carleson v. Remillard*, 406 U.S. 598 (1972); *Lewis v. Martin*, 397 U.S. 552 (1970); *Shea v. Vialpando*, 416 U.S. 251 (1974); *Van Lare v. Hurley*, 421 U.S. 338 (1974). See generally Sard, *supra* note 4 (explaining how welfare litigation shifted from a focus on constitutional challenges to statutory claims after the decision in *Dandridge v. Williams*).

13. The Supreme Court held that the Eleventh Amendment prohibits federal courts from ordering retroactive payments of benefits to recipients. See *Edelman v. Jordan*, 415 U.S. 651 (1974); *Quern v. Jordan*, 440 U.S. 332 (1979).

14. See Fed. R. CIV. P. 23(a).

15. See generally GERALD ROSENBERG, *THE HOLLOW HOPE* 336-343 (1991) (concluding that "courts act as 'fly paper' for social references who succumb to the 'lure of litigation'").

16. See, e.g., GERALD LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); Anthony Alfieri, *Disabled Clients, Disabling Lawyers*, 43 *HASTINGS L.J.* 769 (1992); Lucie White, *To Learn and Teach: Lessons from Dreifontein on Lawyering and Power*, 43 *WISC. L. REV.* 699 (1988).

17. See, e.g., LOPEZ, *supra* note 16, at 32-38.

18. See *id.* at 14-16 (describing how a test case lawyer chooses the clients to fit the case, rather than the other way around).

19. See White, *supra* note 16, at 755.

20. *Id.* at 742; Alfieri, *supra* note 16, at 837-838.

21. White, *supra* note 16, at 757.

22. See Omnibus Budget Reconciliation Act, Pub. L. No. 97-35, 95 Stat. 357 (1981) (amending Social Security Act to undo the result of several Supreme Court decisions favoring AFDC recipients).

23. See Matthew Diller, *Poverty Lawyering in the Golden Age*, 93 *MICH. L. REV.* 1401 (1995); See also Lynn Kelly, *Lawyering for Poor Communities on the Cusp of the Next Century*, 25 *FORDHAM URBAN. L.J.* 721 (1998).

24. 394 U.S. 618 (1969).

25. 392 U.S. 309 (1968).

26. See Stephen Loffredo, *Poverty, Democracy and Constitutional Law*, 141 *U. PA. L. REV.* 1277 (1993).

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27. In many states judges are elected for fixed terms, and are thus dependent on campaign contributions. *See* William Glaberson, *Fierce Campaigns Signal New Era for State Courts*, N.Y. TIMES, June 5, 2000, at A1. Few doubt the influence of ideology and public opinion on the judiciary. Moreover, in the process of litigation wealthy repeat players enjoy advantages over impecunious individuals. *See* Marc Galanter, *Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC. 95 (1974).
28. *See* Paul Tremblay, *Acting "A Very Moral Type of God:" Triage Among Poor Clients*, 67 FORDHAM L. REV. 2475, 2514-17 (1999) (calling for poverty lawyers to seek a diversified portfolio of goals and methods).
29. *See* FRANCES FOX PIVEN & RICHARD CLOWARD, POOR PEOPLE'S MOVEMENTS 264-359 (1977); Diller, *supra* note 23, at 1426-1427.
30. *See generally* ALBERT O. HIRSHMAN, EXIT, VOICE AND LOYALTY 15-20 (examining dynamic of deteriorating institutions or systems in which stakeholders choose to either abandon the institution or remain loyal and seek to improve it).
31. *See* 42 U.S.C. § 602(a) (repealed 1996) (detailing state plan requirements).
32. *See* 42 U.S.C. § 682 (repealed 1996).
33. *See* COMMITTEE ON WAYS & MEANS, BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 486 (1998) (reporting that in 1995 only 42.6 percent of adults receiving AFDC could be required to participate in the jobs program, and only 27 percent of these actually participated).
34. *See* Luke Cole, *The Crisis and Opportunity in Public Interest Law: A Challenge to Law Students to be Rebellious Lawyers in the '90s*, 4 B.U. PUB. INT. L.J. 1, 10-11 (1994); Luke Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. 619 (1992).
35. *See* Brian Glick & Matthew Rossman, *Neighborhood Legal Services as House Counsel to Community Based Efforts to Achieve Economic Justice: The East Brooklyn Experience*, 23 N.Y.U. REV. L. & SOC. CHANGE 105 (1997); Susan Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195 (1997); Peter Pitegoff, *Child Care Enterprise, Community Development and Work*, 81 GEO. L.J. 1897 (1993).
36. A description of TANF administration appears in Matthew Diller, *The Revolution in Welfare Administration: Rules, Discretion & Entrepreneurial Government*, 75 N.Y.U. L. REV. 1121 (2000).
37. 42 U.S.C. § 602(a)(1). The statute expressly restricts the regulatory authority of the Department of Health and Human Services. *Id.* at § 617.
38. *See* Diller, *supra* note 36, at 1179-83. *See also* RICHARD NATHAN & THEODORE GAIS, IMPLEMENTING THE PERSONAL RESPONSIBILITY ACT OF 1996: A FIRST LOOK 35-42 (1999).
39. *See* AMERICAN PUBLIC WELFARE ASS'N, DEVOLUTION OF ADMINISTRATIVE AUTHORITY TO THE LOCAL LEVEL: WELFARE REFORM IN FIVE STATES (1998) [hereinafter DEVOLUTION OF ADMINISTRATIVE AUTHORITY].
40. *See id.* at 11-16 (describing Colorado's TANF program); JANET QUINT ET AL., BIG CITIES AND WELFARE REFORM 79-80 (1999) (describing CalWORKS).
41. *See* DEVOLUTION OF ADMINISTRATIVE AUTHORITY, *supra* note 39, at 27-32; Miriam Wilson & Charles F. Adams, Jr. *Welfare Reform: Ohio's Response*, 60 OHIO ST. L.J. 1357 (1999).
42. *See* KATHLEEN MALOY ET AL., A DESCRIPTION AND ASSESSMENT OF STATE APPROACHES TO DIVERSION PROGRAMS AND ACTIVITIES UNDER WELFARE REFORM 32-40 (1998).
43. *Id.* at 37.
44. DEVOLUTION OF ADMINISTRATIVE AUTHORITY, *supra* note 39, at 27-32.
45. *See* Jason Deparle, *For Caseworker, Helping is a Frustrating Struggle*, NY TIMES, Dec. 10, 1999, at A1, A26.
46. *See* Diller, *supra* note 36, at 1183-85.
47. The emphasis of welfare reform on performance measurement is part of a broad trend in public administration. *See, e.g.*, Government Performance and Results Act of 1993, Pub. L. No. 103-62, 107 Stat. 285 (1993) (requiring federal agencies to prepare performance goals and measure and report outcomes in relation to these goals). *See generally* GENERAL ACCOUNTING OFFICE, MAJOR MANAGEMENT CHALLENGES AND PROGRAM RISKS 10 (2001) (describing administrative reforms focused on "results-oriented and accountability based management approaches" intended to "deliver economical, efficient and effective programs and services to the American people"); Mary L. Heen, *Reinventing Tax Expenditure Reform: Improving Program Oversight Under the Government Performance and Results Act*, 35 WAKE FOREST L. REV. 751, 756 (2000) (describing broad trend in public management to shift focus from "inputs" to "outputs").
48. Diller, *supra* note 36, at 1185.
49. Pub. L. No. 100-485, 102 Stat. 2343.
50. The City of New York provides a good example of such an approach. *See* Reynolds v. Giuliani, 35 F. Supp. 2d. 331 (S.D. N.Y. 1999).
51. *See, e.g.*, VIRGINIA KNOX, ET AL., REFORMING WELFARE AND REWARDING WORK: A SUMMARY OF THE FINAL REPORT ON THE MINNESOTA FAMILY INVESTMENT PROGRAM (2000), at <http://www.mdrc.org/Reports2000/MFIP/MFIPSummary.htm> (reporting on results of Minnesota's efforts to encourage and reduce dependence while also reducing poverty).
52. *See* 42 U.S.C. § 603(a)(1).

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53. See, e.g., Raymond Hernandez, *Federal Welfare Overhaul Allows Albany to Shift Money Elsewhere*, N.Y. TIMES, Apr. 23, 2000, at A1 (reporting that the State of New York used over \$ 1 billion in federal TANF funding for purposes other than assisting the poor and noting that other states have similarly diverted welfare funds to other uses).
54. Pub. L. No. 105-33, § 5001.
55. Pub. L. No. 105-22.
56. *Id.* at § 134 (d)(4)(E).
57. See *id.* at §§ 111, 116.
58. See U.S. DEP'T OF LABOR, OVERVIEW OF THE WORKFORCE INVESTMENT ACT OF 1998, available at <http://usworkforce.org/runningtext2.htm>.
59. See City of New York, Local Law 00/13 (grievance procedures for workfare program); City of New York, Local Law 00/14 (transitional jobs for public assistance recipients); City of New York, Local Law 99/06 (limits on size of emergency shelters for adults).
60. Brennan Center for Justice, Legal Services Lawyers Work Closely with Communities in Need, at 16 (2000) (reporting that Mayor Rendell invited community legal services to help develop strategies for dealing with federal welfare reform).
61. Local boards must have a majority of business representatives and representatives of labor organizations, community based organizations and service providers. Board members are selected by local elected officials in accordance with criteria established by the governor of each state.
62. See Diller, *supra* note 36, at 1195-1206.
63. See *id.* at 1198-99.
64. See Christopher Drew & Eric Lipton, *2 with Ties to Chief of Welfare Got Jobs with Major Contractor*, N.Y. TIMES, Apr. 23, 2000, at A1; Eric Lipton, *City Contracts for Workfare Are Criticized*, NY TIMES, Mar. 14, 2000, at B1.
65. See *Giuliani v. Hevesi*, 276 A.D.2d 398, 715 N.Y.S.2d 12 (App. Div. 1st Dep't 2000) (holding that New York City Mayor could override objections of New York City Comptroller). As of March 15, 2001, Maximus has not commenced operations in New York and it is not clear when it will do so. Conversation with Glenn Passanen, the City Project, March 16, 2001.
66. See Karen Kucher, *County CalWorks Pacts May be Illegal Judge Tentatively Rules Against Millions in Farmed-out Contracts*, SAN DIEGO UNION-TRIB., July 22, 2000, at B1; Karen Kucher, *Lawsuit Targets Welfare Contracts*, SAN DIEGO UNION-TRIB., Aug. 3, 1999, at B1.
67. Kucher, *County CalWorks Pacts*, *supra* note 66, at B1.
68. See David Barstow, *ATM Cards Fail to Live Up to Promises to Poor*, N.Y. TIMES, Aug., 16, 1999, at A1.
69. *Id.*
70. The bank announced it would install 25 ATMs in poor neighborhoods and enable recipients to use their cards in the NYCE network of 23,000 machines. *Id.* It did not, however, drop its fees or provide access through other networks. *Id.*
71. Investor relations offers another possible avenue of influence over private welfare administrators. Campaigns may be organized to boycott the stock of companies that treat welfare recipients unfairly.
72. See GENERAL ACCOUNTING OFFICE, SOCIAL SERVICE PRIVATIZATION: EXPANSION POSES CHALLENGES FOR ENSURING ACCOUNTABILITY OF PROGRAM RESULTS 17 (1997).
73. There is a substantial body of literature on performance measurement. See, e.g., MARK FRIEDMAN, A GUIDE TO DEVELOPING AND USING PERFORMANCE MEASURES IN RESULTS-BASED BUDGETING (1997), available at <http://www.financeproject.org/measures.html>. See also HARRY HATRY, PERFORMANCE MEASUREMENT: GETTING RESULTS (1999).
74. See Lucy Williams, *Race, Rat Bites and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate*, 22 FORDHAM URB. L.J. 1159, 1177-84 (1995) (describing negative reaction to welfare rights activists in the 1960's).
75. See *Smith v. Commissioner of Transitional Assistance*, 729 N.E.2d 627 (Mass. 2000) (striking down regulation limiting extensions of the time limit on benefits as violative of state statute); *Minnefield v. McIntire*, 11 Mass.L.Rptr. 369 (Super. Ct. Mass. 2000) (striking down regulation that impermissibly made it more difficult for caretakers of disabled children to receive exemptions from work requirements).
76. See *Weston v. Hammons*, Case No. 99 CV 412 (District Ct., City and Cy. of Denver, Nov. 5, 1999) (sanction notices in Colorado TANF program violate due process), available at <http://www.welfarelaw.org/webbul/99novdec.htm#CO> (sanction notices are constitutionally inadequate).
77. See *Meachem v. Wing*, 77 F. Supp.2d 431 (S.D.N.Y. 1999).
78. See *Saenz v. Roe*, 119 S. Ct. 1518 (1999) (striking down lower tier of benefits for new residents as unconstitutional).
79. See Diller, *supra* note 36, at 1206-10; see generally JOEL HANDLER, DOWN FROM BUREAUCRACY (1996).

TACKLING HOMELESSNESS THROUGH ECONOMIC SELF-SUFFICIENCY

SUSAN R. JONES*

Addressing the needs of homeless people is a formidable challenge because the causes of homelessness are complex. The homeless population is diverse, no longer consisting of primarily transient adult males. Homeless people include women, families with children, the mentally ill, persons dependent on drugs and alcohol and the unemployed. Homelessness is caused by the shortage of affordable housing, poverty, low wage work insufficient to pay for basic living expenses, and the lack of services to help people overcome personal challenges such as mental and physical health problems and alcohol and substance abuse.¹

Statistics show that: 10.5 million renters compete for 6.1 million low-income housing units; 4.4 million people lack an affordable place to live; at least 2.3 million Americans (nearly one percent of the U.S. population) are likely to experience a period of homelessness; 750,000 people are homeless on any given night; families with children make up 37% of homeless Americans and they are the largest group of homeless in rural areas; 14% of homeless people are veterans; 21% of homeless Americans are working; 14% are single women; and 63% have suffered domestic violence by a male partner.² Given these statistics and the depth of the problems, the unfettered market cannot be fully relied on to deliver decent, safe and affordable housing to the poor without some form of government assistance. While the need to create affordable housing is essential, scholars stress the need to move away from the initial short-term shelter thrust of the homelessness movement to a policy that combines housing, income and social services, the three key elements in new policies for homeless people. Moreover, proponents of strategies to end homelessness proffer that these elements must be combined with efficient community organization principles, expanded resources, and empowerment as well as strategic litigation.³

This essay explores economic self-sufficiency through avenues such as microenterprise development,⁴ a rapidly growing and innovative strategy in advocacy for the poor, homeless and other persons in need such as dislocated workers and domestic violence survivors. It looks at innovative job training in the context of supportive housing and/or supportive services, and public policy incentives such as tax credits to sustain homelessness advocacy. To inform the daily work of lawyers representing homeless people and their advocates, this essay also provides practical examples of economic self-sufficiency innovations and discusses current trends in philanthropy, which potentially impact the viability of the programs cited and models like them. It concludes that economic self-sufficiency strategy such as microenterprise development is as valuable for homeless people as it is for others when coupled with housing and other supportive services.

I. IS MICROENTERPRISE DEVELOPMENT A VIABLE TOOL FOR HOMELESSNESS ADVOCACY?

Microenterprise development is a tool for homelessness advocacy that is part of a larger menu of supportive services. The microenterprise industry, with its roots in housing and women's economic development, is a natural ally, supporter and contributor to homelessness efforts. The first task is locating housing but maintaining a home requires income. The self-employment objective contemplated by the intersection of microenterprise and homelessness advocacy is creating "a job of one's own." The reality is there are not enough good paying jobs in the right locations for some workers, particularly those with low skills.⁵ The microenterprise

development alternative may work for only a small percentage of the overall homeless population but it is an important tool because of its human capital potential.⁶ Lawyers and homelessness advocates might choose to emphasize the creation or expansion of programs working with a particular sector of the homeless population, for example, youth,⁷ domestic violence survivors, dislocated workers or disabled homeless.⁸

JOE'S STORY⁹

Joe is a 47-year old man who is a participant in Faith Ministry's Building Assets Microenterprise Group [Faith Ministry]. He is currently living in transitional housing provided by Faith Ministry and participating in a fatherhood project designed to reunite fathers and children.¹⁰ During high school, Joe excelled in woodworking. After graduating he became an apprentice with a well-known carpenter and house builder. He was then drafted to serve in the Vietnam War. He married about ten years ago and has two school age children. He is currently estranged from his family and has not lived with them for the last two years. Joe abused alcohol for at least half of his life and found it difficult to work for other people in the past because of his drinking and because he has not had a permanent home. Now with the social service support he gets in transitional housing, he wants to take up his old trade as a carpenter and start a handyman business. He is now in an alcohol recovery program and is working with Faith Ministry to determine whether he can start his own handyman business. At present, Joe is receiving general public assistance and he is exploring use of his Veterans' Administration benefits. He is now in the tenth week of Faith Ministry's program where he has learned about marketing, accounting, legal requirements, and business regulations. A volunteer lawyer has agreed to help him structure his business, assist him with getting the appropriate business licenses,¹¹ and, along with the microenterprise program staff, help him apply for a \$1000 loan for tools and equipment and business start-up expenses. The lawyer, also a Vietnam Veteran, has agreed to serve as Joe's personal mentor. Joe is very motivated by the idea of starting his own business. He attributes his current successes—sobriety, temporary housing, participating in a microenterprise program—to the possibility that he can start something on his own and try to reunite with his family.

II. A BRIEF OVERVIEW OF MICROENTERPRISE DEVELOPMENT

A microenterprise in the U.S. is often defined as a sole proprietorship, partnership or family business that has fewer than five employees, does not generally have access to the commercial banking sector, can initially utilize a loan of less than \$25,000 to start or expand a business that usually grosses less than \$250,000 per year.¹² The technical assistance and loans are dispensed through more than 700 microenterprise development programs in fifty states and the District of Columbia.¹³ These programs often serve targeted groups and regions such as persons moving from welfare to work, the physically challenged, minorities, rural areas and Native American regions. Some microenterprise programs developed from women's economic development organizations and assist a range of economic groups – from low wage workers to welfare recipients. Other programs were created to expand the work of Community Action Agencies and Community Development Corporations and respond to needs of low-income people. Today, microenterprise development programs are operated as stand-alone programs or as part of multipurpose organizations with purposes ranging from affordable housing creation and retention, employment and training, women and minority development, economic development and social services.¹⁴

The U.S. microenterprise industry originated in the early 1980's and is based on models of micro credit in Latin America, Africa, Asia and other parts of the developing world. One of the

most famous and successful models is the Grameen Bank in Bangladesh, which now lends over \$6 million dollars a month to more than 690,000 members (92% of whom are women) in 14,000 villages throughout Bangladesh.¹⁵ A hallmark of international micro credit models is “peer” or “circle lending” in which loans made to a group of three to five people are distributed through the group and secured by moral collateral. A default by one person halts further lending to the group. Most U.S. programs lend to individuals. Individual loans are usually for greater amounts of money than group loans.¹⁶ Microentrepreneurs also consist of repeat borrowers, first receiving very small loans of \$500 to \$1000. After the initial loan is repaid, a new loan is “stepped up” to a larger amount based on need and business growth.¹⁷ Advocates of microenterprise distinguish the U.S. industry from its international counterpart because American society is not as homogeneous as other societies. The cultural and community norms for money lending are different in the U.S. The legal, regulatory and tax requirements for establishing a small business are often more onerous than in other parts of the world.

A. The Success of Microenterprise: Increasing Income for Poor People

Generally, the uses of microenterprise are broad, including full self-employment, income patching¹⁸ and job readiness.¹⁹ Given this reality, the self-reflective microenterprise industry is examining best practices in assisting diverse groups of microentrepreneurs.

A recent report from the Aspen Institute’s Self-Employment Learning Project (SELP) tracked 403 low-income entrepreneurs from 1991 through 1997 and found that 72% of low-income microentrepreneurs experienced gains in income; 53% had household income gains large enough to move them out of poverty; microentrepreneurs in the study reduced their reliance on public assistance by 61%; and the business survival rate was 49%, comparable to national statistics for business success. The study also estimates, based on statistics from the U.S. Small Business Administration, the U.S. Department of Commerce and the U.S. Department of Labor, that while there are 2-3 million low-income entrepreneurs, the industry has been able to serve only a small fraction of them.²⁰

Other studies focus on microenterprise service sectors such as refugees and immigrants, and the use of microenterprise programs for TANF recipients and youth.²¹ The viability of self-employment as a component of services for exoffenders, many of whom have difficulty finding employment, also deserves exploration.²²

Overall, the U.S. microenterprise industry boasts impressive statistics. There are three hundred and forty-one microenterprise programs listed in the 1999 Directory of U.S. Microenterprise Programs, 283 of these are practitioner programs,²³ which provide loans and/or technical assistance to microentrepreneurs. In 1997, these practitioner agencies served 57,125 individuals; 6,153 were borrowers and 50,972 were non-borrowers who received training and technical assistance; 24,145 businesses were assisted in 1997 and of these 10,791 were more than 12 months old while 7,054 were not operating businesses when they came to the program; practitioner programs loaned \$33,262,529 to microentrepreneurs. Since these programs were established they have served a cumulative total of 250,017 participants and disbursed more than \$160 million in loans to microentrepreneurs.²⁴

The success of microenterprise is also reflected in a strong membership association. Since 1991, the industry has been represented by the Association for Enterprise Opportunity (AEO), the only national member-based association dedicated to microenterprise development. Representing the U.S. microenterprise agenda, AEO provides members with a forum, information and a voice to promote enterprise opportunity for people and communities with limited access to economic resources.²⁵ The industry has advocated for increased technical assistance in the form of grant subsidies, business incubators and the development of sectoral markets or shared networking clusters.²⁶

B. Pros and Cons of Microenterprise Development

Critics of microenterprise raise several concerns. They question whether microenterprise is sound public policy given that the programs are expensive to maintain and there are limited economic resources for social programs. Many microenterprise programs have high overhead costs because of technical assistance and business training and are not self-sufficient. Even though interest rates are competitive, smaller loans are costly to underwrite. Unlike their international counterparts, the U.S. regulatory, tax and legal systems are complex, making it harder to establish a small business in America than in many of the countries in which microenterprises flourish. Critics also argue that there is only a small percentage of possible microentrepreneurs in the U.S. population. Unlike international microcredit models which sometimes charge high interest rates considered usurious in the U.S. and which may be economically self-sufficient, it is unlikely that many domestic microenterprise programs will be economically self-sufficient and may always need some public subsidy.²⁷ As a result, many are concerned that microenterprise is “oversold” and touted as the “answer to poverty alleviation.”

Homelessness advocates are especially uneasy about the tendency of welfare departments, for example, to think that businesses such as childcare are a good route for clients even though they often pay very low wages and may allow few chances for escaping poverty.²⁸ Microenterprise is not “the answer to poverty” and blind reliance on this anti-poverty option is likewise not the answer, yet the Aspen Institute study found that 72% of low-income microentrepreneurs experienced income gains and 53% had enough household income gain to move them out of poverty.²⁹

Microenterprise critics also levy a category of arguments, which has yet to find evidentiary support in studies about microenterprise. These critics argue that microbusinesses are more likely to fail than mainstream businesses because the owners lack business experience or formal education; industry specific microbusinesses such as child care and garment industry work, operated by those less able to protect themselves may contribute to the oppression of the group; and caution that they may become sweatshops. To the contrary, the Aspen Institute Study found that microenterprise business survival rates of 49% were comparable to national statistics for business survival. Moreover, it is arguable that the presence of technical assistance for microentrepreneurs may help to combat sweatshop abuses, which can occur with small businesses that do not have such support.

Other critics maintain it is “doubtful that microenterprise will increase the capacity for well-being for welfare dependent persons.”³⁰ “Successful entrepreneurs and welfare-dependent persons are statistically distinct groups. They have predictably different personal situations and economic resources. These differences strongly suggest that self-employment through small business may not be an appropriate antipoverty strategy for welfare dependent persons.”³¹

Some of these critics fail to recognize a more comprehensive understanding of the nature, uses and benefits of microenterprise development. Microenterprise is not a panacea and may not work for everyone, yet it is working for many who are serious and dedicated, often as an income patching strategy for low-wage workers.³² Sometimes people are able to make viable businesses out of hobbies or special talents or interests such as sewing or cooking. Self-employment does not depend on traditional educational credentials, allows women with children who have child care concerns to work from home or makes childcare more accessible by locating the workplace closer to child care. There are a variety of service jobs in neighborhood commercial niches such as barber and beauty shops, carpentry and lawn care. In a larger community economic development context, neighborhood small businesses can provide long-term models of economic enfranchisement for neighborhood residents. Self-employment has human capital potential to generate income that far exceeds the minimum wage. It can help to break the cycle of isolation, dependency and hopelessness by providing economic literacy and basic business skills and

restore responsibility, dignity, self-esteem, initiative and other personal assets such as leadership ability, personal and business confidence.³³ Indeed, a number of microenterprise programs particularly those for welfare dependent persons emphasize economic literacy as a key feature.³⁴

Another group of critics urges the microenterprise and legal communities to document the human capital potential of microenterprise development.³⁵ Applying a feminist critique of microenterprise development, Professor Lucie White observes that microenterprise has been supported by poverty activists in clinical legal education:

“In the same way that some loan circles have produced far-reaching results, some legal clinicians have set up exemplary programs for politically and socially empowering low-income women through the vehicle of assisting them with micro-business planning. Yet, the paths toward empowerment on which this strategy is premised are unclear. There are very few well-documented examples of how the strategy can positively impact on the economic forces that constrain low-income women’s economic opportunity, even when a number of micro-businesses are clustered in a single neighborhood.”³⁶

As the next section demonstrates, with increased government support, publicity, program evaluation and analysis of best practices, hopefully, the microenterprise industry will be able to further document results in actual small business development including income patching, assistance in job placement and sole income self-employment, and associated benefits including economic literacy, empowerment and human capital development.

III. FEDERAL, STATE AND PUBLIC FUNDING RESULT IN INCREASED VISIBILITY FOR MICROENTERPRISE DEVELOPMENT

Notably since the inception of microenterprise development in the U.S. there have been sixteen different federal programs supporting the microenterprise industry.³⁷ In the last decade these programs have invested more than \$300 million to advance microentrepreneurship.³⁸ A recent manifestation of federal support for microenterprise is the Program for Investment in Microentrepreneurs Act of 1999, also referred to as the PRIME ACT, designed to build the institutional strength of microenterprise development organizations so they can respond to the growing demand for training and technical assistance among low-income entrepreneurs. The law authorizes a cumulative appropriation level of \$105 million over four years starting with an appropriation of \$15 million in FY 2000.³⁹ Prime funds will be administered through the U.S. Small Business Administration. They may be used by qualifying nonprofit organizations to provide training and technical assistance to low-income and disadvantaged entrepreneurs interested in starting their own businesses; to engage in capacity building activities of microenterprise development programs and support research and development activities aimed at identifying and promoting entrepreneurial training and technical assistance programs to effectively serve low-income and disadvantaged entrepreneurs.

Another example of increased federal support to microenterprise development programs is the new governmental agency, the Community Development Financial Institution (CDFI) Fund, created by the 1994 Community Development Banking Act.⁴⁰ CDFI, a part of the U.S. Treasury Department, provides loans and grants to microenterprise programs and is now in its fifth year of funding. In an effort to maximize resources and convey information about the microenterprise industry efficiently, there is a Microenterprise Development Interagency Website to coordinate efforts throughout federal government agencies.⁴¹ Efforts to complement and strengthen microenterprise are found in the Assets for Independence Demonstration Program at the U.S. Department of Health and Human Services (HHS), part of the Human Services Reauthorization Act of 1998, which authorized a five-year, \$125 million Individual Development Account (IDA) demonstration program at HHS. This program has the potential to initiate 50,000 new IDA accounts nationally. IDAs, which are similar to employer-employee retirement savings, are

leveraged savings accounts dedicated to high return investments in business capitalization, home ownership or post secondary education.⁴²

According to the Corporation for Enterprise Development which “aims to incorporate Individual Development Accounts and other asset-building tools for low-income people into the policy infrastructure . . . “as of April 2000 all but two states reported IDA policy or IDA-related activities. State support includes direct general funds appropriation, state tax credits for contributors to IDA programs, Community Development Block Grant Funds (CDBG) and TANF funds as well as partnerships with nonprofit organizations using the Assets for Independence Act (AFIA).⁴³

One federal program that has the ability to help some homeless people is the Self-Employment Assistance (SEA) program of the U.S. Department of Labor which allows eligible unemployment insurance claimants to collect benefits while starting a business. Eleven states have enacted SEA legislation and eight states have implemented SEA programs.⁴⁴ Similarly, the now defunct Job Training Partnership Act (JTPA) Microenterprise Grant Program included a Microenterprise Grant Program and focused on dislocated workers and the long term unemployed.⁴⁵ The JTPA has been superceded by the Workforce Investment Act effective July 1, 2000 and advocates are studying how this new law is actually working.⁴⁶

Policy experts have found that the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996⁴⁷ and the implementation of the state TANF Program, allowed states broad discretion in many areas affecting microenterprise. This discretion has made it easier for states to provide microenterprise training and support.⁴⁸ The use of TANF funds may be revisited in the 2002 Congressional reauthorization of the program. Statewide funding for microenterprise is diverse including block grants from the federal government, which flow through to states, such as CDBG funds from the U.S. Department of Housing and Urban Development (HUD) and grants from city, county and regional governments.

State level microenterprise activity has lead to the creation of state microenterprise associations (SMAs), which have organized around common priorities – education, advocacy, peer information sharing, public policy design and influence and capacity building. SMAs also use small amounts of state funds to leverage larger amounts of federal funding.⁴⁹

Foundations and corporations such as Ford, Charles Stewart Mott and Levi Straus have been critical to advancing microenterprise. Such support has also facilitated research on best industry practices, described below.

In the last decade, there have been a number of efforts to increase the visibility of microenterprise development. The first is the Presidential Awards for Microenterprise Development. Started in 1996, this non-monetary award program was initiated to bring wider attention to important successes in the domestic microenterprise industry.⁵⁰ Second, as part of a multipart collaboration with AEO several other projects were initiated. These include, a documentary film, *To Our Credit*, the first two-part comprehensive exploration of microcredit internationally and of the U.S. microenterprise industry;⁵¹ a research and development fund, *The Microenterprise Fund for Innovation, Effectiveness, Learning and Dissemination (FIELD)*, dedicated to the expansion and sustainability of microenterprise development efforts, particularly those aimed at poor Americans; and an American Bar Association sponsored publication, *A Legal Guide to Microenterprise Development*, designed to encourage lawyers to provide pro bono legal services to microentreprise development programs and their clients.

IV. THE FUTURE OF MICROENTERPRISE

The Microenterprise Fund For Innovation, Effectiveness, Learning and Dissemination of the Aspen Institute has found that “training and technical assistance are arguably the most important components of microenterprise development services in the U.S. today, particularly for low-

income clients.”⁵² It recently made five \$100,000 grants to pursue research to facilitate a better understanding of what constitutes effective services. “FIELD’s goal in funding a cluster of grants on this subject was to identify and support practitioner organizations interested in advancing the effectiveness of their business training and technical assistance.”⁵³ Similarly, in response to industry concern that loan demand in the U.S. has been much lower than expected, five organizations were granted \$100,000 each “[t]o identify tools that can help low-income entrepreneurs obtain the capital they need to start or expand their businesses.”⁵⁴ To further chronicle developments in the field, the Journal of Microfinance has been created to “help shape and advance the microfinance movement by presenting articles on innovative approaches in microfinance, lessons learned from the field, and essays that represent the broad spectrum of views in the microfinance community.”⁵⁵

V. INNOVATIONS IN HOMELESSNESS AND MICROENTERPRISE DEVELOPMENT

“Homeless people have trouble getting jobs and learning work skills. This program provides self-esteem, places to work, and places to learn.” Mayor (of Toronto, Canada) Mel Lastman⁵⁶

The Toronto Homeless Community Economic Development (CED) Project is a unique collaboration between three levels of Canadian government (federal, provincial, and municipal) and United Way of Greater Toronto. With a significant collective investment of \$1.1 million in the first year, leveraged by two donors to United Way, the Toronto Homeless CED Project funds locally-run small projects that involve homeless people and those at risk of being homeless in ventures designed to “build life and work skills, develop self-esteem, and link them with viable community services and employment opportunities. Examples of CED projects include: catering businesses for low-income women, courier businesses, house painting ventures, dog walking services, and casual labour job banks or craft businesses that allow people to sell their products.”⁵⁷ Recognizing that the key to fighting homelessness is working together and by linking with the business sector, the Toronto Homeless CED Project “is aimed at helping people who are not well-served by traditional employment assistance programs including aboriginals, abused women, people with mental health issues, families with children, people with disabilities, refugees and immigrants, single men, single parent families, single women and youth.”⁵⁸

While the Toronto Homeless CED Project appears to be one of the best funded programs of its type in North America, there are other efforts to support homeless people through self-employment.

Some of the programs focus on women. The Coleman Foundation awarded a \$25,000 grant to the University of Colorado at Denver’s Bard Center for Entrepreneurship Development, which works with SafeHouse, a women’s shelter. A goal of the program is to “give the women a business background to help them in their personal and professional lives,” and to recognize that a home-based business could “help them with issues of income and child care.”⁵⁹ Similarly, the Center for Women and Enterprise’s Community Entrepreneurs Program (CEP) in Boston is an entrepreneurship training and education program designed to prepare low-income women, some of whom are homeless, to start their own businesses.⁶⁰ Programs such as CEP recognize that employment does not guarantee self-sufficiency and that many “working poor live lives of even greater deprivation because of greater limitations on public benefits they are eligible to receive.”⁶¹ Indeed, because of time limits on the 1996 welfare law, benefits available in the past will no longer be available. Self-employment can be essential to supplement low wage work and as CEP participants report, self-employment training results in greater self-awareness and life enhancing skills.⁶²

Other programs focus on perceived growth occupations. The Salvation Army WOOF Program (Work Opportunities for Outstanding Futures), “provides low-income and no-income

individuals with instruction in both dog training and business start-up in a ten week training program.”⁶³ National Occupational Employment Statistics show that animal care is expected to grow faster than the average of all occupations through the year 2006. The program aims to open doors of independence by enabling people to become professional trainers and build successful businesses. Professional trainers can help to address the problem of canine euthanasia by training dogs; 4 million canines are euthanized each year.⁶⁴

VI. JOB TRAINING AND ECONOMIC SELF-SUFFICIENCY FOR HOMELESS PERSONS

In addition to self-employment, microenterprise training is important to job training as well. Indeed, a number of microenterprise programs are part of larger job-training operations. While job-training programs for homeless persons are not new, the relevance, quality and long-term benefits of some programs have been criticized.⁶⁵

As the next section demonstrates, foundations, practitioners and scholars, are attempting to reconcile and examine the most effective ways to prepare and train disadvantaged job seekers who have structural and personal barriers to employment with the realities of matching low-skilled workers with low-skilled jobs.⁶⁶ This task requires knowledge of the social service environment, innovation and creativity.

A. Sector Employment Intervention

Sectors of the legal services community, recognizing that its best efforts over three decades have not reduced the need for legal services, have recently advocated a new approach to complement litigation and other legal service delivery, called “sector employment intervention” (SEI). SEI is a systematic approach, which “aims to capture employment opportunities and resources beyond neighborhoods, where employers are most often located.”⁶⁷ By targeting occupations within growing sectors of regional economies and engaging in system reform of markets that have excluded minority workers, SEI has become a CED vehicle to “connect residents of poor communities to employment opportunities, livable wages and benefits, good working conditions, and advancement opportunities.”⁶⁸ SEI is based on the premise that legal service providers have key access to many institutions in the wider community including “lawyers, the organized bar, law schools, government officials, religious leaders, business executives, schools, hospitals, universities and others.”⁶⁹ To achieve the goal of job creation in the information-age economy, SEI requires collaborative partnerships “among community-based organizations, industry employers, and employment and training providers, thus integrating human services, economic development, and workforce development strategies.”⁷⁰ SEI is also a model for lawyers and legal advocates working with the homeless. The priority-setting model of SEI allows for “focus groups of targeted populations including homeless residents of a transitional housing facility . . . As much as they need housing, the homeless also need assistance in obtaining and keeping good jobs. They need better day care for their children, better public transportation and more support groups and advocates as they try to find and maintain employment.”⁷¹ Illustrative of the SEI approach, organizations such as the National Economic Development and Law Center have linked child-care to economic development, leveraged financial and political resources for child-care and increased the child care industry’s small business entrepreneurial capacity.⁷²

B. Supportive Housing and Integrated Support Services

The creation of supportive housing and other integrated supportive services is further evidence of new initiatives in services for the poor and homeless. *Our House*, a transitional-housing project in Little Rock, Arkansas, selected by the Bush Administration as a “point of light”⁷³ is one example of an innovative program. Utilizing a former nurses’ quarters at a

Veteran's Medical Center to provide transitional-housing to homeless individuals and families, *Our House* has two job-training programs. The first program provides training and experience with computer hardware and software such as word processing programs and spreadsheets. The computer trainees are required to wear business attire, learn how to interview and apply for a job. Business people conduct mock job interviews, which are videotaped to provide feedback to the trainees. A number of the business people conducting the interviews were so impressed with the trainees that they offered them "real" employment on the spot.⁷⁴ The second program provides training and experience with small appliance repair such as washers, dryers, toaster, refrigerators and vacuums. The repaired items are given to formerly homeless people as they secure transitional or permanent housing. The National Law Center on Homelessness and Poverty helped *Our House* obtain the federal surplus property that houses the operation. During the last nine years 87% of its graduates have been placed in jobs.⁷⁵

C. Back-to-the-Earth Gardening Programs and Side Jobs

Recognizing that homelessness and lack of job skills often go hand in hand, the Homeless Garden Project's (HGP) mission is to employ and train homeless people in Santa Cruz County, California, within a community supported organic garden enterprise. The goals of the project are to offer a supportive, meaningful work environment that encourages self-esteem, responsibility and self-sufficiency, to provide a place for homeless people in community and to practice principles of economic and ecological sustainability. The job training and transitional employment are designed to help homeless people "acquire the skills necessary to move in productive directions and lift themselves out of their homeless or marginalized situation."⁷⁶ Since 1990, the Homeless Garden Project has had a permanent staff of seven and employment and training positions for 24 homeless workers in an "organic garden and minifarm," in a dried flower and candle making enterprise, and in commercial produce and flower sales. The organic farm and mini-garden are supported by Community Supported Agriculture (CSA) in which individuals and families invest as shareholders in the garden by buying into a harvest each year at the beginning of the growing season and receive weekly supplies of the produce.⁷⁷ This arrangement produces capital to maintain the organic garden and minifarm.

The Woman's Organic Flower Enterprise (WOFE), which is part of HGP, produces wreaths, dried flower arrangements from organic flowers and herbs grown in the garden and hand-dipped beeswax candles. While producing a hand-crafted gift line for wholesale, retail sale and internet purchase, the organic garden and workshop provide a "nurturing space where women feel safe, where healing takes place and where women learn to help themselves."⁷⁸ In addition, commercial produce and flower sales (not distributed through CSA) are offered to local restaurants, health food stores and other retail shops. Another activity of the HGP is the Side Job Program, which provides opportunities for local residents to hire Project workers for landscaping, yard work, hauling and similar jobs.⁷⁹ Thirty-six percent of the Homeless Garden Project's \$200,000 annual budget comes from its business activities.⁸⁰

D. Culinary Arts

Consistent with the goal of creating good jobs with a future, D.C. Central Kitchen created a Culinary Arts Training Program and *Fresh Start*, a catering, bakery, and contract food services business. Homeless, unemployed and TANF recipients receive valuable training while the catering service acts as a graduate school for the students in the job-training program. Relying on community and business partnerships, D.C. Central Kitchen boasts a 91% after-graduation job placement rate.⁸¹

McMurphy's Grill in St. Louis, Missouri is a nonprofit three-to-six month training program for homeless people, persons at risk of being homeless and people with mental health problems. Now in its tenth year of operation, McMurphy's teaches work ethics and assists trainees with

money management and savings so they can locate a place to live. All of the trainees have case managers. McMurphy's Celebrity Chef Program exposes trainees to local chefs who announce job opportunities, and who provide monthly cooking demonstrations and success strategies.

E. Public Private-Partnerships to Abolish Homelessness

1. Café Habitat

Massachusetts is a leader in homelessness advocacy. In northwestern Massachusetts where there is a large homeless population, social services for the homeless have focused on obtaining housing and mental health services, but assistance for economic self sufficiency or job training was lacking. Café Habitat, a for profit organic coffee business, was started in 1995 by formerly homeless people and shelter workers from the Grove Street Shelter. Initially, the business hosted fund-raising events to explore options for economic development for homeless people. With the assistance of business mentor Dean Cycon, a former corporate lawyer and owner of Dean's Organic Coffee, Café Habitat incorporated in 1996. Like its mentor, Café Habitat buys coffee from independent coffee growers in Latin America. Undaunted by skeptics who thought that Café Habitat would not be able to secure HUD funding, through the Innovation Economic Initiatives Program, Café Habitat, with its fiscal agent,⁸² Service Net, a nonprofit organization, received a three-year \$400,000 grant from HUD to create a first of its kind Small Business Incubator Project. Now in its fourth year of funding, Café Habitat has trained well over 100 homeless people.⁸³

2. Miami-Dade County Homeless Trust

In Dade County, Florida, business and social service groups joined forces and lobbied the state to allow the county to create a 1 percent homeless tax on all large restaurants that serve liquor. This has produced nearly \$6.5 million a year for the new Miami-Dade County Homeless Trust.⁸⁴ The Trust, created in 1993, was no doubt encouraged by the court's ruling in *Pottinger v. Miami*.⁸⁵ At the time of the lawsuit, there were only 700 shelter spaces for 6,000 homeless persons. Based on these facts, the court held that the city's policy of arresting homeless people for sleeping in public places where the city could not provide shelter, violated of the Equal Protection Clause, the Due Process Clause and the Eighth Amendment right to travel.⁸⁶

The mission of the Miami-Dade County Homeless Trust is to "oversee the implementation of the Miami-Dade County Community Homeless Plan, to collect and disperse public funding in this regard and to contract with the private sector . . . to create a true public private partnership."⁸⁷ The creation of the trust and a public/private partnership in Miami has by no means eliminated the problems of homelessness in Miami-Dade County, but it is theoretically a model and a step in the right direction. The trust has brought together a diverse group of people to implement the goals of the Miami-Dade County Community Homeless Plan.⁸⁸ The private dollars leverage and attract federal money. Since 1993 the county has received \$38 million in food and beverage funding and \$25 million in private sector funding. It has been selected as one of six U.S. HUD model cities initiative grantees (for a 1995 award of \$15 million over three years), it was also selected as a U.S. HUD Best Practice Program for its Community Homeless Plan.⁸⁹ Miami-Dade County highlights receiving over \$81.7 million in federal funding, \$1.4 million in state funding and \$1.2 million in local funding since 1993.⁹⁰

The Miami-Dade Homeless Trust in Florida and Café Habitat in Massachusetts provide a theoretical model for what can be accomplished through collaboration with the small business community. The model can be developed by examining and expanding economic self-sufficiency opportunities for homeless people under the umbrella of supportive services.

VII. THE INFORMATION AGE, NEW TECHNOLOGIES AND HOMELESSNESS ADVOCACY

As noted earlier, there is an overlap between microenterprise development and job-training and public-private partnerships as evidenced by the new field of “remote access staffing.” Remote access staffing refers to accessing products and services from a distant location. Cyber Agents are phone operators/customer service representatives working from home who handle e-commerce and other sales transactions. They receive calls from customers for goods and services and process the orders. Willow’s Cybercenter Networks allows businesses to direct calls to a Cyber Agent who owns a computer, pays for a basic two-week training course, and monthly telcom charges.⁹¹ Several Florida counties are using Workforce Investment Act funding to pay for the Cyber Agent training.⁹² Working Capital Florida Partners for Self-Employment, Inc. provides individual loans of \$500-2,000 each for persons who have completed Cyber Agent training to purchase computer equipment;⁹³ it has eleven outreach offices in four counties.⁹⁴ Willow, a leader in the remote staffing company field, was recognized by the Presidential Task Force on Employment of Adults with Disabilities as one of the top job opportunities in the country for disabled people.⁹⁵

Unless the Cyber Agent training is paid for or subsidized, it would appear difficult for homeless persons to access this type of program unless it is in the context of supportive housing. While this type of program “job-training for self-employment” is intriguing, it demands further investigation and study.

Similarly, the Abilities Fund, “the first and only nationwide community developer and financial lending institution targeted exclusively to advancing entrepreneurial opportunities to Americans with disabilities,” proposes to combine CDFI and private funds to invest \$10 million in existing microenterprise networks for disabled entrepreneurs.⁹⁶

The Nebraska Microenterprise Development Partnership Fund, with the support of Union Bank, is developing a 6-month computer-training program. Participants can earn bonus points for completing training, which can be used to lease computers and printers to start small businesses. It is anticipated that between 1999 and 2002, the program will aid 77 low-income people in establishing small businesses.⁹⁷

VIII. SOCIAL ENTREPRENEURISM, SOCIAL PURPOSE BUSINESSES, AND HOMELESS ECONOMIC DEVELOPMENT

Some of the aforementioned innovations, such as the Homeless Garden Project, are part of an emerging field of social entrepreneurship, “a provocative blend of social, philanthropic and business values”⁹⁸ which is an integration of social work, community economic development and business development in the creation of social purpose businesses. The National Center for Social Entrepreneurs defines the term broadly. Social entrepreneurship is using smarter business and marketing practices to generate more revenue to fuel mission-related activities. On the enterprise spectrum, social entrepreneurship is somewhere between purely philanthropic and purely commercial.⁹⁹ A subset of this phenomenon is homeless economic development. The Roberts Foundation has been at the forefront of this work. In 1990 it established the Homeless Economic Development Fund to support the work of “New Social Entrepreneurs” and explore the potential for nonprofit enterprise creation. The philosophical underpinnings of this movement are that people are not “serviced out of poverty.”¹⁰⁰ The ability to exit from poverty is governed by employment, asset accumulation and wealth creation. A final report on the experience of the San Francisco Homeless Women’s Economic Development Project indicated that “while only a few women were able to start full-time businesses that provide enough income to support them, a large proportion were successful in setting up small scale enterprises that provide supplemental income to their full-or part-time jobs. Regardless of their self-employment

status, almost all of the participants experience significant increase in their annual household income.”¹⁰¹ Given this reality a recommendation for future projects is to offer economic development tracks such as job training and job placement along with supportive services, child care and transportation subsidies.¹⁰²

A number of innovative programs have been funded by The Roberts Fund, such as the San Francisco Homeless Women’s Economic Development Project and Asian Neighborhood Design (AND). AND is a nonprofit organization that “provides permanent and transitional jobs including work experience for persons who face multiple barriers to employment.” Areas of training include carpentry, cabinetmaking, computer-aided design and drafting, plumbing, computer machine operation and related fields.¹⁰³

The current shift in the nonprofit sector is influenced by several factors: the advent of devolution in which federal funding for a myriad of social, educational and other programs is being transferred to the states; the rise of social entrepreneurship described above; outsourcing inspired by the reinventing government movements; for-profit competition in acquisitions, mergers, and alliances; outcome performance (measuring impact or results); and the evolving practice of venture philanthropy described in the next section.¹⁰⁴

A. Social Venture Philanthropy, the Changing Nature of Charitable Giving and the Impact on Funding for Homelessness Advocacy¹⁰⁵

Social Venture Philanthropy (SVP) is a new paradigm in charitable giving influenced by venture capital. SVP is driven by new donors who are turning their attention to charitable issues now that they have acquired substantial wealth. The SVP model often allows for longer term investments (3-5 years) in nonprofit organizations which are monitored and evaluated for progress, management and expansion capabilities, eliminating the need for nonprofit groups to reapply, yearly in some cases, for grant funds. SVP models choose organizations led by social entrepreneurs, nonprofit leaders who combine social, philanthropic and business values.¹⁰⁶

The private efforts of wealthy Americans complement the work of government. 73% of Americans gave to charity last year. In 1999, charitable gifts totaled \$190 billion. One survey found that 90 percent of business owners contribute to charity.¹⁰⁷ America, claiming to be the richest, strongest and smartest nation on earth produces more millionaires and billionaires than any other country. The multimillionaires of the booming technology industries are changing the way philanthropy is approached. Researchers refer to the “golden era of philanthropy.” A number of foundations are analyzing “the nonprofit capital market.”¹⁰⁸ The theory is that investments in nonprofits are still capital investments seeking social and economic, not purely financial returns. This analysis requires that nonprofit capital investments be managed with due diligence and strategic thinking applied in the for-profit world. Although government funding of nonprofit groups will remain at the forefront, government spending has slowed considerably and there are many more cutbacks projected.¹⁰⁹ The nonprofit capital market will also shift considerably in the future — the wealth creation of the past 15 years from Baby Boomers’ inheritances is projected to exceed \$1 trillion in the next twenty years.¹¹⁰ This new trend in venture philanthropy, using the aggressive venture capital methods that created the new wealth, means that nonprofit organizations working with homeless people will have to consider entrepreneurial approaches to sustainability. “This new breed of philanthropist scrutinizes each charitable cause like a potential business investment, seeking maximum return in terms of social impact — for example, by counting the number of children taught to read or the number inoculated against malaria.”¹¹¹

Critics of SVP say that not all problems can be solved with commercial approaches.¹¹² Some believe that the characteristics of venture philanthropy — measurable and result-oriented giving — are already being employed by many donors.¹¹³ Others caution that the outcome measure driven nature of SVP may thwart the learning process and nonprofit groups’ willingness to

openly discuss and share lessons learned. These concepts of strategic philanthropy, outcome funding, engaged grant making and grant making for effective organizations are gaining increased attention as many social actors believe that the approaches of the past have not resulted in the sought after impact or change.

One example of an outcome driven model is Seattle Children's Home's call for businesses and nonprofit groups to work toward the goal of no children living on the streets of Seattle by 2005. The board of directors of the Seattle Children's Home designed a continuum of care, "a new model based upon private investment where the kids would get well, stay well and become successful adults. It would be a model where the dollars would follow the kids. But, it had to be a business plan and not a social commentary, for it would need to attract not just donations but investments,"¹¹⁴ To accomplish this goal, the Seattle Children's Home coordinates support from family, educators, social workers, clinicians, physicians and others. The building blocks of the continuum of care model are comprehensive assessment services, parent advocacy, enriched case management, strategic alliances of service providers and outcome accountability. Children and families work together in multi-systems to establish and achieve mutually agreed goals.¹¹⁵ Homelessness advocates could benefit from further study of the Seattle Children's Home and similar programs.

B. A Critical Role for Lawyers and Legal Advocates

Lawyers are needed to interpret the legal issues in the new philanthropy and to lobby for legislative and policy changes that support the abolition of homelessness.¹¹⁶ Transactional counsel is needed in corporate, tax, contracts and intellectual property matters such as examining joint venture relationships between a nonprofit and its for profit collaborators. Legal counsel is also needed to protect a homeless advocacy organization's intellectual property rights in publications, trademarks and logos. As one scholar notes, "Legal counsel face a daunting task when asked to advise section 501(c)(3) tax exempt entities. . . as to what economic development activity involving for profit entities is charitable".¹¹⁷ Scholars suggest that internal revenue law reforms are needed in the areas such as unrelated business income tax in order for nonprofit organizations to be engaged in successful economic development and job creation endeavors.¹¹⁸

Similarly, lawyers are needed to address legal issues associated with the Workforce Investment Act of 1998 (WIA) which took effect July 1, 2000 and which repeals and replaces the Job Training Partnership Act (JTPA).¹¹⁹ WIA establishes a new national framework for low-income and other people seeking employment. Legal services attorneys urge the importance of advocacy efforts on WIA mandated state and local implementation. One example of advocacy is focused on formation of the state and local workforce investment boards.¹²⁰ Once low-income and other workers secure employment, legal services advocates can protect their employment rights.¹²¹

The faith-based policy initiative of the George W. Bush administration may also spur the need for legal interpretation. This new initiative, designed to make federal programs more friendly to faith-based organizations, has generated considerable discussion at the start of the new administration.¹²²

CONCLUSION

This essay focuses on policies and innovations in income creation for homeless people. Integrated approaches to homelessness prevention and policies that combine housing, income and social services are essential for the abolition of homelessness. Microenterprise development, innovative job training and strategic partnerships with the business community, will advance the goal of eliminating homelessness. Some of the programs described herein are new. While the jury is still out on the efficacy of some, these programs seem to represent innovations that value

the humanity, human capital, individuality, social and economic needs of homeless people and they deserve further study in best practices. At the same time, they reflect the current trends toward economic self-sufficiency in the American policy rhetoric.

Notes

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This essay was supported by a summer writing grant from The George Washington University Law School.

1. See National Alliance to End Homelessness, *Facts About Homelessness*, at <http://www.naeh.org/back/factsus.html> (last visited Feb. 7, 2001).

2. See AMERICAN BAR ASSOCIATION: COMMISSION ON HOMELESSNESS AND POVERTY, *Homelessness in America*.

3. Peter Salsich, Jr., *Homelessness and the Law Symposium: Homelessness at the Millennium: Is the Past Prologue?*, 23 STETSON L. REV. 331, 332-34, 336-42 (1994). One such solution is the Continuum of Care model, part of a Consolidated Plan developed by the U.S. Department of Housing and Urban Development (HUD) to track the outcome and impact of billions of dollars for affordable housing and community development. The Continuum of Care model is designed to reflect a community's vision and action plan for comprehensive services to the homeless. The Continuum of Care model can also assist localities in obtaining competitively awarded grants under the Stewart B. McKinney Homeless Assistance Act. See also Deborah Austin & Susan Jones, *Learning From HUD: A Continuum of Service for the Small Business Community*, 9 J. AFF. HOUSING & COMMUNITY DEV. L. 119 (2000).

4. Susan R. Jones, *A Legal Guide to Microenterprise Development: Battling Poverty Through Self-Employment*, AMERICAN BAR ASSOCIATION COMMISSION ON HOMELESSNESS AND POVERTY (1998). Microenterprise development is a community economic development (CED) and anti-poverty strategy in which business training, technical assistance, and/or small loans are provided to very small businesses.

5. PETER WERWATH ET AL., *HELPING PEOPLE GET JOBS: CASE STUDIES AND OTHER RESOURCES*, THE ENTERPRISE FOUNDATION 9-10 (1999). See also *HARD LABOR: WOMEN AND WORK IN THE POST-WELFARE ERA 77* (Joel F. Handler & Lucie White eds., 1999) [hereinafter *HARD LABOR*].

6. Human capital is the term social scientists use to "describe the positive externalities that accrue when individuals take control of their lives, develop self-esteem, and succeed in the economic market place." Susan R. Jones, *Self-Employment: Possibilities and Problems*, in *HARD LABOR*, *supra* note 5, at 76 [hereinafter *Possibilities and Problems*].

7. The Massachusetts Housing and Shelter Alliance, dispelling the myth that homeless people are anonymous street people wandering from shelter to shelter, asserts that some of the homeless come from youth programs such as foster care. See MASSACHUSETTS HOUSING AND SHELTER ALLIANCE, *MAKING PREVENTION TANGIBLE, PREVENTING HOMELESSNESS: POLICY, PROTOCOLS AND PRACTICES FOR DISCHARGE AND PLANNING* (1999).

8. For more information on microenterprise and youth see Susan R. Jones, *Youth Entrepreneurship and Microenterprise Development*, in AMERICAN BAR ASSOCIATION, *AMERICA'S YOUTH STILL AT RISK* (2001). Available from The ABA Steering Committee on the Legal Needs of Children. For a discussion of using Temporary Assistance for Needy Families (TANF) funds to support youth initiatives, see Marie Cohen & Mark Greenberg, *Tapping TANF for Youth: When and How Welfare Funds Can Support Youth Development, Education and Employment Initiatives* (Jan. 2000), at Center for Law and Social Policy (CLASP) website at <http://www.clasp.org/pubs/jobseducation/jobseducationemployability.htm> (last visited on Feb. 22, 2001).

9. While Joe's story is an entirely fictional account it could be someone's story. The author represented a microenterprise program in which one of the participants, a homeless man, was establishing a bicycle repair business while receiving housing assistance. The Center for Women and Enterprise's Community Entrepreneurs Program works with some homeless women. Indeed, as the microenterprise industry reflects on its work with certain populations, such as persons with disabilities, immigrants and youth, homeless people will be among them.

10. Fatherhood programs teach active parenting skills. Telephone Interview with Joseph Osborne, Executive Director, Lancaster Fatherhood Project (Oct. 12, 2000).

11. This type of business can require substantial legal and regulatory expertise. In addition to creating a legal entity such as a corporation or a limited liability company, the business requires service contracts and liability insurance. In Washington, D.C. for example, a handyman/carpenter would need a home improvement contractor's license and a general business license. A prerequisite to the license is bonding.

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12. AEO defines a microenterprise as a sole proprietorship, partnership or family business that has fewer than five employees, small enough to benefit from loans under \$25,000 and too small to access commercial banking services. See ASSOCIATION FOR ENTERPRISE OPPORTUNITY, MICROENTERPRISE FACT SHEET SERIES, FACT SHEET #1 - MICROENTERPRISE DEVELOPMENT IN THE UNITED STATES: AN OVERVIEW (2000), at <http://www.microenterpriseworks.org/microdevelopment/factsheets/factsheetsindex.htm>. [hereinafter MICROENTERPRISE FACT SHEET SERIES, FACT SHEET #1] (last visited April 18, 2001). Another definition is a business comprised of one to five people with less than \$5,000 in start up capital. See Lewis D. Solomon, *Microenterprise: Human Reconstruction in America's Inner Cities*, 15 HARV. J. L. & PUB POL'Y 191, 192 (1992).
13. See MICROENTERPRISE FACT SHEET SERIES, FACT SHEET #1, *supra* note 12. See also JOHN F. ELSE, AN OVERVIEW OF THE MICROENTERPRISE DEVELOPMENT FIELD IN THE U.S., INSTITUTE FOR SOCIAL AND ECONOMIC DEVELOPMENT, INTERNATIONAL LABOR OFFICE 3, 36 (2000). See also e-mail from Bill Edwards, the Executive Director of the Association for Enterprise Opportunity (Nov. 30, 2000) (on file with author) (reports that there are 700 microenterprise programs in 50 states).
14. ELSE, *supra* note 13, at 25.
15. Jones, *Possibilities and Problems*, *supra* note 6, at 78.
16. E-mail from Bill Edward, *supra* note 12. Some advocates believe that the peer-lending model is less attractive in the U.S. because the cultural and community constructs, which cement the peer-lending model, are often absent in the U.S.
17. Jones, *Possibilities and Problems*, *supra* note 6, at 78.
18. Income patching involves supplementing full-or part-time work with income from self-employment. See generally ASSOCIATION FOR ENTERPRISE OPPORTUNITY, MICROENTERPRISE FACT SHEET SERIES, FACT SHEET #5 - SOURCES OF PUBLIC FUNDING (2000), at <http://www.microenterpriseworks.org/microdevelopment/factsheets/Factsheetsindex.htm> (last visited April 18, 2001).
19. For examples of the uses of microenterprise including self-employment, job patching and job readiness, see Jones, *Possibilities and Problems*, *supra* note 6, at 78.
20. PEGGY CLARK & AMY KAYS, MICROENTERPRISE AND THE POOR: FINDINGS FROM THE SELF-EMPLOYMENT LEARNING PROJECT FIVE-YEAR SURVEY OF MICROENTREPRENEURS vii, 16, 35, 48, 68 (1999).
21. See generally JOHN F. ELSE & CARMEL CLAY-THOMPSON, REFUGEE MICROENTERPRISE DEVELOPMENT: ACHIEVEMENTS AND LESSONS LEARNED, INSTITUTE FOR SOCIAL AND ECONOMIC DEVELOPMENT (1998); Lisa Plimpton & Mark Greenberg, *TANF Policies in Nine States: Implications for Microenterprise Initiatives Center for Law and Social Policy*, at <http://clasp.org/pubs/jobseducation/microenterprises.htm> (last visited April 18, 2001). (Dec. 1999); Mark Greenberg, *Developing Policies to Support Microenterprise in the TANF Structure: A Guide to the Law, Microenterprise Fund for Innovation, Effectiveness, Learning and Dissemination* (1999).
22. See Matthew C. Sonfield, *From Inmate to Entrepreneur: A Preliminary Analysis*, (on file with the author).
23. Practitioner Programs give loans, training and technical assistance directly to entrepreneurs. They are distinguished from Practitioner Support Agencies, which are generally intermediaries that service Practitioner Programs in program planning and design, training, research and evaluation and financial assistance. Some of the agencies in the Directory serve both functions. JENNIFER A. LANGER et al., 1999 DIRECTORY OF U.S. MICROENTERPRISE PROGRAMS, MICROENTERPRISE FUND FOR INNOVATION, EFFECTIVENESS, LEARNING AND DISSEMINATION (FIELD) xii-xvi (1999).
24. *Id.* at xv.
25. For more information about AEO visit its web site at <http://www.microenterpriseworks.org> (last visited April 18, 2001).
26. Sectoral markets maximize resources and help low-income entrepreneurs connect to more lucrative, high-value markets through cooperative efforts. See, *Making the Connection: Appalachian Center for Economic Networks*, a study examining how the Center helped microentrepreneurs break into the specialty and natural foods industry in Ohio. For more information about the book visit the website for the Microenterprise Fund for Innovation, Effectiveness, Learning and Dissemination (FIELD), at <http://www.fieldus.org> (last visited April 18, 2001), or call the Publications hotline (410) 820-5338. For general information on sectoral markets visit the AEO website, at <http://www.microenterpriseworks.org>. For information about business incubators, visit the National Business Incubation Association website at <http://www.nbia.org> (last visited April 18, 2001). Business Incubators offer fledgling companies benefits and resources such as office space and basic office services (e.g., receptionist, fax and photocopy machines), legal and accounting help and sometimes offer access to venture capital. For profit business incubators provide the aforementioned services in exchange for an equity stake in the company and some have helped to bring some start-up technology companies to fruition. Shared networking clusters offer enhanced incubation services. See Morten T. Hansen et al., *Networked Incubators: Hothouses of the New Economy*, HARV. BUS. REV. (2000) (describing networked incubators, distinguishable from those that provide a place to "set up shop" because they foster partnerships among start-up teams, facilitate talent and forge marketing and technology relations).
27. This issue is a source of considerable discussion in the microenterprise community and is one of the reasons that U.S. practitioners use the terminology microenterprise and not micro credit. They contend that it takes more than just "credit" to operate a U.S. microbusiness. Often times, the business training and technical assistance is more important than the loan. Indeed, one of the findings of the FIELD study is that many participants completing training did not request loans. See THE ASPEN INSTITUTE, FIELD FORUM 2 (Oct. 1999).
28. See e-mail from Clare Pastore, Staff Attorney, Western Center on Law and Poverty in Los Angeles, California (Nov. 27, 2000) (on file with author).

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29. PEGGY CLARK & AMY KAYS, *MICROENTERPRISE AND THE POOR: FINDINGS FROM THE SELF-EMPLOYMENT LEARNING PROJECT FIVE-YEAR SURVEY OF MICROENTREPRENEURS* vii (1999).
30. Louise A. Howells, *The Dimensions of Microenterprise: A Critical Look at Microenterprise as a Tool to Alleviate Poverty*, 9 J. AFF. HOUSING 2,174 (2000).
31. *Id.* at 162.
32. See MICROENTERPRISE FACT SHEET SERIES-FACT SHEET #1, *supra* note 12.
33. See Jones, *Possibilities and Problems*, *supra* note 6, at 78.
34. Colette Dumas, *Evaluating the Outcomes of Microenterprise Training for Low-Income Women* 3 (unpublished Ph.D dissertation), Suffolk University, Frank Sawyer School of Management, Boston (copy on file with the author) [hereinafter Dumas dissertation].
35. Lucie E. White, *Feminist Microenterprise: Vindicating the Rights of Women in the New Global Order?*, 50 ME. L. REV. 327, 332 (1998).
36. *Id.*
37. FEDERAL MICROENTERPRISE FUNDING PROGRAMS, at <http://www.microenterprise.org/microdevelopment/federal/funding.htm> (last visited April 18, 2001).
38. MICROENTERPRISE FACT SHEET SERIES - FACT SHEET #5, *supra* note 18.
39. Community Development Banking and Financial Institutions Act of 1994, 12 U.S.C. § 4701 *et seq.* (2000). The appropriation for fiscal year 2001 is \$250,000,000; \$300,000,000 for Fiscal Year 2002 and \$350,000,000 for fiscal year 2003.
40. *Id.* See also Donald A. Lash, *The Community Development Banking Act and the Evolution of Credit Allocation Policies*, 7 J. AFF. HOUSING AND COMMUNITY DEV. LAW 385 (1998) (provides a history of banking reforms, the legislative history and an overview of the Community Development Banking Act of 1994).
41. For more information visit the Microenterprise Development Federal Agency website, at <http://www.sba.gov/microcenter> (last visited April 18, 2001).
42. *Individual Development Accounts: Hearing Before the D.C. City Council Committee on Economic Development* (2000) (statement of Ray Boshara, Policy Director for CFED). See generally MICHAEL SHERRADAN, *ASSETS AND THE POOR* (1991).
43. Assets for Independence Act (AFIA), Pub. L. No. 105-285, 112 Stat. 2579 (1998). AFIA provides competitive grants to nonprofit IDA programs. Although it was authorized at \$125 million over five years, it received a \$10 million appropriation in fiscal year 1999 and 2000. See also Corporation for Enterprise Development, *Federal and State IDA Policy Overview* (2000).
44. The follow states have enacted SEAS legislation: New York, Maine, Oregon, Delaware, New Jersey, California, Maryland and Pennsylvania. See ASSOCIATION OF ENTERPRISE OPPORTUNITY, AEO POLICY COMMITTEE, 1998-1999 KEY ACCOMPLISHMENTS, AEO 1999 LEGISLATIVE PRIORITIES, AEO FACT SHEETS, at www.microenterpriseworks.org/aboutaao/committees (last visited April 18, 2001).
45. Job Training Partnership Act, 29 U.S.C. 1501 *et seq.* (2000) (*repealed* by Workforce Development Act of 1998, Pub. L. No. 105-220, 112 Stat. 936 (1998)) (codified as §504 of the Rehabilitation Act, 29 U.S.C. §794(d)).
46. Greg Bass, *Adult and Dislocated Worker Job Training Provisions of Title I of the Workforce Investment Act of 1998: Part 1 - Federal, State, and Local Work-Force Investment System*, 33 CLEARINGHOUSE REV. 525-528 (Feb. 2000); Greg Bass, *Adult and Dislocated Worker Job Training Provisions of Title I of the Workforce Investment Act of 1998: Part 2 - Delivery of Services*, 33 CLEARINGHOUSE REV. 649 (Apr. 2000).
47. Personal Responsibility and Work Opportunity Act of 1996, 42 U.S.C. §601 (2000).
48. Plimpton & Greenberg, *supra* note 21, at 3. TANF POLICIES IN NINE STATES: IMPLICATIONS FOR MICROENTERPRISE INITIATIVES, CENTER FOR LAW AND SOCIAL POLICY (CLASP) 3 (2000) at <http://www.clasp.org/pubs/jobseducation/jobseducationemployability.htm>. The welfare law also created obstacles to microenterprise development with its emphases on time limits, caseload reduction, and limits on longer-term education and training. See also MARK GREENBERG, *DEVELOPING POLICIES TO SUPPORT MICROENTERPRISE IN THE TANF STRUCTURE: A GUIDE TO THE LAW, MICROENTERPRISE FUND FOR INNOVATION, EFFECTIVENESS, LEARNING AND DISSEMINATION (FIELD)* (1999).
49. See Association for Enterprise Opportunity, *State Associations*, at <http://www.microenterpriseworks.org/stateassoc> (last visited Nov. 1, 2000). See William Lewis Randolph, *Capitalizing Microenterprise Funds: The Virginia Enterprise Initiative* (2000), at <http://www.usabe.org> (last visited Nov. 1, 2000). SMA's have identified legal issues ranging from the limits on lobbying to the feasibility of merging existing microenterprise programs.
50. For more information about the Presidential Awards for Excellence in Microenterprise Development visit the Community Development Financial Institution website, at <http://www.treas.gov/cdfi> (last visited Mar. 23, 2000).
51. For more information about *To Our Credit* visit its website at <http://www.toourcredit.org> (last visited Mar. 23, 2000).
52. ASPEN INSTITUTE, *supra* note 27, at 1.
53. *Id.* The grantees mission is to creatively understand the impact of training and technical assistance on low-income entrepreneurs' skills development and the businesses they create. The grantees are: 1) Women's Initiative for Self-Employment, San Francisco, California; 2) Institute for Social and Economic Development, Iowa City, Iowa; 3) Detroit Entrepreneurship Institute, Inc., Detroit, Michigan; 4) Women's Housing and Economic Development Corp., Bronx, New York; and 5) Central Vermont Community Action, Barre, Vermont.

54. Grants were awarded in August 1999. For Immediate Release, *FIELD Awards \$500,000 to Groups Exploring Links Between Training/Entrepreneurship*, Wednesday, August 4, 1999 and *FIELD Awards \$500,000 to Groups Testing Ways to Pump Capital Into Low-Income Businesses* (on file with author and available from The Aspen Institute, One Dupont Circle, NW, Suite 700, Washington, DC 20036; phone 202.736.5800; fax 202.467.0790; emailfieldus@aspeninstitute.org). The grantees for the capital expansion project are: 1) Community Ventures Corporation, Lexington, Kentucky; 2) Coastal Enterprises, Wiscasset, Maine; 3) Accion U.S. Network, Cambridge, Massachusetts 4) New Hampshire Community Loan Fund, Concord, New Hampshire; and 5) West Central Wisconsin Community Action Agency, Glenwood City, Wisconsin.

55. *Journal of Microfinance*, at <http://www.microjournal.com>; see Association of Enterprise Opportunity, at <http://www.microenterpriseworks.org> - AEO Exchange July-August, 1999, p 2.

56. *United Way and Three Levels of Government Launch New Program to Help Reduce and Prevent Homelessness*, CANADA NEWswire, Jan. 19, 2000, available at LEXIS, News Library, News Group File.

57. *Id.* at 56. Telephone Interview with Dan Clement, Director, Special Projects and New Initiatives, United Way of Greater Toronto (Oct. 24, 2000) [hereinafter Telephone Interview with Dan Clement].

58. *Id.* at 56. Telephone Interview with Dan Clement, *supra* note 57.

59. Kristen Go, *Survivors Learn Business Skills*, THE DENVER POST, Oct. 9, 1999, at A-26, available at LEXIS, News Library, News Group File; Telephone Interview with Sherry Maloney, Safe House Program Administrator, University of Colorado's Bard Center (Oct. 16, 2000).

60. Conversation with Jennifer Bennet, Director, Community Entrepreneurs Program, Center for Women and Enterprise (July 27, 2000). See also Center for Women and Enterprise, at <http://www.cweboston.org> (last visited Nov. 1, 2000).

61. Dumas dissertation, *supra* note 34.

62. *Id.* at 14, 21-22.

63. *The Salvation Army Selects Matthew 'Uncle Matty' Margolis and His Exclusive Program, The Business of Dog Training, to Teach the Homeless a Profession with a Future*, BUSINESS WIRE (Nov. 5, 1999), at <http://www.unclematty.com>, or <http://www.salvationarmy-social.org>.

64. Telephone Interview with Mathew Margolis, Founder, National Institute of Dog Training (Oct. 26, 2000). The first dog-training program had 40 homeless participants ranging from 19 - 60 years of age. The second program, which began in early October 2000, had 85 participants.

65. PETER WERWATH ET AL., HELPING PEOPLE GET JOBS: CASE STUDIES AND OTHER RESOURCES, THE ENTERPRISE FOUNDATION 1-4 (1999).

66. *Id.*

67. Greg Volz & Brad Caftel, *Job Strategies in the Era of Welfare Reform: A Community-Based Model of Legal Services*, 33 CLEARINGHOUSE REV. 569, 571(2000).

68. *Id.*

69. *Id.* at 569. See also Nona Liegeois et al., *Helping Low-income People Get Decent Jobs: One Legal Services Program's Approach*, 33 CLEARINGHOUSE REV. 279 (1999).

70. *Id.*

71. Volz & Caftel, *supra* note 67, at 577.

72. For more information about SEI visit the NEDLC website, at <http://nedlc.org/programs>.

73. The Points of Light Foundation, created in 1990, is a private foundation encouraging volunteerism and private efforts to combat social problems. See Heather Gottry, *Profit or Perish: Nonprofit Social Service Organizations & Social Entrepreneurship*, 2 GEO. J. ON POVERTY L. & POL'Y 249, 253 n.20 (1999).

74. Thanks to Laurel Weir, Policy Director of the National Law Center on Homelessness and Poverty, for providing initial information about Our House and other job training programs for homeless people. See email from Laurel Weir, Policy Director of the National Law Center on Homelessness and Poverty (Mar. 10, 2000) (on file with author). Telephone Interview with Joe Flaherty, Director, Our House (Oct. 11, 2000).

75. Telephone interview with Joe Flaherty, *supra* note 74.

76. For information about the Homeless Garden Project visit the web site, at <http://www.infopoint.com/sc/orgs/garden> (visited July 25, 2000). For a discussion of the role of gardening in community economic development and a review of the legal issues in establishing community gardens on vacant land, see Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 N.Y.U. J. LEGIS. & PUB. POL'Y (2000).

77. Telephone Interview with Jane Petroff, Executive Director, Homeless Garden Project (Oct. 24, 2000).

78. *Id.*

79. *Id.* There are a number of examples of side job or odd job projects. One of them, Central Union Mission, in Washington, D.C. has a catering project in which trained cooks are teaching homeless people culinary arts.

80. *Id.* Proponents of back to the earth employment and training programs have also found international examples to assist them. Modeled on successful social experiments in Denmark, the Hyannis, Massachusetts based Housing Assistance Corporation received a \$250,000 grant from the U.S. Department of Housing and Urban Development to buy land for a farm that will be inhabited and run almost entirely by homeless men.

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81. For more information about D.C. Central Kitchen, see the website at <http://www.dccentralkitchen.org> (last visited Nov. 2, 2000).
 82. Fiscal agency also known as fiscal sponsorship arises when a project wants to get support from a private foundation, government agency or tax deductible contributions from individual or corporate donors and looks for a 501(c)(3) sponsor to receive funds on its behalf for project purposes. See GREGORY L. COLVIN, FISCAL SPONSORSHIP, SIX WAYS TO DO IT RIGHT 2-4 (1993).
 83. Conversation with Daphne Bishop, Founder of Café Habitat (August 4, 2000). Telephone Interview with Rebecca Muller, Shelter and Housing Division Leader, Service Net (Oct. 13, 2000).
 84. Jeanne DeQuine, *Project Offers More Than Just Shelter*, CHRISTIAN SCIENCE MONITOR, Aug. 8, 1996, at 1. See also *Miami-Dade County Homeless Trust*, at <http://www.co.miami-dade.fl.us/homeless> (last visited Aug. 9, 2000).
 85. Conversation with Arthur Rosenberg, Director, Florida Legal Services (July 24, 2000). *Pottinger v. City of Miami*, 720 F. Supp. 955 (S.D. Fla. 1989) (Pottinger I); *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1991) (Pottinger II); *Pottinger v. City of Miami*, 40 F.3d 1155 (11th Cir. 1994) (Pottinger III), *remanded*, 76 F.3d 1154 (11th Cir. 1996) (Pottinger IV).
 86. *Id.*
 87. Telephone Interview with Julieann B. Edwards, Assistant Executive Director, Miami-Dade Homeless Trust (Oct. 17, 2000). See also *Miami-Dade County Homeless Trust*, *supra* note 84.
 88. Conversation with Arthur Rosenberg, Director, Florida Legal Services (July 24, 2000). The Miami-Dade County Homeless Trust implements the Miami-Dade County Homeless Plan, which includes a Continuum of Care. The trust is funded by federal, state and private sources.
 89. *Id.* at 84.
 90. See *Miami-Dade County Homeless Trust*, *supra* note 84.
 91. CALL CENTER MAGAZINE, April 2000, at 1 (on file with author), available at <http://www.callcentermagazine.com> (last visited Nov. 16, 2000).
 92. Conversation with Marty Urrea, Director of Cyber-Agent Administration at Willow (Feb. 6, 2001).
 93. *Id.*
 94. See Brochure on Partners for Self-Employment, Inc., Enterprise Network Fund, Loan Capital (copy on file with author).
 95. Willow Cybercenter Networks, *Company Background*, at <http://www.willowcsn.com> (visited Oct. 11, 2000).
 96. See e-mail from Irina Zabello-Scemelova, AEO (Nov. 21, 2000) (copy on file with the author).
 97. WERWATH ET AL., HELPING PEOPLE GET JOBS, *supra* note 65, at 45.
 98. THE ROBERTS FOUNDATION, NEW SOCIAL ENTREPRENEURS: THE SUCCESS, CHALLENGE AND LESSONS OF NON-PROFIT ENTERPRISE CREATION, A PROGRESS REPORT ON THE PLANNING AND START-UP OF NON-PROFIT BUSINESSES FROM THE ROBERTS FOUNDATION, HOMELESS ECONOMIC DEVELOPMENT FUND 2-3 (1996).
 99. THE NATIONAL CENTER FOR SOCIAL ENTREPRENEURS, SOCIAL ENTREPRENEURSHIP AND VENTURE CAPITALISM: THE FUTURE OF PHILANTHROPY?, Washington Areas Lawyers for the Arts, Second Annual Arts and Entertainment Law Symposium (Nov. 9, 2000).
 100. *Id.* at 97.
 101. SELF-EMPLOYMENT AND VERY LOW-INCOME WOMEN: A FINAL REPORT ON THE EXPERIENCE OF THE SAN FRANCISCO HOMELESS WOMEN'S ECONOMIC DEVELOPMENT PROJECT 31 (May 1995)(on file with the author).
 102. *Id.*
 103. For information about Asian Neighborhood Design (AND) visit the website at <http://www.andnet.org/home.html> (last visited July 31, 2000).
 104. Jed Emerson, *The U.S. Nonprofit Capital Market: An Introductory Overview of Developmental Stages, Investors and Funding*, THE ROBERTS ENTERPRISE DEVELOPMENT FUND, THE ROBERTS FOUNDATION 1-11(1998). See also *By the Year 2005 No Child Will Have to Live on the Streets of Seattle: President of Seattle Children's Home Issues Call for Partnership with the For-Profit Sector to Eliminate Homelessness Among Children*, PR NEWSWIRE (May 12, 1999).
 105. The first ever White House Conference on Philanthropy, Gifts for the Future on Oct. 22, 1999 "highlighted the unique American tradition of giving, discussed the diverse and changing face of philanthropy and explored how we as a nation can sustain and expand this tradition for future generations." See <http://www.search.nara.gov>. (last visited August 17, 2001).
 106. Emerson, *supra* note 104, at 15.
 107. *In Brief: Giving, Study Shows Gifts by Entrepreneurs*, THE CHRONICLE OF PHILANTHROPY (Nov. 30, 2000).
 108. *Id.*
 109. Between 1992 and 1996 government funding increased only 2.9% compared to 8.4% between 1987 and 1992. Emerson, *supra* note 104, at 7.
 110. *Id.*
 111. Karl Taro Greenfeld, *The New Philanthropy, A New Way of Giving*, TIME MAGAZINE, July 2000, at 50-51.
 112. David Whitford, *The New Shape of Philanthropy: The Internet Generation is Bringing the Principles of Venture Capital to Philanthropy, it's Innovative-But is it Effective*, FORTUNE, June 2000, at 315.
 113. Shashank Bengall, *California Community Leader Discusses Future of Venture Philanthropy*, SAN JOSE MERCURY NEWS, Aug. 9, 1999.
 114. *By the Year 2005 No Child Will Have to Live on the Streets of Seattle*, *supra* note 104.

115. For more information about the Seattle Children's Home visit their website at <http://www.seattlechildrenshome.org> (last visited April 18, 2001).

116. It is noteworthy several AEO members in Ohio and Boston report successful relationships with attorneys who provide pro bono or reduced fee services. Volunteers of Legal Service (VOLS) in New York works with microentrepreneurs who have been identified by economic development corporations such as the Business Resource and Investment Center in Harlem. VOLS asks law firms to pledge 30 hours of pro bono time. Law firms have helped microbusiness with "food preparation, clothing design, operating a beauty salon, child care, writing and so on. The legal work includes preparing organization documents, reviewing contracts and financial documents, leasing issues, assistance on workers' compensation, licensing and employment matters." Lawyers provide one-on-one legal counseling and make presentations on legal issues such as commercial leasing and choice of legal entity. *Pro Bono Part II, Organizations VOLS: Moving People From Welfare to Employment - Microenterprise and the MFY Partners*, THE METROPOLITAN CORPORATE COUNSEL 50 (Sept. 2000).

117. Gregory G. Maher, *Charitable Economic Development: It's Time the IRS Took Another Look*, 7 J. AFFORDABLE HOUSING AND COMMUNITY DEV. LAW 31, 33 (1997).

118. Heather Grottry, *Profit or Perish: Nonprofit Social Service Organizations & Social Entrepreneurship*, 2 GEO. J. ON POVERTY L. & POL'Y 249, 272-274 (1999).

119. Workforce Investment Act of 1998, Pub. L. No. 105-220, 112 Stat. 939 (1998) (codified as amended at 29 U.S.C. §§ 2801-2945).

120. WIA mandates that each state's governor establish a workforce investment board to designate local work force investment areas, oversee the establishment of local boards and one-stop service delivery systems in the state. Bass, *Adult and Dislocated Worker Job Training Provisions of Title I of the Workforce Investment Act of 1998*, *supra* note 46, at 525-528, 649; *see also* Cynthia Negrey et al., *Job Training Under Welfare Reform: Opportunities For and Obstacles to Economic Self-Sufficiency Among Low-Income Women*, 2 GEO. J. ON POVERTY L. & POL'Y 347 (2000).

121. Sharon Dietrich et al., *An Employment Law Agenda: A Road Map for Legal Services Advocates*, 33 CLEARINGHOUSE REV. 543-47 (Feb. 2000).

122. For more information on the faith-based initiative, *see* website at www.whitehouse.gov/news/reports/faithbased.html (last visited Feb. 15, 2001).

ON ABOLITIONIST CRITIQUES, “HOMELESS SERVICES” PROGRAMS, AND PRAGMATIC CHANGE

LUCIE WHITE*

I. INTRODUCTION

Several of the other authors in this volume, as well as a number of other scholars of homelessness, share what Florence Roisman has called an “abolitionist” perspective on homelessness.¹ These individuals share the belief that homelessness is but a symptom of deeper institutional dysfunctions and structural injustices in America’s political economy. In their analysis, vulnerable individuals become homeless because of deep systemic failures in housing, labor, and healthcare markets. These failures cannot necessarily be traced to specific bad acts or foolish policies on the part of political elites. Yet they can be corrected by fairly obvious changes in political values and policy priorities. In the abolitionist analysis, a complex interplay of historically-rooted social inequalities, systemic market-failures, and resulting unfair distributions of social capital and political power is both the salient cause of housing insecurity among low income Americans, and the key to policy changes that—if enacted—could eventually make “homelessness” history.

According to the abolitionist analysis, political mobilization to address homelessness should focus on basic social and economic rights for all citizens. That is, advocacy for “the homeless” should seek to build political will to promote the equitable distribution of essential social goods like housing, educational services, healthcare, cash income, and the like, particularly across historically constructed hierarchies of race and class. Legal policy, in turn, should focus on redistributing resources and regulating markets, particularly for housing and income, so that all persons can secure a decent life, according to the society’s prevailing standards. Political organizing, at the grassroots and in formal political spheres, should focus on building the capacity of citizens and groups to raise their voices effectively in the policy process.

This abolitionist critique is both logically and intuitively compelling. Yet it has often had little bite, when it comes to improving the lives of *literally* homeless individuals in the short term. The most avid of the abolitionists might defend this failure by arguing that working to improve the lives of homeless persons—even by enabling them to find stable housing on an individual basis—is politically counterproductive. Relying on an either/or strategic logic, they might argue that *all* state policies and social programs aimed at helping homeless individuals promote a blame-the-victim story of the underlying problem: these policies aim the blame for homelessness at an absurdly wrong target. Thus, according to this either/or logic, individually-focused homeless policies lure people into individualized and even punitive ways of thinking about the problem, and away from the kinds of social vision and political energy that might do some good in the long run.

Yet many with abolitionist leanings, including myself, are not comfortable with so extreme a position. We believe that the state and the private sector should give homeless individuals the resources they need for living better lives today, at the same time that the “system” is changed to guarantee basic economic and social entitlements to every person, over the long term. Contrary to the either/or perspective, I suggest that these two kinds of policy work are not opposed to one another. Indeed, I suggest that the abolitionist critique can be fashioned into a powerful tool for evaluating and improving here-and-now “homeless services” programs. That is, the abolitionist critique can help to guide the evaluation and design of homeless assistance programs, so that

those programs improve real lives *and* build public consciousness about the systemic roots of homelessness, at the same time.

In this article, I use the case of homeless employment assistance programs to show how the abolitionist critique can re-energize our thinking about *service provision* for homeless persons. Street-level homeless employment assistance programs are generally housed in private non-profit or faith-based organizations, although some are operated by local governmental, quasi-governmental, or public-private entities like municipal mental health clinics, adult education programs, welfare offices, community action agencies, private industry councils, and the like. The legal frameworks that authorize, fund, and regulate these street-level programs are set forth in federal, state, and local legislation. What motivates this article is an intuition—something more like a hope than an argument—that the abolitionist perspective is not too bold to have something important to say about the details of street-level services for homeless persons and the laws that shape them. The article asks how an abolitionist perspective can re-energize the legal and theoretical debate around these programs in ways that improve our best practices for service provision, while bringing those best practices more into harmony with the long-term political commitment to make “services for the homeless” a subject for history books rather than policy symposia.

This article works off of several examples of street-level programs for helping homeless persons to find and keep waged work. These examples were selected on the basis of a telephone survey of a dozen homeless employment programs that have gained public recognition for innovation and effectiveness. These programs exemplify current thinking about best practices for moving homeless individuals into sustained employment. The goal of the initial telephone survey was not to learn about these exemplary programs. A wealth of descriptive information about these and other homeless employment programs has already been compiled, and is readily available in HUD publications and newspapers, as well as on the Internet.² Rather, through the survey, I wanted to probe for the norms and assumptions that shaped each program’s day-to-day practices. In this article I will focus on a few of the programs that were surveyed. Using these examples as a starting point, I will ask if critical scrutiny of such programs’ embedded values and assumptions can suggest *concrete* changes in policy and practice that might both benefit clients in the short term and promote the abolitionist vision.

The article has three parts. First, I will set forth a map of current policies for assisting homeless persons find and keep jobs. Second, I will describe the survey and profile the surveyed programs. Third, I will critique and evaluate these programs from an abolitionist perspective. In conclusion, I will consider how abolitionism can help improve services for homeless persons in ways that also challenge the systemic inequalities that sustain the homelessness problem.

II. An Overview of Homeless Employment Assistance Programs

A. *The Legal Scaffolding*³

1. *The Legislation*

In 1987, Congress enacted the Stewart B. McKinney Homeless Assistance Act,⁴ which provided a comprehensive federal framework for homelessness assistance. In 1990, Congress enacted the PATH program, which authorized formula grants to the states for projects to assist individuals to move out of homelessness.⁵ This program allied the federal government with an “abolitionist” policy orientation toward homelessness. Rather than providing on-going programs of assistance to the homeless sector of the population, Congress wanted to focus policy on eliminating the problem.

2. *A Focus on Work*

Yet not all abolitionist policies amount to the same thing. Over the 1990s, as the debates over welfare reform heated up, the federal government increasingly emphasized *work*, rather than on-going public regulation and subsidization of the housing, labor, and health-services sectors as the appropriate centerpiece of its abolitionist policy. The idea was that if the government could fund good job services for homeless individuals, many would eventually find their way into stable long-term employment. Thus, homelessness would be abolished as low-income individuals were enabled to pay for their own basic needs, including housing and health care, over the long-term. For individuals with the most severe mental illnesses, it was conceded that on-going public assistance, in the form of health services, subsidized or “sheltered” employment, housing assistance, and supplemental income assistance would be required over the long term. Yet even with respect to the mentally ill, the hope was that involvement in work would provide individuals stability, social networks, and a boost to self-esteem.

3. *Demonstration Grants*

Several federal agencies—Housing and Urban Development, the Department of Labor, the Center for Mental Health Services—took on the homeless employment issue during the early 1990s. In addition to providing funding directly to state and local governments, the federal government has provided funds and incentives directly to non-governmental, community-based organizations to innovate new approaches, at the grassroots level, to serving homeless clients. The typical policy instrument for such assistance is the demonstration grant program: local entities are invited to compete for small grants to design and implement innovative pilot programs for homeless employment assistance. The federal government then evaluates those programs, documents the most successful in “best practice” narratives, and disseminates the results in agency publications.⁶

This approach is exemplified in the Job Training for the Homeless Demonstration Program (JTHDP), which Congress authorized under Section 731 of the Stewart B. McKinney Homeless Assistance Act of 1987. Under this program, the Department of Labor was authorized to design and implement a job training demonstration program for homeless individuals. The Department’s Employment and Training Administration, in turn, structured the program to award grants to locally-operated demonstration sites in a series of phases between September of 1988 and November of 1995. These grants were intended to provide an incentive for the innovation of new, replicable approaches to job services for different sub-groups of the homeless population, including the mentally ill, chemically dependent individuals, single adults, and families with children.⁷

Under the terms of the initial competition, each grantee was expected to innovate within a program logic that included three features: (1) a standard sequence of job-related services, including outreach, intake/assessment, job training, job placement, and job retention;⁸ (2) extensive support services, such as housing, transportation, and child care; and (3) case management, particularly to help the client access appropriate supportive services.⁹ In addition to this standard template of features, programs were invited to add innovative features, such as job development projects, or procedures for improving outreach, job training, or communication with employers after clients were placed in jobs. As the program continued through several funding phases, increased emphasis was placed on encouraging innovations that involved partnership with other service providers and would ensure the long-term viability of the project.

One of the key features of the Congressional mandate was that the Department include a strong emphasis on the evaluation of funded projects, and then translate the evaluation data into knowledge that could inform future policy decisions. Thus, the Department designed a two-pronged evaluation protocol. First, detailed narrative and process evaluations were done of each program. Second, a comparative evaluation was done of all of the demonstrations, based on a

standardized survey of client characteristics and outcomes in all of the demonstration programs. Over the seven-year course of the demonstration just over sixteen thousand homeless individuals—about thirty-six per cent of those participating in the program—obtained at least one job.

As a result of the program, approximately the same number of participants improved their housing situation, presumably as a result of the case management and supportive services that accompanied the employment services. Of those who were employed through the program, just half were still working after thirteen weeks.¹⁰ Thus, the evaluation showed that the standard sequence of job services did not work very well for the many homeless clients who could not move along a path from “outreach” to “retention” in lock-step fashion. Rather, these clients needed a service model that was highly individualized, with services tailored to each person’s “expressed needs.”

B. Three Program Models

It should be no surprise that the homeless employment programs that have emerged in the non-profit sector over the last decade have shaped themselves around the template that the legal/administrative frameworks laid out. Thus, virtually all non-profit sector programs—whether or not they actually received a demonstration grant—provide a familiar sequence of conveyor-belt employment services. These move an idealized client from intake and assessment, through training, placement, and retention, even as many real clients fall off of that wagon long before it reaches its elusive goal. Programs tend to add “case management” and “supportive services” to this track, enabling a few lucky clients to get better housing out of these programs, even when the job track leads nowhere. Around the edges of that core set of ritualized services, however, there is a little room for play. Programs tend to cluster into three models of service provision: client-focused services, sheltered employment, and inclusion.

1. Client-Focused Services

A first set of programs focus their attention on individualized case-management services. Their goal is to build up the individual client as much as possible, in the hope that the most robust competitors will have better luck in harsh low-income job markets. Thus, these programs seek to train a corps of savvy case managers. They use creative means to build up a supply of goods, like medical services, housing subsidies, and access to their communities’ best vocational programs. Their case managers can then distribute these goods on an individualized basis. They then send their “empowered” clients out into the low-income job market and hope for the best.

2. Sheltered Employment

A second set of programs create sheltered jobs for their clients. One model is for a program to develop its own agency-sponsored entrepreneurial businesses (ASEBs).¹¹ In some cases, these jobs are viewed as transitional positions, designed to provide on-the-job training for their clients in a more supportive setting than the regular market would be likely to provide. After working in these positions for a fixed period of time, clients are pushed to seek work in the open market. In other cases, however, these sheltered jobs are designed to provide long-term employment for the agency’s clients. Some of these programs work with a “special” sub-population of homeless individuals, like mentally ill or cognitively impaired clients, who are not believed capable of “mainstreaming” into the unsheltered labor market. Other agencies operate small-scale enterprises, often structured as worker cooperatives, that provide an employee-centered work environment to “regular” as well as “special” groups of homeless clients over the long term. The idea here is to offer individuals an alternative to the pressured, and often exploitive, environments of many low wage jobs, and at the same time to set forth a critique of those labor market conditions for all workers.

3. Inclusion

A final group of agencies focus on placing and retaining clients in jobs in the regular low wage labor market. The most innovative of these programs set up processes for on-going communication, negotiation, and problem-solving between the homeless individual and her employer, through the mediation of the agency and its case managers. In effect, the agency plays the role of an intermediary organization, enhancing the worker's limited capacity to negotiate problematic work conditions as they arise. Most of the programs that follow this third model understand the "problems" that they seek to resolve to arise from *within* the employee, rather than from either the *relationship* between the worker and his boss or the workplace itself. But some of the agencies in this third group view the challenge of retaining homeless persons in paid employment in a more complex way.

C. Using Critique to Improve Service Practices: A Rejoinder

All homeless employment assistance programs are not the same. Most programs fit within one of the three service models that I outlined, even if they have some features of all three. Programs that fit within the inclusion model—and thus seek to change the mainstream low-wage workplace, rather than merely rehabilitate homeless individuals—will tend to be more in synch with the abolitionist perspective. That point should be fairly obvious.

Yet beyond that broad point, there is a more nuanced way of evaluating job programs within *each* model through an abolitionist lens. Programs in each model can be *designed and implemented* in ways that are more or less consistent with an abolitionist sensibility. That is to say that each of the three models can be realized through a wide range of activities, staffing policies, and organizational cultures, which subtly convey different *political* constructions of the "homelessness" problem. That range of variation within each model might be plotted along a spectrum, ranging from the pole of individual moral rehabilitation to that of systemic transformation. The on-going evaluation and improvement of any program might then seek to move it *along* that spectrum, toward the pole of systemic change.

This kind of pragmatic evaluation and redesign would be especially effective if it were done against a background "reference map" created through the following research project. First, a sample of "good enough"¹² programs reflecting each model would be selected for detailed case study and process evaluation. If funding permitted, such a study would investigate each program's official rhetoric, institutional design, and day-to-day practices, using a combination of survey, interview, and observational methods. It would investigate each sample program from the perspective of each stakeholder group with a significant interest in its activities, such as staff, clients, target employers, target co-workers, etc., in order to map their differing *understandings* of the roles, relationships, motivations, and behaviors at play in the program, both normative and actualized. Based on this data, the sample programs reflecting each model would be plotted along a spectrum ranging from less to more "abolitionist" in their overall organizational cultures. The resulting background "reference map" would permit several things.

First, it would remind us that each of the three models of homeless employment programs can be realized in a range of politically contrasting ways. For instance, it would show us that employment programs that focus on building the capacity of individuals to find and keep jobs are not *necessarily* "conservative." Nor are workplace-inclusion focused programs necessarily "transformative." Rather, all three program models can be implemented in ways that are more or less abolitionist in their overall ideological orientation. The ideology is embedded in the ways that the programs realize their goals on a day-to-day basis.

Second, and more importantly, such a background map would give us a baseline and sense of direction as we evaluate and seek to improve programs that follow each model of service provision. The reference map would help us to set forth benchmarks for measuring the progress of programs of each type toward a more abolitionist organizational culture.

A pragmatic commitment to improving the *political* culture of street-level homeless service programs is premised on two assumptions about politics. The first is the idea that progressive political change—the kind of change that might lead to the “abolition” of homelessness—happens, in large part, by infusing a new political sensibility into everyday organizational practices. The second idea is that *sustained* political change is unlikely unless those individuals who are the most vulnerable to unjust distributions of wealth and power figure significantly, as *agents*, in reinvigorating our political institutions and practices, from the ground up.

Two interesting corollaries that are specific to “homelessness” follow from these premises. The first is that an “abolitionist” politics of homelessness, simply in order to be effective *in political terms*, must have its base in those places on the social landscape that homeless people actually inhabit, particularly places like state-sponsored social programs where their lives most directly intersect with state power. Thus, agency-based “service” programs for homeless people are not marginal to the issues with which abolitionists should be engaged: the practices and opportunities in those programs should be *central* sites of abolitionist critique and reconstruction. Second, the politics of homelessness is not marginal to a wider politics that seeks to reinvigorate democracy. Rather, homelessness should be understood as a *central* site for that politics.

III. SOME EXAMPLES OF HOMELESS EMPLOYMENT ASSISTANCE PROGRAMS

A. *The Survey*

It is beyond the scope of this article to set forth the kind of detailed map I have described above. Rather, I could only do telephone surveys of a small sample of agencies that had achieved recognition for effectiveness. Working with a research assistant, I sought out agencies that exemplify each model of service provision that I have described; i.e., programs that provide client-focused services, sheltered employment, and inclusion. To construct the sample, I researched government reports, organizational web sites, and newspaper databases. We sought agencies that had received recognition on multiple occasions for the success of their programs. Given the time and resources available for the project, I did not seek to survey all relevant stakeholders in the programs I profiled. Rather, I interviewed each program’s director or another important staff member. I asked open-ended questions about the program’s design and function, about the key features that might account for the program’s effectiveness, and the major obstacles that impede it, and about the nexus between the program and state funding, oversight, and regulation.

B. *The Programs*

The following sketches are drawn from the telephone survey and program materials. Following the sketches of programs that fall neatly within each model, I have included several examples of hybrid or atypical programs.

1. *Programs that offer client-focused services*

a. Homeless Initiatives Pilot Project of the King County Regional YWCA, Seattle, WA¹³

The YWCA of Seattle, King County Region, runs a Homeless Initiatives Pilot Project (HIPP) as one of its employment services. The program offers a traditional sequence of employment and training services to homeless individuals: skill and interest assessment; the collaborative crafting of an employment plan; the agency’s brokering of services, with an emphasis on occupational skills training and financial aid; case management through the training phase; coaching on job-finding skills; and follow-up after placement to ensure retention. The program

is offered in partnership with the Seattle-King County Private Industry Council (SKPIC), which has coordinated a range of employment-related services for homeless persons in the Seattle area.

There are several distinctive features of the HIPP project. First, it targets its services to parents, particularly women, and regularly provides child care while clients are participating in educational and training programs. Second, it provides direct financial aid—a wage equivalent—including some paid internships, with its occupational training. Third, the program is coordinated with the local private industry council’s other employment-related services, as well as the YWCA’s other programs. Fourth, the program maintains extensive computerized listings of job openings in the region. Fifth, several innovations ensure close communication between the program and potential employers. It sponsors employer panels several times a year, at which employers talk with HIPP clients about their expectations. It has an Employer Advisory Group (EAG), consisting of employers, service providers, and community volunteers, that meets regularly to develop job opportunities for HIPP clients in the region.

In his response to the telephone survey, the YWCA’s director of employment services highlighted several other features of the program. First, the program’s services are all participatory, in the sense that the *individual* client works closely with program staff in a “coaching” relationship that seeks to produce “one on one” job readiness. Second, through information it receives from the local private industry council, the staff continually re-tunes its job training programs to target “ladder” jobs (i.e., those in which low-skilled entry-level workers have some chance to move into higher-paid positions) in growth sectors of the local economy. Relying on an organizational partner to supply on-going information about the local labor market and then using that information to shape the training program improves the chance that the services that clients receive will in fact make them more competitive and more successful labor-market participants.

The greatest obstacle that the director sees to the program’s success is in the demeaning culture of low-wage work-sites and attitudes of low-wage employers. The program’s effort to build up the self-confidence of a prospective worker can be undermined in a moment in a workplace atmosphere in which homelessness becomes an object of ridicule or abuse. The director ended the interview by observing that reforms like the provision of more affordable housing to homeless job-seekers or the decriminalization of homelessness would challenge this culture of stigma at the same time that such reforms would provide direct benefits.

b. Massachusetts Career Development Institute, Springfield, MA¹⁴

The Massachusetts Career Development Institute (MCDI) is an accredited educational institution that provides literacy, adult education, and occupational training services to low-income local residents.¹⁵ MCDI’s homeless program involves mainstreaming persons recruited from local shelters, soup kitchens, and outreach workshops into its regular vocational courses, such as Graphics, Word Processing, Nursing Assistant, Manufacturing Technologies, and the like.¹⁶ These programs combine classroom and laboratory experiences. Each subject area has an active private-sector advisory board which reviews curricula, teaching staff, equipment, and instructional methods. The programs are open entry/open exit, to make participation easier for homeless clients.

The agency offers two additional programs to homeless job-seekers. One focuses on interpersonal skills, self-confidence, and motivation.¹⁷ The second, “Enjoyment While Seeking Employment,” offers an on-going psychosocial peer support group for participants.¹⁸ Unlike consciousness-raising or popular education-oriented support groups, which focus on enhancing a participant’s capacity to *critique and change* challenging environments, the MCDI group focuses on enhancing the client’s capacity to *adapt* to them. In addition to these groups, the program offers an unusually wide array of what it calls supportive services, including part-time employment, mentorships, psychological counseling, health services, and child care in the

program's on-site day care center. Through its combination of intensive education and multiple forms of social support, over 70 per cent of MCDI's clients have obtained private sector jobs at wage levels averaging over \$7.00 an hour.¹⁹

In a telephone interview, the project director emphasized several innovative ways that the program creates relationships through which its services are shaped to clients' needs and extended into the workplace. First, because it provides literacy and adult basic education as well as vocational training and job readiness, the program typically develops a long-term relationship with individual clients. Relationships develop through which the client's particular challenges—domestic violence, for instance—can be picked up and “smoothed down” before the client enters the competitive job market. Second, the pre-employment support groups continue to function after an individual has been placed in a competitive job, providing both on-going emotional support around these issues, and a continuing link with program services. Indeed, an advisory group drawn from these support groups is sometimes called upon to intervene when an employer calls about a workplace problem.

2. Programs that Provide Sheltered Employment

a. An Example of an Agency-Sponsored Business Enterprise: Heartland Candleworks, Iowa City, IA²⁰

Heartland Candleworks is a small, for-profit business that, since 1996, has employed between ten and twenty-five homeless and formerly homeless persons to produce candles.²¹ It offers its employees a flexible, non-traditional work environment. In addition, it co-signs leases and loans, and provides funds for security deposits. Many of the employees have been referred by local homeless shelters and Goodwill Industries. A local bank provided working capital loans and a line of credit to the business. A private non-profit housing assistance program provides supportive services for Heartland employees. Goodwill Industries provides pre-service job training and on-going job coaching to employees. In 1996, Iowa City committed funds from its federal community development block grant to assist Heartland fund five job positions.²²

In his telephone interview, the current program director explained that the most important feature of the program's supportive work environment is the mutual support that is encouraged among workers. An employee council provides a formal shop-floor structure for providing this support. It also convenes regular meetings between workers and employers to ensure that communication remains open and clear. Even with all of the support structures that the project offers and the partial subsidy through the block grant program, the biggest challenge to the program is to retain trained, competent workers.

b. An Example of an Agency-Sponsored Subsidized Job Program: Employment and Training Opportunities for the Homeless (ETOH) Program City of Waterbury, CT, Department of Employment, Education, and Grants Administration²³

The ETOH program, while it was in existence, targeted homeless clients with four specific employment barriers: skill levels too low to qualify them for on-the-job training programs; histories of incarceration or substance abuse; high academic performance but a history of low functioning; and diligent effort but difficulty finding employment.²⁴ The theory behind the project was that persons in these groups are likely to face discrimination in seeking jobs.²⁵ Furthermore, even if they are hired, they are especially vulnerable to a vicious cycle of low employer expectations, erosion of employee self-confidence, and workplace failure. The program provided employers who hired its clients with two months of deep wage subsidies (75% for the first month and 50% for the second).²⁶ The employers then provided training services

and weekly evaluations.²⁷ The program provided its clients a specific list of expectations, both on and off the job.²⁸

3. *Programs that Promote Inclusion*

a. For Workers with Severe Mental Illness: Fountain House, New York, NY²⁹

Fountain House provides transitional employment and long-term employment support to chronically mentally ill persons who have experienced homelessness.³⁰ Homeless clients receive the same array of services as other Fountain House members.³¹ The first phase of this residential program is for clients to work for several hours a day in one of FH's in-house work units, which include food/dining services, a beauty shop, and a bank.³² This sheltered employment allows clients to build up self-confidence without the stress of ordinary employment. Clients then move into the transitional employment unit, which places clients in workplaces around New York City. Typical jobs include working in mailrooms or mass mailing centers.³³ FH provides on-site training and case management. Critical to the program's capacity to retain employers is the fact that it guarantees the placement: if a client does not show up for work, the program sends one of its staff members to fill in.³⁴ Many clients stay in the transitional employment program for an extended time, changing work-sites every six months.³⁵

According to the project director, who was interviewed for this research, the critical features of Fountain House's success are that it provides supportive housing to the large majority of its clients, and that it has worked hard over the years to develop close co-operative relationships with the employers in the transitional work program.³⁶ Because of this relationship, the employers are committed to the program. Thus, Fountain House and an employer can anticipate and resolve problems with individual workers before they produce workplace failure. Because of the clients' on-going difficulties in managing routine workplace stress, the program must maintain this channel of communication over the long term. Only gradually, after establishing a long track record of successful employment, do some clients achieve enough capacity to handle workplace stress that they can move on from transitional employment to an unsupported work setting.

b. For Workers with Multiple Disabilities: Jobs for Homeless Consortium Center for Independent Living, Berkeley, CA³⁷

The Center's Jobs for Homeless Consortium serves homeless persons with mental or physical disabilities.³⁸ In addition to providing pre-service job counseling, basic education, vocational training, and supportive services, the program offers its clients self-esteem and problem solving workshops that focus on the particular challenges faced by disabled clients.³⁹

In his interview, the director of the Center's homeless project emphasized the issue of the clients' "internal barriers" to moving toward better lives.⁴⁰ In addition to the "first-order" barriers that are created by their disabilities, they also face the "second-order" barriers of stigma, low self-esteem, and social isolation, that arise from the *social meaning* that is placed on the intersection between their underlying disabilities and their homeless status in this society.⁴¹ As we have seen in several other programs, the Center seeks to counter those barriers by building supportive relationships for clients, particularly with their peers. The Center's peer group process starts as soon as clients are "wheeled in here." All of the Center's job preparation activities are seen as sites for developing peer and mentoring relationships. Clients are organized into "job clubs" to look for jobs. Clients participate in a support group for up to a year *after* they are placed in a job, to ensure that the peer relationships that developed during the job preparation

phase are sustained. If a client loses a job, she can rejoin a job club and continue to look for work.⁴²

On the job development front, the Center relies on deep, on-going relationships with forty to fifty area employers.⁴³ Some of these employers have worked with the Center for over a decade. This core group of employers funnel job prospects to program counselors, who work with the employers to adapt these positions to particular clients' needs. A large part of the Center's work involves educating these *employers* about how to work successfully with formerly homeless and disabled employees.

The Center offers a formal mentoring program to employers in which their personnel managers and supervisors are trained in how to develop effective on-the-job training programs. The mentoring focuses on how to break tasks down into learnable units, and how to deal with a natural range of learning styles. Both large and small area employers participate in this program. Each year, roughly 40 to 50 of these employers come together with clients in seasonal "job fairs," where they present job opportunities to the client community.⁴⁴ The Center also arranges for labor unions to do on-site presentations to the Center's clients, and to take part in the training and coaching of clients after they are employed.⁴⁵ The Center facilitates problem solving between employers and client-employees. Because of its relationships with both clients and employers, the Center has developed the capacity to successfully resolve just about all of the job conflicts that arise.

4. *Cross-cutting Strategies*

Some homeless employment service programs use strategies that cross-cut each program model. This section provides three examples.

a. Investing Co-Workers in the Client's Success on the Job

Often formerly homeless persons encounter negative attitudes from co-workers, even when the employer has not been informed about the client's homeless status. In addition, some formerly homeless workers will require flexibility or accommodation in their work setting, either because of underlying physical or psychiatric disabilities, or because of needs that stem from the client's formerly homeless status. Some programs have developed job retention strategies that focus specific attention on the relationships between the client and his work group at the same time that they address the more familiar issues around conflict and accommodation between the program, the client, and the employer. In the context of psychiatric rehabilitation, techniques have been developed for "mapping" the social networks in the workplace environment, so that work group members can be included in an accommodation intervention strategy.⁴⁶ After existing relationships, alliances, and interests are sketched out, areas of potential conflict can be predicted. Then educational programs and shop-floor support groups can be developed for addressing these issues *before* they erupt into overt conflict.⁴⁷ At the same time, processes can be set up for addressing tensions between co-workers when they begin to appear.⁴⁸

b. Giving Clients Provider Roles

It is a well-established practice in psychiatric rehabilitation to place clients or consumers in helper roles vis-a-vis other clients as a strategy for building the self-confidence, motivation, and job-readiness of the helper.⁴⁹ This strategy has been picked up among homeless employment service providers. Thus, several of the programs described above use peer counseling or peer support strategies.⁵⁰ An extension of this idea is to give clients roles in the management or operation of the agency itself. Particularly when an agency runs an in-house enterprise for its clients, giving clients managerial responsibility can give a substantial boost to their self-esteem,

while at the same time helping them to develop specific employment-related skills. Thus, the Heartland Candleworks describes itself as an enterprise that was established by and for homeless and formerly homeless persons.⁵¹ Another ambitious example of involving homeless persons in the management of an in-house enterprise is the Homeless Employment and Related Training (HEART) project, which has developed a replicable, community-based model for a project that trains its homeless and formerly homeless participants to build and renovate affordable housing for their own community.⁵² Such projects become suspect when their sponsors or advocates claim that they offer comprehensive solutions to systemic failures in housing markets.⁵³ Yet as strategies for teaching job skills and building up the self-confidence of homeless persons, they can have valuable effects.

c. Promoting Service and System Integration

A final cross-cutting strategy is for the program to promote the integration of service *systems* as well as service *provision*. A prominent theme in recent writing on welfare delivery has been the importance of integrating the *delivery* of services, so that the whole range of a client's needs can be addressed in a holistic way. The major strategy for achieving integration at the level of individual client services has been case management. The idea is to create a new corps of providers, usually employed by the front-line non-profit service agency, who broker services for a small number of clients while playing a coach or mentor role.⁵⁴

Recent literature suggests that this approach to service integration has a band-aid logic.⁵⁵ It does not ensure that the services that the case worker patches together will complement or build on one another. If the entities that design and produce the services are not *institutionally* integrated, there is no assurance that the array of services will mesh together sensibly from the perspectives of either the individual client or the overall client population. Institutional integration will allow for joint planning of overall strategies of service delivery, so that agency staff can team up on particular projects in ways that do not merely avoid duplication, but actually improve the value of what is provided. As a result of several studies documenting that *systems* integration pays off in improved *services* for individual clients,⁵⁶ public and private service providers in cities and regions are beginning to take the steps required to get agencies to collaborate effectively on an on-going basis. These steps include creating interagency coordinating bodies and staff positions and, even more importantly, engaging the cooperating agencies in meaningful processes of joint, forward-looking strategic planning, so that joint work can take place on new projects from the ground up.

This is a behind-the-scenes strategy that will not show up in case studies of individual service agencies. Yet it can make an enormous difference in the creativity and quality of the projects that these agencies are able to undertake. For instance, high quality joint strategic planning between a private industry council and service agencies might enable better integration of labor market data with skills training and job search programs. Joint planning between legal services providers and agencies working with employers might generate projects that engage employers and co-workers to design accommodations for disabled workers *before* workplace problems arise. The McKinney Act has promoted the idea of system integration since the late 1980s.⁵⁷ It is only more recently, however, that best practices for realizing this goal are being defined, and the positive link between system integration and service quality is getting documented.

C. Politically Salient Variations in Agency Practices

In the first part of this article, I suggested that each model of homeless employment services might be implemented in a range of different ways. I suggested further that the variations in each model might be plotted along a political spectrum. Informed by the brief program sketches

in the last section, I now want to name some of the key dimensions of *politically salient* variation for each of the three program models.

1. *Client-Focused Services: How Good is the Link Between Labor Market Conditions and Program Design?*

An ardent abolitionist might reject all homeless employment service programs for aiming at the wrong target. Others would claim that employment can have positive effects for homeless persons, both psychological and political, even if sustained low-wage employment, alone, will not resolve a homeless person's underlying shelter insecurity. Service programs that seek to offer clear, accessible, on-going communication between the program and reliable sources of local labor market information will be more politically progressive for several reasons. First, such programs will be less likely to erode clients' morale by setting them up for frustration and failure in the labor market. Second, such programs will be less likely to promote the unrealistic idea that competitive employment can be a route out of "dependency" or into affordable housing for homeless individuals.

Finally, such programs can take advantage of occasional growth spurts in regional low wage labor markets, in two ways. First, they can target their skill training and job-search activities toward those sectors, thus enabling some clients to experience some success in the labor market. Second, they can educate and mobilize their clients and constituents around state policies and grassroots economic development strategies that seek to expand and exploit those growth sectors while they last.

2. *Sheltered Employment: How Fully Does the In-house Enterprise Challenge Narrow Conceptions of "Productivity"?*

I use the term "empowering" reluctantly, because it is at once vague, ambiguous, and overused. Yet none of the obvious alternatives work any better to convey the multiple features that must come together to create the optimal shop-floor culture in sheltered work-sites, from the perspective of their clients' *political* development. What are some of these features? At the most basic level, the workplace culture should treat its formerly homeless client-workers with absolutely consistent dignity and respect. That much should be obvious, and that much seems to be preached, if not always practiced, in most sheltered employment programs.

To treat formerly homeless persons in this way, the program will have to root out all forms of status-based stereotyping and denigration, including that which is based on people's differing capacities to do the work. To accomplish this, the workplace will have to subject its job categories, production processes, and priorities, to continual re-evaluation. How does it define "productivity," "efficiency," "profit," or "value"? Are those terms defined in ways that workers with cognitive or psychological disabilities, for instance, are, *de facto*, considered to be of less worth to the collective enterprise than workers without those challenges?

In order for the firm's work processes to be subject to this kind of scrutiny, the workplace will have to give all of the workers an effective voice in defining the firm's core mission. A workplace that draws formerly homeless workers into enterprise management at this level will double as a school for citizenship. It will be a place for its workers to hone capacities for democratic participation that will carry over into other realms of political activism. Furthermore, as the enterprise seeks to practice its egalitarian values *and* produce goods and services for a competitive market, its workers will learn critically important lessons about political economy.

Because of the circumstances of their workers, the constraints that agency-based enterprises face are huge. It bears repeating that the features of an "empowering" workplace that I am naming define the *far end* of a spectrum of politically salient practices in sheltered work-sites.

3. *Inclusion Programs: How Fully Does the Program Draw the Employer and Co-Workers into Processes of Organizational Change?*

A key dimension of variation in the third program model is defined by two related questions. The first question has to do with how fully the program draws the employer and co-workers—as well as the formerly homeless employee and agency staff—into the process of addressing conflicts or problems that arise on the job. Does the process make clear to the employer and co-workers that the “problem” does not reside *inside* the formerly homeless worker, but rather in the relationships between employer, managers, and workers that comprise the workplace culture? The second question has to do with how fully the program regards the process of resolving issues between the formerly homeless client and co-workers as an on-going *forward-looking* process of improving the workplace culture to pre-empt potential problems before they arise, as opposed to one of settling conflicts or problems after they have erupted. A more progressive program would work closely with its core group of cooperating firms to shape on-going practices of employer and co-worker education and shop-floor communication. The goal of that education and communication would be, in turn, to shape a flexible and responsive shop-floor culture for all workers, particularly the most vulnerable.

The kinds of workplace-based education and communication that define the far end of this spectrum may seem far-out, as indeed they should. Yet the examples that were set forth include several features, such as the Center for Independent Living’s *employer* mentoring program, that point toward that pole. It bears repeating that the point of setting forth what the practice at that pole might look like is to sharpen our capacity to critique and improve existing homeless employment service programs, so that they can work to advance the abolitionist political project.

IV. CONCLUSION: A WORD OF CAUTION

Throughout this essay, I have felt uncomfortable with much of the language I have used. I do not like the tone that gets set when words like “client services” and “formerly homeless individual” are repeatedly used. Yet this is the language that is used in the domain of employment services—by the groups who are doing it, by the governmental agencies that are funding and regulating it, and by the academics who are evaluating and researching it. I could create my own different language to describe what very low income people need in the way of help with finding jobs. Yet the project of seeking to link a pragmatic internal critique with the abolitionist aspiration is one that challenges us to speak inside of that language at the same time that we seek to push beyond it. Even as I pursue that dangerous project, I feel qualms about whether the project is worth doing at all, from a political perspective. Perhaps it is best to leave the domain of homeless service programs alone, and concern ourselves instead with the few projects—like the late Mitch Snyder’s Center for Creative Non-Violence, or On the Rise in Boston, which empowers homeless women—that do not choose to take the state’s money, or to speak its language, and have no confusion about “which side” they are on.

Notes

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1. See, e.g., Bristow Hardin, *Why the Road Off the Street Is Not Paved with Jobs*, in HOMELESSNESS IN AMERICA (J. Baumohl ed., 1996); Homes for Homeless, *Common Sense: Why Jobs and Training Alone Won’t End Welfare for Homeless Families* (1996) (report available from the National Resource Center on Homelessness and Mental Illness as Item #6953 of its Annotated Bibliography on Education, Vocational Rehabilitation, and Supported Employment, at

http://www.prainc.com/nrc/bibliographies/education_employment.shtml); *See generally* SHARON PARROT, WELFARE RECIPIENTS WHO FIND JOBS: WHAT DO WE KNOW ABOUT THEIR EMPLOYMENT AND EARNINGS? (1998) (reporting that welfare recipients, including the homeless, who find work typically work a substantial number of hours per week but are paid low wages).

2. Among the many extensive bibliographies on homelessness, see, e.g., HOMELESSNESS INFORMATION EXCHANGE AND THE NATIONAL COALITION FOR THE HOMELESS, THE ESSENTIAL REFERENCE ON HOMELESSNESS: A FULLY ANNOTATED BIBLIOGRAPHY (available from National Coalition for the Homeless, 1612 K Street, NW, Suite 1004, Washington, DC 20006, (202) 775-1322); *HHS Publications Related to Homelessness* (1993-Present), at <http://aspe.os.dhhs.gov/progsys/homeless/pubs.htm> (visited Feb. 10, 2000) (containing links to other government web sites including other bibliographies); *see also* NATIONAL RESOURCE CENTER ON HOMELESSNESS AND MENTAL ILLNESS, ANNOTATED BIBLIOGRAPHY: EDUCATION, VOCATIONAL REHABILITATION, AND SUPPORTED EMPLOYMENT, at http://www.prainc.com/nrc/bibliographies/education_employment.shtml (visited Feb. 10, 2000).

3. For comprehensive information about legislation regarding homelessness, see the resources of the National Law Center on Homelessness and Poverty, 918 F Street NW, Suite 412, Washington, DC 20004. For an historical analysis of past and present homelessness legislation, see Michael Peters, *Homelessness: A Historical Perspective on Modern Legislation*, 88 MICH. L. REV. 1209 (1990). For a bibliography of legislation related to homelessness and mental illness, see *Center for Mental Health Services, Annotated Bibliography: Legislation Concerning Homelessness and Mental Illness*, at <http://www.prainc.com/nrc/bibliographies/legisl.htm>.

4. Stewart B. McKinney Homeless Assistance Act, Pub. L. No. 100-77, 101 Stat. 485 (1987) (codified as amended in 92 U.S.C. § 11301 (2000)).

5. Stewart B. McKinney Homeless Assistance Amendments Act of 1990, Pub. L. No. 101-645, 104 Stat. 46731, Subtitle B-Formula Grants to States for Assistance Regarding Transition From Homelessness (1990).

6. *See* D.J. Rog & C.S. Holupka, *Reconnecting Homeless Individual and Families to the Community* (paper presented to the National Symposium of Homelessness Research, Oct. 29-30, 1998, and available from the National Resource Center on Homelessness's web-site, at #7907 of the Education, Vocational Rehabilitation, and Supported Employment Bibliography, <http://www.prainc.com/nrc/bibliographies> (visited Feb. 10, 2000)). This paper reviews the track-record of employment programs for the homeless and concludes that comprehensive programs that integrate job services with social support and housing are most likely to achieve results. It also recommends that homeless employment programs concentrate more attention on the development of friendships and social networks ("social capital") among their clients.

7. *See* U.S. DEP'T OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION RESEARCH AND EVALUATION REPORT SERIES 97-F, EMPLOYMENT AND TRAINING FOR AMERICA'S HOMELESS: BEST PRACTICES GUIDE (1997) [hereinafter BEST PRACTICES GUIDE]. *See also* JOHN TRUTKO, ET AL., EMPLOYMENT AND TRAINING FOR AMERICA'S HOMELESS: FINAL REPORT ON THE JOB TRAINING FOR THE HOMELESS DEMONSTRATION PROGRAM (1997) (prepared for the U.S. Dep't of Labor by James Bell Associates, Inc.).

8. This standard sequence of services has been exhaustively addressed in the literature on vocational rehabilitation. For one reading that applies the standard sequence to the vocational rehabilitation of the homeless mentally ill, see Jerome Vaccaro et al., *Challenge and Opportunity: Rehabilitating the Homeless Mentally Ill*, in *TREATING THE HOMELESS MENTALLY ILL* (H.R. Lamb, et al. eds., 1992). This analysis lists six overlapping stages in job services for this population: (1) engagement; (2) functional assessment and goal setting; (3) prevocational skill training; (4) work adjustment; (5) job seeking and acquisition; and (6) sustained employment. *Id.* at 280.

9. BEST PRACTICES GUIDE, *supra* note 7, at Appendix A (Overview of the Job Training for the Homeless Demonstration Program).

10. *Id.*

11. Compare the similar trend in employment services for individuals with severe mental illness. *See* BARBARA GRANGER, ET AL., A NATIONAL SURVEY OF AGENCY-SPONSORED ENTREPRENEURIAL BUSINESSES EMPLOYING INDIVIDUALS WITH LONG-TERM MENTAL ILLNESS (1995) (available from Matrix Research Institute, 6008 Wayne Ave., Philadelphia, PA 19144).

12. I borrow this term from D.W. Winnicott and use it to denote a rough measure that is somewhat akin to a negligence standard. Thus, a "good enough" homeless employment service program would be viewed as reasonably sound—competently managed, consistent with relevant legal rules and practice norms, and effective—by the relevant communities of providers, consumers, funders, regulators, and the like.

13. *See* <http://www.ywcaworks.org/southking.htm> (visited Feb. 10, 2000); U.S. Dep't of Labor Employment and Training Administration, *The YWCA Works: South King Country Region*, in BEST PRACTICES GUIDE, *supra* note 7, at Appendix B (Synopsis of 21 JTHDP Multi-Year Projects) (entry on Homeless Initiatives Pilot Project, Seattle-King County Private Industry Council) [hereinafter *The YWCA Works*].

14. BEST PRACTICES GUIDE, *supra* note 7, at Appendix B.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* *See also*, Blue Ribbon Practices in Community Development: Heartland Candleworks, at <http://www.candleworks.org> (visited Feb. 10, 2000).

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21. BEST PRACTICES GUIDE, *supra* note 7, at Appendix B. *See also*, Blue Ribbon Practices in Community Development: Heartland Candleworks, at <http://www.candleworks.org> (visited Feb. 10, 2000).
 22. BEST PRACTICES GUIDE, *supra* note 7, at Appendix B. *See also*, Blue Ribbon Practices in Community Development: Heartland Candleworks, at <http://www.candleworks.org> (visited Feb. 10, 2000).
 23. *See* The YWCA Works, *supra* note 13.
 24. *Id.*
 25. BEST PRACTICES GUIDE, *supra* note 7, at Appendix B (Synopses of 21 JTHDP Multi-Year Projects) (entry on Employment and Training).
 26. *Id.*
 27. *Id.*
 28. *Id.*
 29. *See* The YWCA Works, *supra* note 13.
 30. *Id.*
 31. *Id.*
 32. *Id.*
 33. *Id.*
 34. *Id.*
 35. *Id.*
 36. Interview with Michael Daniels, Project Director of Center for Independent Living: Jobs for Homeless Consortium, Berkeley, California (1997).
 37. *See* The YWCA Works, *supra* note 13.
 38. *Id.*
 39. *Id.*
 40. Interview with Tom Malamud, Project Director of Fountain House, New York (1997).
 41. *Id.*
 42. *See* BEST PRACTICES GUIDE, *supra* note 7.
 43. *Id.*
 44. *Id.*
 45. *Id.*
 46. *Id.*
 47. *Id.*
 48. *See, e.g.*, Laurence Gates et al., *Relationship Accommodations Involving the Work Group: Improving Work Programs for Persons with Mental Illness*, 21 PSYCHIATRIC REHABILITATION 264 (1998).
 49. *Id.* at 271. Examples of this approach abound in the psychiatric rehabilitation literature. For instance, in the Denver Consumer Case Management Project, persons with mental illness are trained for employment as case managers in mental health agencies. *See, e.g.*, Russell Porter & Paul S. Sherman, *The Denver Consumer Case Management Project* (1988).
 50. Gates et al., *supra* note 48 at 271; PORTER ET AL., *supra* note 49.
 51. Gates et al., *supra* note 48 at 271; PORTER ET AL., *supra* note 49.
 52. *See* Ellen Rossman, Heart to Heart: Creating a Solution to Homelessness for Home Builders Institute (1993) (unpublished guide on file with the Home Builders Institute).
 53. *Id.*
 54. *See* Gary Morse, A Review of Case Management for People Who are Homeless: Implications for Practice, Policy, and Research (unpublished paper presented at the 1998 National Symposium on Homelessness Research and posted, *available at* <http://aspe.os.hhs.gov/progsys/homeless/symposium/7-Casemgmt.htm>).
 55. *See* Deborah Dennis, et al., What Do We Know About Systems Integration and Homelessness? (unpublished paper presented at the 1998 National Symposium on Homelessness Research, *available at* <http://aspe.os.dhhs.gov/progsys/homeless/symposium/12-Sysintg.htm>).
 56. *See* Randolph, *supra* note 23; Martin Cohen, *Supported Housing: Insights from the Robert Wood Johnson Foundation Program on Chronic Mental Illness*, 13 PSYCHOSOCIAL REHABILITATION J. 43 (1990).
 57. *Id.*

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HOMELESSNESS AND LAW/ ADVOCACY

A

Melanie B. Abbott, *Homelessness and Substance Abuse: Is Mandatory Treatment the Solution?*, 22 FORDHAM URB. L.J. 1 (1994).

This article posits that the main problem in successfully implementing government programs to help the homeless is the government's persistent failure to address the link between substance abuse and homelessness. Abbott admits that there has been an equal lack of desire on the part of advocates to admit that substance abuse is a problem within the homeless community because it casts the homeless in the role of the other. The author advocates a solution to the problem called the housing treatment model. This conditions access to housing on treatment for substance abusers, but it carries with it privacy guarantees, implementation procedures, and control and funding mechanisms which insure both dignity, and hopefully success, for those involved. The piece ends by offering several examples of model programs already up and running.

Melanie B. Abbott, *Seeking Shelter under a Deconstructed Roof: Homelessness and Critical Lawyering*, 64 TENN. L. REV. 269 (1997).

This article identifies and explains the major schools of legal theory and then explains the relationship between one of those schools -- critical legal studies -- and public interest lawyering. Abbott emphasizes that critical lawyering should be a collaborative process between the lawyer and the client who are operating on an equal footing. She also advises the modern public interest lawyer how approaching a homeless client's problems may differ from other public interest work.

Michelle Adams, *Separate and [Un]Equal: Housing Choice, Mobility and Equalization in the Federally Subsidized Housing Program*, 71 TULANE L. REV. 413 (1996).

This article discusses the racial housing segregation of African-Americans and the particular role that federally subsidized housing programs have played in reinforcing this segregation, both historically and in the modern era. Adams gives a historical background for both housing segregation and public housing projects in general. She points out that the vast movement of white citizens out of the cities directly correlates with the decline in income, housing, and health standards of those minorities left in decaying inner cities, particularly those living in public housing. Likewise, she also discusses one of the most prevalent solutions to this problem proscribed by courts -- mobility relief programs -- which allow minority residents to move out of urban areas into non-minority communities. She explains the advantages and disadvantages of such solutions and proposes her own remedy which combines spatial equality, or enriching the black community by improving black neighborhoods, with allowing housing choice, even if that choice is within predominantly black areas.

John J. Ammann, *Criminal Records of the Poor and their Effects on Eligibility for Affordable Housing*, 9 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 222 (2000).

This article deals with the growing problem of people with minor criminal records being denied public housing or employment opportunities. The author, the director of St. Louis University's Law Clinic, deals with such problems almost everyday. He uses three stories of real-life clients that the clinic has helped to demonstrate how a homeless or low-income individual can easily become the recipient of a citation (i.e. begging for money and being cited for panhandling). This problem often escalates by that person being unable to attend the court date due to lack of transportation, ability to take off work, etc. An arrest warrant is then issued and that person may not be able to obtain housing because of this criminal record. He also explains how the screening for rental housing has become much more strict since the passage of the Welfare to Work program and the One Strike and You're Out policy for public and subsidized housing, making it that much harder to overcome such a blight on one's record. Finally, Mr. Ammann discusses the opportunities for lawyers to assist in clearing an individual's record so that he or she may be eligible for low-income housing in the future.

Rebecca Arbogast et al., *Revitalizing Public Interest Lawyering in the 1990s: The Story of One Effort to Address the Problem of Homelessness*, 34 HOW. L.J. 91 (1991).

This article details Yale Law School's Shelter Project and the creation of Housing Operations Management Enterprises, Inc. (HOME). The authors advocate a new type of public interest lawyering which focuses on building interdisciplinary coalitions and coalitions between both the public and private sector to finance projects such as this low-income housing project. They call this new emphasis community institution building and state that in the current era of lessened government funding and unresponsiveness by the judiciary to public interest litigation that this is an alternative that really works.

B

Donald E. Baker, *"Anti-Homeless" Legislation: Unconstitutional Efforts to Punish the Homeless*, 45 U. MIAMI L. REV. 417 (1991).

This article posits that the new laws that are being passed by many cities to "criminalize" homeless individuals' everyday activities are either facially unconstitutional or unconstitutional as applied. Baker reviews a number of different plans of attack for legal challenges to these statutes and ordinances. He also identifies the main types of current anti-homeless legislation and reviews the relevant case law under each one. Finally, he does a cost/benefit analysis of criminalizing ordinances and presents a number of constitutional and criminal defenses that could be offered.

Susan D. Bennett, *No relief but upon the terms of coming into the house - Controlled Spaces Invisible Disentitlements, and Homelessness in an Urban Shelter System*, 104 YALE L. J. 2157 (1995).

This article chronicles the difficulty both administrative and legislative in the homeless obtaining placement in either short or long-term shelter. It uses personal accounts and research conducted by law students at the Office of Emergency Shelter and Support Services for the District of Columbia. Various methods used by processing agents are documented that systematically prevent those in need from ever being able to apply for benefits, and thus being able to enforce their constitutional rights.

Curtis Berger, *Beyond Homelessness: An Entitlement to Housing*, 45 U. MIAMI L. REV. 315 (1991).

This article stresses the need for advocates to focus not only on those that are currently homeless, but also on those who are housing poor, or as Berger calls them, pre-homeless. The pre-homeless are those individuals or families who may very soon cross the divide between the substandard or overcrowded housing they are currently living in and complete homelessness. Berger notes the numerous causes of the increasing problem of homelessness, but he focuses particularly on the lack of affordable housing as a major cause of the problem. He stresses that affordable inhabitable housing must be viewed as a fundamental right. He feels that the way to establish such a right is not through litigation but through legislation. Finally, he highlights several cities that are taking innovative approaches to helping their homeless or pre-homeless populations.

Gary L. Blasi, *And We Are Not Seen*, 37 AMER. BEHAV. SCIENTIST 563 (1994).

This article focuses on the current belief among homeless advocates that the public has both accepted homelessness and desires to criminalize it and blame those who are its victims. Blasi argues that while this may be the belief of the elite press and decision-makers, it is not the belief of the general public, evidenced by a number of yearly polls he cites. Blasi also discusses the role that both the conservative right and homeless advocates have played in reinforcing negative stereotypes and oversimplifying the problems of the homeless. Finally, he notes the overrepresentation of ethnic minorities in the demographics of the homeless and the downplaying of this fact by the media.

Gary L. Blasi, *Litigation Strategies for Addressing Bureaucratic Disentitlement*, 16 REV. L. & SOC. CHANGE 591 (1987-88).

This article discusses bureaucratic disentitlement as a means of reducing the number of people on welfare rolls and further spreading out a rapidly decreasing amount of funds. This type of disentitlement occurs when street-level or management-level officials initiate and enforce very stringent requirements for qualifying for or obtaining aid. This has the effect of making scores of people who would be otherwise eligible for aid, ineligible. Blasi uses as an example the General Relief Program in Los Angeles County, California. Finally, he discusses the role of public interest litigation in fighting these strategies of disentitlement.

Gary L. Blasi, *What's a Theory for? Notes on Reconstructing Poverty Law Scholarship*, 48 U. MIAMI L. REV. 1063 (1994).

This article discusses the recent criminalization and camp construction methods of dealing with the homeless. Many cities have set up camps within the cities where the homeless may live. Blasi interviews a man who has lived in these camps and from this discussion he constructs three theories of homelessness. He then discusses the new poverty law scholarship, comparing and contrasting the two dominant schools -- the scholars and the practitioners.

Raymond H. Brescia et al., *Who's in Charge, Anyway? A Proposal for Community-Based Legal Services*, 25 FORDHAM URB. L.J. 831 (1998).

This article focuses on the author's belief that the solution to many of the problems in current legal services programs is to move away from the service model of advocacy to a more community-based approach. They begin with a comprehensive biography of the legal services movement and then lay out the differences between legal aid and legal services. Likewise, they note that the legal services model has not lived up to all of its early promises and that there are numerous benefits to moving towards a more community-based approach. The article also identifies a number of community-based programs currently working well in different areas and presents a model of what such a program might look like.

Latisha R. Brown, *The McKinney Act: Revamping Programs Designed to Assist the Mentally Ill Homeless*, 33 COLUM. J.L. & SOC. PROBS. 235 (2000).

The core concept of this article is that [s]everely mentally ill homeless people suffer from additional burdens that the general homeless population does not face [and that] these burdens intensify their illnesses which makes their homelessness even worse. The author offers a wealth of helpful information and statistics concerning the homeless who are mentally ill. She also discusses the interaction between the McKinney Act and those who are homeless and mentally ill. There are a number of problems with the Act and the programs derived from it when applied specifically to this group. Both New York and Los Angeles's programs to help this population are examined. Finally, the author stresses the need for reform if any long-term change is to be made. This includes education of the public at-large, reforming current programs to better suit the needs of the homeless mentally ill, and working through the courts to set better legal precedents.

CC Lynn E. Cunningham, *Large PHAs and Their Regional Housing Markets: Time for More Robust Advocacy for Affordable Housing*, 10 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 48 (2000).

This article details the turnaround over the last few years in a number of public housing projects. It also asks the question: How might the large metropolitan PHAs prevent the further deterioration of the supply of affordable housing in their respective metropolitan regions? The author outlines six changes in society and public policy that have negatively affected the amount and quality of low-income public housing in the United States and gives a detailed history of the PHA program. Suggestions are made as to what housing authorities might do to increase the supply of low-income housing, but the author notes the likelihood of them engaging in such behavior is remote. Finally, the article discusses new issues that advocates and the PHAs will have to face concerning public housing.

D

Wes Daniels, *Derelicts, Recurring Misfortune, Economic Hard Times and Lifestyle Choices: Judicial Images of Homeless Litigants and Implications for Legal Advocates*, 45 BUFFALO L. REV. 687 (1997).

This article details the change in public and judicial attitudes toward homelessness. Daniels looks at the current trend of criminal prosecution of those who are homeless for carrying on day-to-day activities in public. Likewise, he critiques the voluntary / involuntary dichotomy often used by advocates to obtain sympathy for their clients by portraying their clients' homelessness as "involuntary," and thus justified. He also criticizes the trend by advocates of characterizing the homeless as helpless individuals. Finally, he offers some alternatives for attorneys in representing homeless clients.

Wes Daniels, *Symposium on Law and the Homeless: An Introduction*, 45 U. MIAMI L. REV. 261 (1991).

This article gives an overview of the problem of homelessness and acts as an introductory piece for a number of articles written following a conference on law and homelessness, printed in volume forty-five of the Miami Law Review. It also includes a brief discussion of each of the major papers from the conference.

Cheryl L. Derricotte, *Poverty and Property in the United States: A Primer on the Economic Impact of Housing Discrimination and the Importance of a U.S. Right to Housing*, 40 HOW. L.J. 689 (1997).

This article offers an extensive review of cases and domestic legislation relating to the attempt to forge a right to housing for the poor in the United States. It also suggests using the housing provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) to try and persuade the U.S. to sign and ratify this document and to push for a domestic right to housing. Finally, Derricotte sets out an agenda to push for the establishment of such a right and for general change overall by the year 2000.

Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67 (2000).

This article explains the author's theory that today's poverty lawyers must take a new approach to lawyering if they are to be truly helpful to their clients. Mr. Diamond emphasizes the need to find legally nontraditional approaches to meeting the needs of one's clients. He explains the different theories underpinning today's concept of poverty law—the collaborative, client-centered, and facilitative models. What he proposes is a new type of community lawyering that calls for an activist model of legal practice. He explains the growing need to reach out to groups within the community—those that are formally established and those that he labels extemporaneous. Throughout the article the focus is on the diverse needs of the community and how today's attorneys can best meet those legal and social needs.

E

Peter Edelman, *Responding to the Wake-Up Call: A New Agenda for Poverty Lawyers*, 24 N.Y.U. REV. L. & SOC. CHANGE 547 (1998).

This article discusses how the job of poverty lawyer is drastically different today than it was just twenty-five years ago. The author notes that [f]our facts frame the world as seen by advocates for the poor in 1999. These are that the Constitution is no longer our friend, that there is no true federal statutory safety net for the poor, that how the poor are treated differs greatly from state to state, and that the assistance that is given to the poor is at best a patchwork, with gaping holes. Mr. Edelman emphasizes the importance of today's advocates playing a role in congressional decision-making and in what goes on in state and local governments. He also stresses the need for community-building on the part of poverty lawyers, and de-emphasizes the reliance that should be placed on litigation as a tool for change. Finally, the article offers a proposal to establish a privately funded center for poverty law in every state or city of sufficient size. This center would help foster the goals set forth earlier in the article.

Greg Ernst & Maria Foscarinis, *Education of Homeless Children: Barriers, Remedies, and Litigation Strategies*, 29 CLEARINGHOUSE REV. 754 (1995).

This article focuses on the McKinney Act and recent court rulings which enforce the provisions of this legislation concerning homeless children and their rights regarding education. It uses an excellent group of statistics to discuss the problems faced by homeless children and the schools they attend. It also focuses on a litigation-centered approach to the problem of homelessness and education.

F

Monica A. Fennell, *Hunger and Homelessness: Why the Homeless Need Food Stamp Advocacy and How to Pay for it*, 21 FORDHAM URB. L.J. 127 (1993).

This article stresses the idea that any successful attempt to meet the needs of the homeless community must be a hybrid approach combining both shelter and food. It addresses the multiple

benefits of such an approach and also the role for lawyers. In particular, this role includes helping the homeless access food stamps and increasing the benefits that are already available through government and private assistance. Finally, Fennell gives examples of groups where this type of advocacy is already working, options for funding, and a specific proposal for creating a hybrid program.

Maria Foscarinis, *Beyond Homelessness: Ethics, Advocacy, and Strategy*, 12 ST. LOUIS U. PUB. L. REV. 37 (1993).

This article focuses on the movement arising in the 1980s by advocates pushing for federal legislation to help the homeless, which eventually led to the passage of the McKinney Act. It also tracks the positive and negative ramifications of this legislation, including the movement towards the institutionalization and legitimization of homelessness. Likewise, it asks the question of what an attorney is ethically justified in doing to represent a homeless client. Finally, the article offers three alternative models for moving towards the goal of permanently eliminating homelessness.

Maria Foscarinis, *Downward Spiral: Homelessness and its Criminalization*, 14 YALE L. and Pol y Rev. 1 (1996).

This article identifies the new trend in American cities towards criminalizing the everyday activities of the homeless. It begins by rejecting the popular polarity between the right for the homeless to live on the street and society's interest in orderly public places. Foscarinis notes that few, if any, of the homeless truly want to be on the streets and that they have just as much of an interest in wanting nice public places as those with homes. She identifies the interaction between structural and personal characteristics that contribute to homelessness and stresses the need for a long-term solution to the problem. Foscarinis offers reasons for this criminalization trend and identifies the three main types of measures being used by cities. The article breaks down a number of recent court challenges to these statutes and gives examples of many proactive alternative measures taken by cities.

Ruben Franco, *From Welfare to Work in New York City Public Housing*, 22 FORDHAM URB. L.J. 1197 (1995).

This article gives a history of New York City public housing. It emphasizes that in the last two decades public housing has become a much more frightening place to live because of the decrease of working families, the increase in crime and drugs, and the change in certain housing policies. Franco states that the Housing Authority will need to try and attract more working families and provide more assistance in finding education and work for the residents if public housing is to return to its pre-1980s situation.

G

Michael D. Granston, Note, *From Private Places to Private Activities: Toward a New Fourth Amendment House for the Shelterless*, 101 YALE L.J. 1305 (1992).

This article introduces the idea of the shelterless -- individuals who lack both a home to reside in and, because of the inadequacy of homeless shelters, also lack a place in an emergency shelter. Granston states that the jurisprudence surrounding the Fourth Amendment must be altered and a new test established by the Supreme Court so that this new class of shelterless individuals will be afforded their Fourth Amendment protections. He recommends a move towards a private activities standard. Thus, if the police had a reason to believe that an individual's private activities were being conducted in that public space they would need to obtain a warrant, just as if that place was an individual's enclosed private home.

Pedro J. Greer, Jr., M.D., *Medical Problems of the Homeless: Consequences of Lack of Social Policy A Local Approach*, 45 U. MIAMI L.REV. 407 (1991).

This article discusses in detail the changing demographics of the homeless community and the potential for widespread health consequences that this change carries with it. Greer uses a wealth of statistical data to discuss the familiarization and feminization of homelessness. Likewise, he notes that homeless Americans have a higher rate of all acute diseases (except obesity) than individuals with homes. Particularly high are the incidence of HIV/AIDS and tuberculosis. Greer finishes by profiling

the Camillus Health Concern, which is a health clinic established to extend care to the homeless population.

Paul S. Grogan, *Proof Positive: A Community-Based Solution to America's Affordable Housing Crisis*, 7 STAN. L. & POL'Y REV. 159 (1996).

This article posits that the best hope for forming an effective affordable housing strategy in the United States is to set up vibrant grassroots movements which focus on housing and low-income community revitalization. Grogan looks particularly to the new trend of community development corporations (CDCs). These are citizen-led groups trying to revitalize their neighborhoods. Grogan believes that since our country has no workable program for providing housing for low-income people; because the housing gap is rapidly increasing; and because so many people are disenchanted with government programs, and thus urging their legislators to cut funding, that the only real solution is to form CDCs and help communities help themselves. The article ends by offering information concerning a number of CDC programs already up and running that suggest ideas for people looking to replicate these programs in other communities.

Raudi P. Guinn, *Passage of the Foster Care Independence Act of 1999: A Pivotal Step on Behalf of Youth Aging Out of Foster Care and into a Life of Poverty*, 7 GEO. J. ON POVERTY L. & POL'Y 403 (2000).

This article discusses the Foster Care Independence Act of 1999 and the Chafee Foster Care Independence Program. Both are designed to aid foster care youth who are aging out of the system to better transition into the adult world without succumbing to poverty and homelessness. The author discusses foster care in general and how it can lead to a plethora of problems, including homelessness, for the children involved in it. The article stresses both the need to continue this new program and the inclusion of the young people affected by foster care in the decision-making process regarding the allocation of the program's funds. Finally, it discusses the work of Covenant House, a group with programs in a number of different states, whose mission is to help homeless youth.

H

Stanley S. Herr, *Children Without Homes: Rights to Education and to Family Stability*, 45 U. MIAMI L. REV. 337 (1991).

This article chronicles the particular problems faced by homeless children, the fastest-growing demographic group of the homeless, and notes what advocates can do to help them. Herr states that few advocates or legislators are currently working to help homeless children, meaning that the only real piece of legislation to seek relief under is the federal McKinney Act, which often proves to be inadequate. The article also chronicles various judicial and regulatory remedies attempted by advocates, but notes that there continue to be problems, despite these efforts. Finally, Herr offers solutions for emergency services, preventative help, and long-term solutions.

Stanley S. Herr & Stephen M. B. Pincus, *A Way to Go Home: Supportive Housing Assistance Preferences for the Homeless*, 23 STETSON L. REV. 345 (1994).

This article emphasizes the need for government programs for the homeless which focus on a "continuum of care," combining housing, psychological and social programs, and economic help for the homeless. The authors discuss various congressional responses to homelessness which have tended to be either ineffective or focused primarily on short-term emergency aid. They also chronicle the fears of many homeless advocates that the government's programs emphasizing economic mixing in subsidized housing will leave many homeless people on the streets. Herr and Pincus end by offering a comprehensive alternative for providing housing and services to the homeless and by identifying a number of pilot programs already underway in cities across the country.

Mary Ellen Hombs et al., *Advocacy to End Homelessness: New Initiatives for Social Equity*, 27 CLEARINGHOUSE REV. 1143 (1994).

This article stresses that federal homeless policy must contain two elements—prevention of homelessness in the first place and the prompt alleviation of homelessness when it does occur. It begins with a quick history of the homeless movement and the public's response to it at different times in the

last two decades. The authors also note the role that has been assumed by advocates in the past, and the role that they must take on and the problems to be faced in the coming decades. Finally, they offer specific recommendations for federal agencies in dealing with homelessness and note the problems particular to homeless families and children.

Mary Ellen Hombs, *A Continuum of Violence: Rethinking Advocacy Priorities in Homelessness*, 28 CLEARINGHOUSE REV. 407 (1994).

This article focuses on the fact that while many states and cities are currently criminalizing the actions of the homeless, it is the homeless themselves who are often the victims of violent crime. Hombs notes that the homeless are affected by violence in two ways by structural or systematic violence and by individual victimization. In fact, she states that family violence (typically either domestic violence or child abuse) is the primary type of violence which leads to homelessness. Likewise, the author discusses the programmatic violence that occurs through the denial of basic necessities to the homeless and the three typical kinds of responses to this systematic violence. Finally, she stresses the role alcohol, drugs, and mental illness play in contributing to homelessness and the pervasive problem of shelter violence.

Mary Ellen Hombs & Virginia Shubert, *Housing Works: Housing Opportunities for Homeless Persons*, 29 CLEARINGHOUSE REV. 740 (1995).

This article discusses the Housing Works program that was formed by individuals who had previously been homeless and who were deemed by officials to be unhouseable. It concentrates on integrating the harm reduction philosophy, which focuses on stabilizing individuals in housing and then encouraging sobriety and work on social problems, into housing programs. Housing Works particularly centers on individuals who are homeless due to drug or alcohol problems and/or HIV/AIDS. Finally, the authors discuss various litigation efforts in New York to insure that homeless individuals with HIV/AIDS were afforded clean, safe shelters that were not a threat to their already precarious health.

Mary Ellen Hombs et al., *Recent Developments Affecting Homeless People*, 26 CLEARINGHOUSE REV. 1205 (1993).

This article begins by focusing on the various definitions of homeless and homelessness and how these definitions have become the new way to include, or more typically to exclude, people from programs suffering from diminishing federal funds. The authors include examples of states where homeless rights have been furthered and those that have adopted new statutes to criminalize the homeless. They also touch on several specific areas within the homeless movement and discuss the work of the Legal Services Homelessness Task Force.

Mary Ellen Hombs, *Reversals of Fortune: America's Homeless Poor and their Advocates in the Nineties*, 49 GUILD PRACTITIONER 111 (1992).

This article discusses the parabolic curve of society's feelings toward the homeless. It also contains a very good treatment of the different tactics used by advocates throughout the history of the homeless movement to advance the cause. The author notes the problems with both traditional litigation and legislative strategies and the growing gap between income and basic necessities. Finally, Hombs discusses the need to change the institutionalization, complacency, and willingness to bargain of homeless advocates.

Beth Waldo Houck, Comment, *Spinning the Wheel After Roulette: How (and Why) to Overturn a Sidewalk Sitting Ban*, 32 ARIZ. ST. L.J. 1451 (2000).

This article describes members of the homeless community not often spoken about gutter punks. They are youth, many homeless, some not, who hang out on street corners and sidewalks and who are distinguished from the traditional homeless by being unwilling to use shelters or programs to help get them off the street and back on their feet. They typically remain on the street because they are rejecting a mainstream American lifestyle. Cities have taken to passing laws to curb the gutter punks' behavior, particularly ones aimed at keeping them from sitting and loitering on sidewalks. The

author posits that sitting on a public sidewalk, not obstructing traffic or bothering anyone, should be a constitutional right. She then chronicles the history of sidewalk sitting litigation, and offers a plan on how to bring a case against such an ordinance by challenging it under a number of constitutional provisions.

E. J. Hurst II, Note, *Rules, Regs, and Removal: State Law, Forseeability, and Fair Play in One Strike Terminations from Federally-Subsidized Public Housing*, 38 BRANDEIS L.J. 733 (2000).

This article discusses the history of public housing in the United States and particularly the effects of the 1996 congressional mandate that those in public housing be subjected to a One Strike and You're Out policy concerning drugs and violence. This policy determines both those individuals and families who are eligible to receive public housing assistance and the ease with which their public housing benefits may be terminated if anyone within the household is in anyway associated with drugs and/or violence. The author discusses the ramifications of the policy and its overly aggressive implementation by local public housing authorities. The article also examines how this federal law's preemption of existing state laws and the lack of knowledge of those within the household of the offending activity may affect the policy. Finally, the author discusses ways in which Congress can change the policy to make it more fair and common sense based.

I

J

Susan R. Jones, *An Annotated Bibliography of Affordable Housing and Community Economic Development Law*, 7 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 340 (1998).

This is a compilation of a number of recent articles (since 1990) that touch on various aspects within the area of housing law. Within the section entitled affordable housing development law, these include government funding, legal education, low-income housing tax credits, private funding/ not-for-profit housing, systematic housing segregation, zoning exclusionary, and zoning inclusionary/ linkage. There are also a number of articles listed within the area of community economic development law.

K

Lynn M. Kelly, *Lawyering for Poor Communities on the Cusp of the Next Century*, 25 FORDHAM URB. L.J. 721 (1998).

This article identifies the three most important objectives for poverty lawyers in the coming years. These are to identify strategies that work, to increase the legal representation for poor communities, and to keep the legal community engaged in poverty law. Kelly emphasizes that even though litigation does at times fail, advocates should not wholly dismiss it as a viable alternative. Finally, the author uses cases to illustrate each of the areas and how litigation coupled with community and coalition building can help to expand the role of the attorney as advocate to poorer individuals.

Judith E. Koons, *Fair Housing and Community Empowerment: Where the Roof Meets Redemption*, 4 GEO. J. ON FIGHTING POVERTY 75 (1996).

This article tells the story of Cocoa, Florida, and the fight by an African-American neighborhood within the town to halt harmful and discriminatory zoning practices. Koons tracks the founding of a community group to fight urban renewal, which in this case meant removing almost an entire historically African-American community to make room for high rise condominiums and a shopping district to attract tourism. The author uses this neighborhood's fight to identify what she calls community empowerment lawyering. This incorporates collaboration between attorneys and clients; the sharing of power between the two; and the use of client narratives, community mobilization, community economic development, and traditional legal strategies.

L

Jason Leckerman, *City of Brotherly Love?: Using the Fourteenth Amendment to Strike Down an Anti-Homeless Ordinance in Philadelphia*, 3 U. PA. J. CONST. L. 540 (2001).

This article is full of helpful information and statistics about homelessness and the history of anti-homeless city ordinances. In particular, it looks at the ordinance passed in 1999 by the city of Philadelphia the Philadelphia Sidewalk Behavior Ordinance. The author examines in depth two cases that challenged similar ordinances and then applies the reasoning of those cases to the Philadelphia law. Mr. Leckerman also discusses several other ways the law could be attacked, from procedural and substantive due process, to the equal protection clause. Finally, the article considers the challenges that have already been made to the ordinance by the Philadelphia public interest community.

Stephen Loffredo, *Poverty, Democracy and Constitutional Law*, 141 U. PA. L. REV. 1277 (1993).

This article details the Supreme Court's use of rationality review concerning issues affecting the poor. The author argues that the political powerlessness of the poor requires that the court give them at least some expanded judicial protection. Likewise, he dispels as myth the idea that there is political equality between rich and poor in America. Much of the article is an expanded look at both recent and historic constitutional jurisprudence dealing with poverty issues. Loffredo also examines and critiques a number of different justifications given by the court and legal theorists for remaining at rationality review in this area.

M

Peter Margulies, *Building Communities of Virtue: Political Theory, Land Use Policy, and the "Not in My Backyard" Syndrome*, 43 SYRACUSE L. REV. 945 (1992).

This article uses a number of political and professional theories to discuss and propose solutions to the problem of the "Not in My Backyard" (NIMBY) syndrome, where communities attempt to block the placement of certain service facilities within their neighborhoods. Margulies gives a history of NIMBY-ism and identifies it as a major obstacle for any group that is considered "different" by the community. The author eventually encourages the development of a "model of participatory entitlements," which includes entitlements for housing and services, concrete standards for service facilities, and flexible reciprocal roles for both parties. He also discusses differences in community economics and how they relate to the community's ability to apply NIMBY-ism.

K. Scott Mathews, *Rights of the Homeless in the 1990s: What Role will the Courts Play?*, 60 UMKC L. REV. 343 (1991).

This article introduces the concept of the homeless contingency chain of problems. This means that generally one problem of a poor person will trigger another and another, sending the individual into a downward spiral of poverty that may eventually lead to homelessness. It also notes problems with the implementation of the McKinney Act, the most notable being the lack of notification or publication to the homeless community of the available services. Mathews also states that one of the primary focuses of homeless advocates should be working for voting residency requirements that allow the homeless to vote, and thus positively affect the political process in their favor. Finally, like many others, Mathews emphasizes the need for advocates to move away from traditional litigation strategies to long-term legislative and administrative solutions.

Mary Helen McNeal, *Responses to the Conference: Having One Oar or Being Without a Boat: Reflections on the Fordham Recommendations on Limited Legal Assistance*, 67 FORDHAM L. REV. 2617 (1999).

This article takes the recommendations made by the Fordham Conference Group on Limited Legal Services and puts them into practice; discussing some of the practical considerations and limitations that would be involved in actually implementing such a plan. McNeal identifies and distinguishes between the types of limited legal assistance and discusses the issues that must be taken into consideration for each type. She then lays out a research agenda for evaluating the implementation of this limited legal plan.

N

Laura Noble, *The Meaning of a Free Appropriate Public Education for Homeless Children: An Analysis of the Stewart B. McKinney Homeless Assistance Act*, 23 STETSON L. REV. 429 (1994).

This article profiles the various efforts to help alleviate many of the stark conditions and drastic problems faced by the fastest-growing segment of the homeless population—children. Noble looks in detail at the McKinney Act, a national program designed to help the homeless, which contains a number of provisions pertaining to homeless children and education in particular. The author compares and contrasts the McKinney Act with another similar national act, the Individuals with Disabilities Education Act (IDEA). The article sketches out the obligations of both the federal and state governments in complying with the McKinney Act, as well as noting more recent amendments and possible judicial leanings by making comparisons to IDEA.

O

P

Mark Peters, *Homelessness: A Historical Perspective on Modern Legislation*, 88 MICH. L. REV. 1209 (1990).

This article uses the approaches taken towards homelessness at the turn of this century to discuss why current legislation in the area of homelessness is not successful in alleviating the problem. The main difficulty with both historical and current legislation is that the drafters see only the visible manifestation of the problems and do not attempt to look behind that to craft strategies to fix the underlying causes of homelessness. Peters also identifies the three beliefs embedded within both current and historic legislation which doom it to failure in practice.

Q

Kathleen Marie Quinn, Note, *Connecticut v. Mooney and Expectation of Privacy: The Double Edged Sword of Advocacy for the Homeless*, 13 B.C. THIRD WORLD L.J. 87 (1993).

This article discusses in depth the case of *Connecticut v. Mooney*. In certain respects this case included the homeless to be within the protection of the Fourth Amendment's prohibition against unreasonable searches and seizures. Likewise, it reviews those cases used as support for both the majority and dissenting opinions in the *Mooney* case. Quinn also discusses the dilemma that the case presents for homeless advocates—both acknowledging the rights of their clients, and yet at the same time considering a highway embankment to be a suitable home. Finally, the author devotes some time to the current trend towards criminalizing the homeless and other recent cases advancing homeless rights.

R

Report of the Working Group on Rendering Legal Assistance to Similarly Situated Individuals, 67 FORDHAM L. REV. 1801 (1999).

This article offers advice to public interest attorneys working for both groups and individuals. Its main thrust is that any litigation strategy must be a choice for the client(s) and not for the attorney. It also makes specific recommendations for attorneys working in the areas of impact litigation and class action suits.

Florence Wagman Roisman, *Establishing a Right to Housing: An Advocate's Guide*, 428 PLI/LIT 9 (1992).

This article focuses on a number of different areas where a right to housing might be established. Roisman looks particularly on a state-by-state basis at several state entitlement programs. She also reviews federal programs such as Aid to Families with Dependent Children (AFDC), the federal Emergency Assistance Program, and the Supplemental Security Income Program (SSI). Likewise, she looks at the problems of familial and child homelessness and mental health. In each of these areas Roisman offers suggestions for advocates and case examples.

S

Peter W. Salsich, Jr., *Beyond Housing: A Case Study of Combining Social Services and Affordable Housing*, 10 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 20 (2000).

This article details Beyond Housing, a St. Louis not-for-profit housing corporation for low-income families. It has been in existence for twenty years and works with families to provide

assistance with both housing and social services. Beyond Housing has a three-pronged approach to helping its families. First, it seeks to make a difference in the environment of the family by improving its housing through rehabilitation or new construction. Second, it seeks to provide social services. And third, to increase[] the capacity of the family to achieve the level of independence its members are capable of reaching. The author discusses a number of Beyond Housing's specific endeavors, both those which directly aid the participating families and those which are designed to fund the corporation. He also talks about how the focus of the corporation has changed over the years to become more neighborhood-focused. Finally, the article gives lessons that advocates can take away from the experience of Beyond Housing, so that they may learn how to better combine social services and affordable housing work.

Peter W. Salsich, Jr., *Homelessness at the Millennium: Is the Past Prologue?*, 23 STETSON L. REV. 331 (1994).

This article stresses the need to move away from the initial short-term shelter thrust of the homeless movement to a policy that combines housing, income, and social services. Salsich emphasizes three elements that must play a role in this new policy organization, resources, and the empowerment of the homeless. He notes throughout the article that the role for attorneys in the coming years is just as important as in the past. Likewise, he looks at some of the causes and problems facing the homeless today and how attorneys can best respond to these problems within the framework he has set up.

Barbara Sard, *Housing the Homeless through Expanding Access to Existing Subsidized Housing Programs*, 36 VILL. L. REV. 1113 (1991).

This article posits that current homelessness is caused primarily by the lack of affordable housing for very low-income people. Sard states that the best way to remedy this problem is by expanding access to existing housing subsidies immediately. There currently exists a problem with the distribution of housing subsidies because very few of the available spaces each year are turned over to homeless individuals. Sard identifies six strategies to help the homeless better access existing subsidies and lays out the role of attorney advocates, administrative agencies, and legislatures in helping the homeless to acquire those benefits already in place.

Michael H. Schill, *Assessing the Role of Community Development Corporations in Inner City Economic Development*, 22 N.Y.U. REV. L. & SOC. CHANGE 753 (1996).

This article identifies the movement toward forming Community Development Corporations (CDCs) by inner city residents to try and fix problems within the community by themselves. Some minority and low income citizens, living within the inner cities, have decided that government programs to "turn around" blighted areas are not going to be effective, and have taken on the role of revitalizing their neighborhoods themselves. Schill gives a history of CDCs and states that modern CDCs play three major roles -- development catalyst, developer/landlord, and equity investors in business enterprises. He also gives a number of examples of working CDCs and their particular programs.

Michael H. Schill & Regina Austin, *Black, Brown, Poor & Poisoned: Minority Grassroots Environmentalism and the Quest for Eco-Justice*, 1 KAN. J.L. & PUB. POL'Y 69 (1991).

This article chronicles the persistent problem of waste, hazardous chemicals, and other such sites being situated primarily in low-income and minority neighborhoods. The authors point out how both private and government players have helped to effectuate this problem. They also describe the new minority grassroots movements that have sprung up across the country to oppose this trend. The article highlights the author's critique of both the poisoning activities and of the mainstream environmental movement which they believe is not helping their cause. Finally, the authors also explain the role of the attorney in aiding the struggle of these grassroots organizations and identify a number of such groups and their activities.

Michael H. Schill & Susan M. Wachter, *The Spatial Bias of Federal Housing Law and Policy: Concentrated Poverty in Urban America*, 143 U. PENN. L. REV. 1285 (1995).

This article discusses how federal housing policy has acted to concentrate poor and minority individuals in inner city areas. The authors give a short history of subsidized government housing, highlighting the factors that have led to this segregating trend. The article posits that to fix this growing problem the government must enforce anti-discrimination laws, increase the "supply of affordable housing in economically-integrated communities," and change housing programs so as not to concentrate poverty. The authors end by proposing a model for studying class and public housing.

Stephen J. Schnably, *Rights of Access and the Right to Exclude: The Case of Homelessness*, in *PROPERTY LAW ON THE THRESHOLD OF THE 21ST CENTURY* 553 (G.E. van Maanen & A.J. van der Walt eds. 1996).

This article considers the possibility of establishing a legal right of access to public places for the homeless so that they may carry on their daily activities without doing so in hiding or illegally. The author discusses the invisibility and disciplinary strategies, both popular with cities to reduce the homeless problem. He then examines the concept of a home in the United States. Finally, the article looks at the possible pitfalls of establishing a right to access for the homeless and emphasizes the need for political mobilization on the part of the homeless and their advocates to prevent these pitfalls from occurring.

Norman Siegel, *Homelessness: Its Origins, Civil Liberties Problems and Possible Solutions*, 36 *VILL. L. REV.* 1063 (1991).

This article focuses on the fact that development of downtown areas has drastically reduced the amount of low-income housing by forcing many of those in the now destroyed buildings onto the streets for lack of alternative shelter. This phenomenon is especially prevalent among racial minorities. Many of the solutions now proposed by municipal governments are fraught with civil liberty problems. Siegel advises advocates how to combat these constitutional violations and offers specific solutions to solve the problem of homelessness.

Ronald C. Slye, *Community Institution Building: A Response to the Limits of Litigation in Addressing the Problem of Homelessness*, 36 *VILL. L. REV.* 1035 (1991).

This article emphasizes that while litigation does play a role in addressing the problem of homelessness, that today it must be supplemented with other legal activity if a solution to the problem of homelessness is to be created. Slye notes four reasons why traditional litigation does not always work in this area. Likewise, he emphasizes the growing importance of community institution building and urging lawyers to play a role in structur[ing] and maintain[ing] mutually beneficial relationships with their homeless clients. Finally, Slye discusses the innovative Yale Workshop's HOME project.

Lynne Soine & Mary Ann Burg, *Combining Class Action Litigation and Social Science Research: A Study in Helping Homeless Women with Children*, 3 *AM. U.J. GENDER & L.* 159 (1995).

This article stresses that while litigation can be a limited strategy for helping the homeless, class action suits may be able to increase welfare housing benefits to currently homeless women and their children. It begins by pointing out that women with children are demographically the largest, fastest growing subgroup of all homeless people today. The authors posit that this is the case because of widespread gender discrimination which compounds the effects of the other causes of homelessness already in place. The article also discusses the importance of legal advocates in this area of representation.

Robert A. Solomon, *Building a Segregated City: How We All Worked Together*, 16 *ST. LOUIS U. PUB. L. REV.* 265 (1997).

This article uses the city of New Haven, Connecticut to discuss the problems of white flight from urban centers in the latter half of the twentieth century and to propose possible solutions to reintegrate America's cities. Solomon identifies four main errors made in the past and continuing to be made today that have caused the problem of segregation within the urban areas. He also uses physiological tipping analysis to focus on the actual point at which segregation is reached in a city and discusses whether this form of analysis is a useful tool.

Robert A. Solomon, *The Clinical Experience: A Case Analysis*, 22 SETON HALL L. REV. 1250 (1992).

This article chronicles the case of *Savage v. Aronson* which was tried by members of Yale Law School's Homelessness Law Clinic. Solomon discusses the three main legal clinics offered by Yale Law School and the great opportunity they present for law students to become actively involved in the representation of low income and homeless clients. Likewise, the article takes the reader step-by-step through litigation concerning the homeless and offers an excellent example of how such a case might be structured in the future.

Robert A. Solomon, *Ending Welfare Mythology as We Know It*, 15 YALE J. ON REG. 177 (1998) (reviewing MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW-WAGE WORK, KATHRYN EDIN AND LAURA LEIN (1997)).

This is a book review for Edin and Lein's book MAKING ENDS MEET, but within the review Solomon discusses the gap between welfare subsidies and the money needed to provide for the basic necessities of life. The article chronicles the strategies, identified by the book, that are used by both welfare mothers and low-income working mothers to try and survive with little money and many bills. It also discusses the new welfare reform measures and how they will likely negatively affect those already struggling to make it.

T

Ray Telles, Comment, *Forgotten Voices: Gentrification and Its Victims*, 3 SCHOLAR: ST. MARY'S L. REV. MINORITY ISSUES 115 (2000).

This article looks at the growing problem of gentrification, or the displacement of lower-income communities because of an influx of higher income residents, in American cities and what, if anything, can be done to help those low-income renters who are displaced, some even made homeless, because of it. The author uses the Campbell Subdivision in El Paso, Texas, and the redevelopment plan that it is under as an example of the problems that can occur because of gentrification. He discusses the types of gentrification and the general theories of housing patterns to help explain what causes this phenomenon. Finally, the article looks at what rights low-income renters might have and the possible solutions that advocates could help them seek.

Brian C. Thomas, Comment, *Examining a Beggar's First Amendment Right to Beg in an Era of Anti-Begging Ordinances: The Presence and Persistence Test*, 26 U. DAYTON L. REV. 155 (2000).

This article's thesis is that individuals possess a First Amendment right to beg that cannot be abridged by indiscriminate anti-begging ordinances which outlaw all types of begging. It discusses the difference between ordinances banning street begging, those banning aggressive begging, and those which ban all forms of begging. It also contains a thorough background and explanation of anti-begging ordinances in general and supports the author's contention that begging is protected speech by citing a number of cases and reasons why begging is both protected and public speech. Finally, Mr. Thomas outlines the presence and persistence test that he has formulated to help determine the line between acceptable and unacceptable begging.

Deborah M. Thompson, *Breaking the Cycle of Poverty: Models of Legal Advocacy to Implement the Educational Promise of the McKinney Act for Homeless Children and Youth*, 31 CREIGHTON L. REV. 1209 (1998).

This article chronicles the severe problems that homeless children face because of the instability and precarious housing situation of their families. Thompson gives several litigation strategies that attorneys and advocates might use in attempting to force schools to comply with the McKinney Act. The McKinney Act tackles a number of problems that face homeless children, including transportation to and from school and attempting to retain children in the school that it is in their best interest to attend.

Paul R. Tremblay, *Acting A Very Moral Type of God : Triage Among Poor Clients*, 67 FORDHAM L. REV. 2475 (1999).

This article discusses the moral implications behind rationing legal services among the poor, and in particular the triage often applied by legal services providers. Tremblay pinpoints those factors that should and should not be used in determining who is given priority to legal services. Likewise, he discusses the four types of poverty law work, or practice visions, and which one, or what combination of the four, would be best for most organizations. Finally, he looks at the trustee relationship between attorneys and their poor clients and who should decide how services are allocated.

Louis G. Trubek, *The Worst of Times and the Best of Times: Lawyering for Poor Clients Today*, 22 FORDHAM URB. L.J. 1123 (1995).

This article uses three particular areas within poverty law (advocating for battered women, for low-income entrepreneurs, and for non-profit community-based organizations that serve the poor) to discuss the changes occurring in poverty law as a whole. Trubek offers many new alternative roles for the attorney in these areas, each of which is related in some capacity to the problem of homelessness. Likewise, Trubek explores alternatives such as lay person legal advocates and enabling poor clients to represent themselves in certain situations.

Christina Victoria Tusan, *Homeless Families From 1980-1996: Casualties of Declining Support for the War on Poverty*, 70 S. CAL. L. REV. 1141 (1997).

This article focuses on those families and children who are literally without any means of shelter. It begins by comparing the public's perception of the homeless with the reality of homeless family life in the United States. Tusan takes each social demographic characteristic generally attached to the homeless population and deconstructs its true applicability to this community. She also outlines in depth the factors contributing to homelessness and the problems of the working poor; identifying the lack of affordable housing as the primary cause of homelessness in America. Finally, she identifies the problems inherent in the current solutions for familial homelessness and offers her own suggestions for programs, while giving examples of a number of programs she believes to already be operating successfully in this area.

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Benjamin S. Waxman, *Fighting the Criminalization of Homelessness: Anatomy of an Institutional Anti-Homeless Lawsuit*, 23 STETSON L. REV. 467 (1994).

This article advises attorneys who wish to bring a suit advancing homeless rights in the face of municipal statutes criminalizing the everyday behavior of the homeless. The article takes as its example and basis the case of *Pottinger v. The City of Miami*. Waxman puts forth approximately fourteen recommendations, ranging from suggestions for litigation objectives, to choosing the plaintiffs and defendants, to media exposure, the strategy for litigation, and finally trial and post-trial advice.

Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157 (1994).

This article begins by identifying the three ways that lawyers can be catalyst[s] for progressive social change. White then stresses that the third alternative, or collaborative vision lawyering, is becoming more and more important. The article chronicles a number of law students work in grassroots community organizations and it identifies different types of groups and the different legal approaches that would best fit their needs.

Lucie E. White, *Facing South: Lawyering for Poor Communities in the Twenty-First Century*, 25 FORDHAM URB. L.J. 813 (1998).

This article discusses the current movement toward welfare reform and its relationship to the growing number of Americans who are living as if they are in the Economic South, even though they are in the heart of the Economic North. White specifically looks at the growing problem of the gap between the average monthly income and the amount of money required for basic life necessities. Finally, she returns to her theory of collaborative lawyering and emphasizes that the poor must be viewed as partners in the process of their legal advocacy, and not merely clients.

Lucie E. White, *Representing The Real Deal*, 45 U. MIAMI L. REV. 271 (1991).

This article criticizes both the conservative right and homeless advocates for swinging public opinion away from the homeless community in recent years. White identifies the factors that led to a drastic increase in the number of homeless individuals in the United States in the 1980s. The article uses historical data to identify when and how the current crisis arose. White also identifies a number of characteristics or situations which tend to go along with extreme poverty and homelessness and she discusses the concept of shelter poverty.

Lucie E. White, *Specially Tailored Legal Services for Low-Income Persons in the Age of Wealth Inequality: Pragmatism or Capitulation?* 67 FORDHAM L. REV. 2573 (1999). Lucie E. White, *Specially Tailored Legal Services for Low-Income Persons in the Age of Wealth Inequality: Pragmatism or Capitulation?* 67 FORDHAM L. REV. 2573 (1999).

This article identifies three broad trends in advanced industrial welfare states. The first of which is the widening gap between the incomes of the highest and lowest groups. Next, is the widespread rejection of state redistribution as the way to fix this gap, and third is the widespread disillusionment with bureaucratic institutional arrangements. This leads to the two main questions that face current advocates as they approach low-income clients how can they deliver high-quality, equal opportunity legal services in an environment of overwhelming need and limited budgets? And second, how can bureaucratic agencies guard against system-wide prejudice, when they themselves are part of that system? Finally, White challenges attorneys to rethink what their goals as poverty lawyers should be.

Lucy A. Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 YALE L.J. 719 (1992).

This article emphasizes that both historically and currently politicians have blamed the poor for being poor by fostering the idea that Aid to Families with Dependant Children (AFDC) encourages mothers to stay on welfare and to have more children. Williams emphasizes that this belief, disproven by the data, has led many politicians to pass proposals to reform welfare which cut benefits for mothers who do not conform to the white middle-class standard of the acceptable family. She notes the prevalence of using race and gender discrimination as a factor in making these value-laden judgments about who is and is not worthy of welfare benefits.

Lucy A. Williams et al., *The Massachusetts Employment and Training Program*, 20 CLEARINGHOUSE REV. 122 (1986).

This article details a plan proposed by activists who were opposed to a mandatory work requirement for Massachusetts welfare recipients. Their alternative plan was eventually adopted by the state of Massachusetts and is now being praised as a cost-effective option instead of mandatory work requirements, which are often expensive; laborious to monitor; and do not generally succeed in moving the poor off of welfare rolls and into work permanently. The article describes the provisions of this voluntary employment and training program and its successes in Massachusetts.

Lucy A. Williams, *Race, Rat Bites and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate*, 22 FORDHAM URB. L.J. 1159 (1995).

This article explains how the media uses very negative images of welfare mothers to reinforce stereotypes held by the public at-large. In fact, Williams charges that the media has so structured the public's outlook on welfare with images of non-white recipients, blight, social problems, violent crime, and drug abuse that they have influenced public opinion towards massive welfare reform, stressing behavioral requirements for assistance. The data does not support the media's image of the

poor, however. Throughout, Williams uses news stories and the history of the negative treatment of race within the welfare system to exemplify her thesis.

Stephen Wizner, *Homelessness: Advocacy and Social Policy*, 45 U. MIAMI L. REV. 387 (1991).

This article emphasizes the pressure on advocates to choose between short-term goals which are beneficial to their individual clients and long-term goals which benefit the homeless movement as a whole. Wizner also compares, contrasts, and critiques both the conservative and advocate theories concerning the root causes of homelessness.

Alexander Wohl, *Gimme Shelter: Lawyering for the Homeless*, 76 A.B.A. J. 58 (1990).

This article identifies some of the recent litigation battles faced by attorneys working within homeless advocacy. Likewise, it emphasizes the profound problem of enforcing any judgments against cities not complying with federal or state standards for providing shelter or services to their homeless populations. Finally, it emphasizes the need for a comprehensive approach to homelessness, including a combination of legal action, congressional support, and public education to forge a permanent solution to this problem.

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WEBSITES RELATED TO HOMELESSNESS AND HOMELESS ADVOCACY

Laura K. Bedingfield

Jerritt C. Hooper

Web-based Directories

These directories will help advocates access programs, both nationally and in their local communities, which are specifically designed for the homeless individual.

LEGAL SERVICES FOR THE HOMELESS

National Law Center on Homelessness and Poverty – Legal Resources

<http://www.nlchp.org.leg.htm>

A vital need of many homeless individuals is help with legal issues. This website offers links to a number of sites that will aid legal advocates in assisting their homeless clients.

DIRECTORY OF STATE AND LOCAL PROGRAMS

National Coalition for the Homeless – Directory of State and Local Programs

<http://www.nationalhomeless.org/state>

The National Coalition's website contains a thorough directory of state and local programs designed for the homeless person.

Informational Websites

These sites offer a wide variety of information on a number of topics pertinent to the needs of homeless individuals. They have a primarily national focus.

GENERAL INFORMATION

AlaPadre.net

<http://alapadre.net/homeless.html>

Maintained by a Catholic priest, this site houses an extensive list of secular sites. The top ten links related to homelessness focus on providing contacts throughout the nation for assisting those in need. There is an extensive index containing over thirteen thousand sites that could prove to be very useful for advocates.

The Center for Law and Social Policy (CLASP)

<http://www.clasp.org>

As a group CLASP functions as a public policy organization, providing research, reports and advocates to aid in providing legal services to the poor. This website explains CLASP's services and policies which provide outlets for poverty stricken families with children.

Communications for a Sustainable Future

<http://csf.colorado.edu/homeless>

This site, maintained at the University of Colorado at Boulder, contains a wealth of over five hundred links to various internet sites all pertaining to homelessness. Topics range from children to health to medical services. There are also discussion lists available. Most notable are the links to regional resources by country and the service provider resources.

HandsNet

<http://www.handsnet.org>

Integral to this site is its mechanism, WebClipper, which allows one to receive daily updates of information related to a chosen topic. Additionally, the site boasts top stories related to HandsNet's goal of assisting families, children, and people in need.

Jericho Road, Inc.

http://www.jericho.org/~jericho/sq_shlt.html

Though created in Memphis, Tennessee, this site is devoted to maintaining a catalog of social service organizations and ministries in a plethora of communities throughout the nation. The “Additional Links” page contains hundreds of connections nationwide related to homelessness.

The Joint Center for Housing Studies

<http://www.gsd.harvard.edu/jcenter>

Developed at Harvard and in existence for over forty years, the Joint Center addresses housing issues and community development policies. Decidedly academic in nature, the Center’s annual report, The State of the Nation’s Housing, is found here, as well as information on lectures, seminars and colloquiums.

The National Alliance to End Homelessness (NAEH)

<http://www.naeh.org>

With its headquarters in Washington, DC, the NAEH is a federation of public, private, and nonprofit organizations centered around ending homelessness. This well-rounded site includes information on policy and legislation, as well as the historic background of homelessness in America.

National Association of Community Action Agencies (CAA)

<http://www.nacaa.org/index.htm>

Headquartered in Washington, DC, but with branches across the nation, CAAs strive to be a forum for policy on poverty. With over sixty separate programs encompassed under the CAA umbrella, this site maintains links to assist with almost any issue related to homelessness.

The National Center on Poverty Law: Practice Area for Housing Law Advocates

<http://www.povertylaw.org/practiceareas/housing/housing.asp>

An extensive sidebar lists seventeen topics for which related cases may be accessed, in addition to research links, discussion groups, and other similar practice areas. The cases are definitely helpful, though they need to be updated.

National Coalition for the Homeless

<http://www.nationalhomeless.org>

This site, maintained by a national advocacy network of homeless persons, activists, and service providers, is focused on ending homelessness through education, advocacy, grassroots organizing, and technical assistance. Extensive, yet focused, the site includes a bibliographic database along with numerous directories and links to related topics.

The National Housing Institute (NHI)

<http://www.nhi.org>

NHI is a nonprofit organization focused on the crisis in American housing and community living today. This site features access to Shelterforce Online, the oldest housing and community development publication in the United States, as well as reports, policy discussions, and legislative updates.

The National Law Center on Homelessness and Poverty

<http://www.nlchp.org>

This site seeks to stoke the fires under advocates for the homeless by searching for long-term solutions for the nearly two million homeless Americans. Focused on impacting litigation, policy, and education, the Law Center site contains press releases, fact sheets, and information on recent legislative developments.

Policy.com

<http://www.speakout.com/activism/policy>

Providing the “Web’s most comprehensive public policy resource,” this site aggregates information provided by policy experts around the country. In addition to numerous clippings from newspapers,

the site has links connecting one with other housing related topics such as temporary assistance, Medicaid, and EZ/EC zones (empowerment zones/enterprise communities).

The Urban Institute

<http://www.urban.org>

This nonprofit organization based out of DC lists among its goals sharpening thinking around society's many problems. Areas of interest on this site include a pilot housing voucher project and a current report on America's homeless. The site is also full of interesting charts and data.

The "Us" Project, Inc.

<http://usproject.org/shelters.htm>

Displaying a list of seventeen options, this nonprofit support vehicle for volunteer groups provides connections to sites like one for computer literacy for the homeless. The site supplies numerous unique opportunities for ways to help the homeless.

The Welfare Information Network

<http://www.welfareinfo.org/homeless.htm>

Housing a conglomeration of articles, research reports, fact sheets, and related programs this site, based in DC, contains an astonishing array of information. The state specific directories alone are worth a trip.

ASSISTANCE

Financial

The Emergency Food and Shelter National Board Program

<http://www.efsp.unitedway.org>

Chaired by a representative of the Federal Emergency Management Agency, the Emergency Food and Shelter National Board Program provides financial assistance to eligible areas of the country. These areas are determined using population, poverty, and unemployment data. Also included on the site are links to organizations funded by the program.

Health Care

Health Care for the Homeless Information and Resource Center

<http://www.prainc.com/hch/index.html>

This group is dedicated to supporting the delivery of health care to the homeless. They do this by providing services and information to individuals and groups. The site contains a searchable database of information on homelessness and the provision of health services, as well as facts on the organization and its work.

The National Health Care for the Homeless Council

<http://www.nhchc.org>

Out of the Health Care for the Homeless Clinician's Network in Nashville, Tennessee, comes this site devoted to combating and preventing homelessness. Accepting the fact that locating health care for the homeless is an unbelievably difficult task, these physicians place clinics in shelters and soup kitchens in hopes of providing the necessary medical attention these individuals need.

Home Ownership

The Fannie Mae Foundation

<http://www.fanniemaefoundation.org>

Addressing homeownership issues and providing information related to locating affordable housing, the Fannie Mae Foundation in Washington, DC, hunts opportunities to build communities across the

United States. This site reaches out to low-income families and bestows countless grants to nonprofit organizations assisting the homeless.

Habitat for Humanity
<http://www.habitat.org>

This massive site traces the history of Habitat for Humanity, one of the first organizations dedicated to providing housing for the homeless. Also included are true stories, as well as many opportunities to get involved.

The National Council of La Raza (NCLR)
<http://www.nclr.org>

Based in Washington, DC, the NCLR seeks to improve living conditions and reduce poverty and discrimination for Hispanic Americans. This site includes information on Home-to-Own programs, workforce issues, and most importantly, the Raza Development Fund which provides assistance to Hispanic families via community development.

Housing and Shelter

The Enterprise Foundation
<http://www.enterprisefoundation.org>

Spread amongst twelve states and the District of Columbia, this foundation is dedicated to distressed communities and neighborhood transition. Helping achieve this goal through housing development targeted at at-risk areas, the Enterprise Foundation is a well-funded and well-connected organization whose site is worthy of a visit.

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HomeAid America
<http://www.homeaid.org/index1.html>

Maintained by the nation's largest provider of shelter beds for the temporarily homeless, the HomeAid site supplies information about its program of building and renovating homeless shelters. Though initially started in California, HomeAid is expanding nationwide, with new chapters opening in Arizona, Illinois, Colorado, and Texas and eleven more chapters in nine new states slated to open in the near future.

The Housing Assistance Council (HAC)
<http://www.ruralhome.org>

The HAC is a nonprofit organization headquartered in Washington, DC, which seeks to provide accessible, affordable housing to low-income individuals in rural areas of the country.

The National Housing Conference (NHC)
<http://www.nhc.org>

Located in DC, the NHC is a coalition of housing leaders devoted to providing all individuals with affordable, yet dignified housing. The NHC also serves as the nucleus of numerous task forces such as those formulated to benefit single families, rural preservation, and assisted living.

The National Housing and Rehabilitation Association
<http://www.housingonline.com>

This DC site promotes, among other things, cooperation between professionals and low-income residents in affordable multi-family housing units. The site also provides nuggets of information about tax credits and assisted housing.

National Low Income Housing Coalition (NLIHC)

<http://www.nlihc.org>

Another DC-based organization, the NLIHC sponsors many items of interest, namely its analysis of rental housing, entitled Out of Reach. The site also contains an advocate's guide to housing/community development and a link devoted to political activism in the realm of housing issues.

Rural Development Internet Resources

<http://www.rurdev.usda.gov/other/hous.htm>

Created by the USDA, this site contains several options related to housing and housing issues. Included is information about several organizations devoted to helping rural individuals find affordable housing.

YouthBuild

<http://www.youthbuild.org/index.shtml>

Comprising both a comprehensive community development program and an alternative school, YouthBuild was begun in New York City but has since branched out to forty-three states. Participants in the YouthBuild program renovate rundown and abandoned buildings to help revitalize their communities.

LEGAL

American Bar Association Commission on Homelessness and Poverty

<http://www.abanet.org/homeless/home.html>

Based in Washington, DC, this branch of the ABA focuses on developing pro bono programs for homeless advocacy. Also included on this site is a list of links to sites intensively focused on homelessness.

The Center for Law and Social Policy (CLASP)

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COMMUNITY DEVELOPMENT

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targeted at at-risk areas, the Enterprise Foundation is a well-funded and well-connected organization whose site is worthy of a visit.

Local Initiatives Support Corporation (LISC)

<http://www.liscnet.org>

With branches in over twenty states, the LISC runs eleven national programs and countless local ones focused on assisting community development corporations to achieve housing for low-income individuals.

The National Council of La Raza (NCLR)

<http://www.nclr.org>

Based in Washington, DC, the NCLR seeks to improve living conditions and reduce poverty and discrimination for Hispanic Americans. This site includes information on Home-to-Own programs, workforce issues, and most importantly, the Raza Development Fund which provides assistance to Hispanic families via community development.

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GOVERNMENT PROGRAMS

The Emergency Food and Shelter National Board Program

<http://www.efsp.unitedway.org>

Chaired by a representative of the Federal Emergency Management Agency, the Emergency Food and Shelter National Board Program provides financial assistance to eligible areas of the country. These areas are determined using population, poverty, and unemployment data. Also included on the site are links to organizations funded by the program.

Homelessness Programs in the Department of Health and Human Services

<http://aspe.os.dhhs.gov/progsys/homeless/programs.htm>

This site contains information on programs specifically directed towards homeless individuals. Contact numbers as well as links to more information are provided, in addition to descriptions of each of the fourteen programs.

Housing and Urban Development Bibliographic Database

<http://huduser.org/bibliodb/pdrbibdb.html>

A branch of the HUD website, this database includes information on over eight thousand articles, books, and fact sheets pertaining to homelessness. Accessed by Boolean search strings similar to those used on Westlaw, this database unearths a wealth of resources; however, these sources may be too thick to wade through if in need of an immediate answer to a query.

National Housing Trust (NHT)

<http://www.nhtinc.org>

A nonprofit organization "formed to preserve and improve federally assisted housing," the NHT works on policy development and training of assistants. Additionally, the DC-based organization serves as a clearinghouse for HUD properties.

The Public Housing Authorities Directors' Association (PHADA)

<http://www.phada.org>

This “no-nonsense” site is devoted solely to the Public Housing Association. Links include a public housing assessment system, a resource library, and updates on legislation pertinent to public housing issues.

Rural Development Internet Resources

<http://www.rurdev.usda.gov/other/hous.htm>

Created by the USDA, this site contains several options related to housing and housing issues. Included is information about several organizations devoted to helping rural individuals find affordable housing.

SAMHSA (Substance Abuse and Mental Health Services Administration)

<http://www.samhsa.gov>

This federal organization aimed at improving prevention, treatment, and rehabilitation services may provide valuable information to those interested in the co-mingling of addictions and mental illness with homelessness.

United States Department of Housing and Urban Development

<http://www.hud.gov/hmless.html>

This government-maintained site, though a bit limited, presents information on homeless assistance agencies. In addition to homelessness, topics include hunger, health care, and veterans, along with links to other national programs devoted to ending homelessness.

SPECIAL ISSUES

Elderly

American Association of Homes and Services for the Aging

<http://www.aahsa.org/index.shtml>

This association, based in New York, represents nonprofit organizations focused primarily on housing issues related to the elderly. This site dispatches information central to caring for the elderly, including long-term or chronic care needs, Medicare needs, and treatment with dignity.

Mental Illness and Substance Abuse

National Resource Center on Homelessness and Mental Illness

<http://www.prainc.com/nrc/index.html>

This site contains information about the services provided by the Center, including their trainings and workshops to help educate people about homelessness and mental illness. It also has an extensive resource database and referral lists, all of which are designed to help those working with this subsection of the homeless population.

SAMHSA (Substance Abuse and Mental Health Services Administration)

<http://www.samhsa.gov>

This federal organization aimed at improving prevention, treatment, and rehabilitation services may provide valuable information to those interested in the co-mingling of addictions and mental illness with homelessness.

Minorities

ACORN (Association of Community Organizations for Reform Now)

<http://www.acorn.org>

Born in Little Rock, Arkansas, but now located in cities across the country, ACORN seeks to “organize the unorganized.” Politically active as an organization, ACORN focuses primarily on issues

that are central to our nation's minorities such as HUD reform and the creation of homesteading programs which turn vacant houses into low-income residences.

The National American Indian Housing Council

<http://naihc.indian.com>

With a few links still under construction, this site out of DC is devoted solely to Native American housing issues. In addition to concentrating on sanitary and affordable housing for American Indians, this organization also endeavors to maintain tribal unity and culture.

The National Council of La Raza (NCLR)

<http://www.nclr.org>

Based in Washington, DC, the NCLR seeks to improve living conditions and reduce poverty and discrimination for Hispanic Americans. This site includes information on Home-to-Own programs, workforce issues, and most importantly, the Raza Development Fund which provides assistance to Hispanic families via community development.

Veterans

The National Coalition for Homeless Veterans (NCHV)

<http://www.nchv.org>

Seeking to "work its way out of business," the NCHV aims to secure housing for the more than 275,000 homeless veterans in the United States. In addition to government information pertaining to the Veteran's Administration, the site provides information on the unique StandDown program which both assists homeless veterans and raises awareness for the cause.

Women

The McAuley Institute

<http://www.mcauley.org>

Maintained by the Sisters of Mercy of the Americas, the McAuley Institute is the only national housing organization specifically focused on women. The organization provides assistance, both technically and financially, to grassroots organizations addressing housing issues. This website provides both inspiration and ideas for helping those in need.

Youth and Children

National Center for Homeless Education at SERVE

<http://www.serve.org/nche>

This site, maintained by the University of North Carolina at Greensboro, is colorful and easy to navigate. Focusing on homeless youth and children, the site seeks to improve and ensure educational access. Related sources abound and the "Other Organizations" link connects one to an amazingly thorough list.

Stand Up Online

<http://www.standupforkids.org>

This volunteer organization out of San Diego centers around the rescue of homeless children. With outreach programs in eight states this site seeks to further its cause via shocking statistics and testimonials from homeless children served by the program.

YouthBuild

<http://www.youthbuild.org/index.shtml>

Comprising both a comprehensive community development program and an alternative school, YouthBuild was begun in New York City but has since branched out to forty-three states. Participants in the YouthBuild program renovate rundown and abandoned buildings to help revitalize their communities.

Life & Literature

This section contains sites with views about homelessness from those who are actually enduring it. These sites allow visitors to experience a slice of what real life is like for homeless individuals.

12 Days of Homelessness

<http://www.urm.com/12daysofhomelessness>

This interesting and informative report uploaded by the Union Rescue Mission in Los Angeles chronicles twelve distinct aspects of homelessness. Included in the interactive report are sections on women (the “invisible” homeless), legal aid, and ministry.

54 Ways You Can Help the Homeless

<http://www.earthsystems.org/ways>

Rabbi Charles A. Kroloff’s hyperbook contains nine chapters in addition to the fifty-four ways mentioned in the title. Published in 1993, this book, whose title number is a multiple of eighteen, which represents “life” in the Jewish tradition, can be downloaded or printed straight from the computer.

Fund-Raising.com

<http://www.fund-raising.com/frindex.html>

Though not directly related to homelessness, this site provides an infinite number of fund-raising suggestions. All are feasible, diverse, creative, and proven successful. The creativity of this site may help catapult people off the fence and into the realm of true activism.

The Gutter Tribe

<http://www.auschron.com/gallery>

Chronicling the lives of the young homeless in Austin, Texas, this site provides remarkable, if troubling, pictures. Expounding on Austin’s various “tribes” of homeless youth, the accompanying article provides a new twist on this social problem which has invaded nearly every urban area in our country.

The Homeless in America: A Growing Concern

<http://www.geocities.com/heartland/shores/5053>

Based in California, this site contains abundant photographs coupled with stark commentary designed to inform the reader about foul practices related to dealing with the homeless. In addition to textual snippets following each picture (complete with follow-up links), there is also a bulletin board for posting questions, answers, or comments.

The North American Street Newspaper Association

<http://www.speakeasy.org/nasna>

This site catalogs the group’s publications which seek to inform the public about poverty issues, as well as provide employment for low-income and homeless individuals. Often supplying an outlet for the opinions of homeless and formerly homeless individuals, these newspapers include local news, features, editorials, and creative venues all focused on the plight of the homeless.

Real Change: Seattle’s Homeless Newspaper

<http://www.realchangenews.org>

A media smorgasbord, this site, maintained in Seattle, features real time movies, photos, and a simulation to help show the true plight of the homeless. The “game” of Hobson’s Choice alone is worth a visit to the site.

Tedrico’s Page

<http://4homeless.hypermart.net>

Claiming to be “your informative homelessness resource link,” Tedrico’s Page, out of California, is snappy and fast moving. Interwoven amongst the many links is a scrolling chat-box displaying real-time comments. The site additionally has survival resources, a language translator, and a people locator.

State and Local Websites

Divided by state, these sites focus solely on the particular location in which they are physically established.

ALABAMA

Alabama Arise

<http://www.alarise.org>

Calling itself the “Conscience of Alabama,” this group, established in 1988, deals with all issues related to poverty in the state. The website contains information about the group, as well as the changes it has helped to bring about for those who suffer from poverty in Alabama.

ALASKA

Alaska Coalition on Housing and Homelessness

<http://www.akcoalition.com>

This group was formed in 1989 and is committed to alleviating homelessness in Alaska and helping its citizens to obtain affordable housing. The site is very limited, but all of the minutes from the group’s meetings can be accessed, as well as a link to a list of helpful agencies in Alaska.

ARIZONA

Save the Family

<http://savethefamily.org>

Encompassing seventy-three transitional housing units in several Arizona cities, Save the Family insists “it’s meant to be a way out, not just a handout.” Taking referrals from across the state, the organization strives to keep families together and under a roof.

ARKANSAS

Arkansas Low Income Housing Coalition (ALIHC)

<http://www.aristotle.net/alihc>

The ALIHC’s mission is to obtain “decent, safe, sanitary, and affordable housing” for all Arkansas residents. The site contains lists of various programs available to those in need, as well as an overview of innovative programs helping to provide housing for those of low-income in Arkansas.

CALIFORNIA

HomeBase: The Center for Common Concerns

<http://www.homebaseccc.org>

Seeking ways of ending homelessness, this San Francisco firm started in the late 1980s establishes community service networks available to homeless individuals. Claiming to serve as a national model of solutions, HomeBase’s website contains policy reports and programs for interested individuals.

The National Student Campaign Against Hunger and Homelessness (NSCAHH)

<http://www.pirg.org/nscahh>

This organization with its homebase in Los Angeles seeks to familiarize students about the needs of our nation’s homeless. Additionally, this site provides information on the more than six hundred collegiate chapters of the NSCAHH.

Shelter Partnership, Inc.

<http://www.shelterpartnership.org/programs.htm>

At the heart of this L.A.-based program is an agency developing resources and housing for the homeless of Los Angeles. Also worthy of note is the library on this site which houses over 1,200 documents on homelessness and housing.

The St. Vincent de Paul Village

<http://www.svdpv.org>

Established in 1950, this organization “considered to be America’s #1 rehabilitation center for the homeless,” utilizes many interrelated programs to achieve its goals. Headquartered in San Diego, but

with branches elsewhere in California, this Catholic organization's facilities include six separate living villages.

The Union Rescue Mission (URM)

<http://www.urm.com/newlook/new2.html>

Began in 1891, URM, out of Los Angeles, is a nonprofit organization "dedicated to serving the poor and the homeless." This site contains many forms of assistance from legal services to health care.

COLORADO

Colorado Coalition for the Homeless

<http://www.coloradocoalition.org>

This organization sponsors a number of programs that are designed to create a lasting solution to the problem of homelessness. Information about the programs, the organization, and homelessness in Colorado can all be found on this site.

CONNECTICUT

Connecticut Coalition to End Homelessness

<http://www.cceh.org>

This coalition works statewide to provide emergency shelter, as well as transitional and permanent supportive housing. The site contains information about the current state of homelessness in Connecticut. It also has an extensive bank of material relating to new legislation in Connecticut which may affect the homeless in that state.

DELAWARE

Delaware Housing Coalition

<http://www.housingforall.org>

This site is bilingual (English and Spanish) and provides a great deal of information. It contains data on the organization, whose mission is to provide "safe, decent, and affordable housing" throughout Delaware. It also has general information about homelessness in Delaware and complete current and back issues of The Housing Journal, the group's publication.

DISTRICT OF COLUMBIA

Alliance for Stray Animals and People (ASAP)

<http://www.4asap.org>

Offering help to both animals and people, this unusual organization out of Washington, DC, works to help homeless people and their companion animals. When human friends are hard to come by, many homeless individuals turn to stray animals for companionship. Providing veterinary care for animals and food, shelter, and postal services for the homeless, this alliance is most creative in its efforts to solve America's homeless problem.

Christ House: A Medical Facility for the Homeless

<http://www.christhouse.org>

Christ House provides twenty-four hour nursing, nutritional, and pastoral care to Washington, DC's homeless population. Also provided are patient activities, social services, and a permanent housing program called Kairos House for former Christ House patients.

The Community for Creative Non-Violence

<http://users.erols.com/ccnv>

Though a limited site that is somewhat narrow in scope, the Community for Creative Non-Violence maintains the largest full service homeless shelter in America. The site provides inspiration, as well as ideas about running and maintaining a shelter for over 1,300 homeless individuals.

Help the Homeless

<http://www.helpthehomelessdc.org>

Dedicated to raising awareness of DC's homeless problem and to help homeless service providers in the District, this organization has an informative website. It provides visitors with a number of

opportunities to participate in fund-raising events, as well as offering links to other programs and information about homelessness in DC, Maryland, and Virginia.

FLORIDA

Florida Impact

<http://www.flimpact.org/flimpact>

This multi-denominational organization is dedicated to helping solve a range of problems surrounding poverty in Florida. Among its many programs are an Emergency Family Housing Assistance Program for homeless families, school breakfast programs, and a program to work towards the elimination of laws which discriminate against farm workers. The site provides even more resources for those willing to join the organization.

GEORGIA

The Mad Housers

<http://madhousers.photobooks.com/index.shtml>

Housed in Atlanta, this small organization provides shelter to individuals by building non-permanent huts to serve as a roof over one's head until he can get back on his feet again. In addition to providing homeless individuals with a shelter of their own, this group also helps them develop skills and knowledge pertaining to housing and shelter.

Union Mission, Inc.

<http://unionmission.org>

Located in Savannah, Georgia, this is an emergency shelter which also provides a number of programs for the homeless community. It works to find permanent placements for those who use the shelter and last year it succeeded in placing 66% of those in its program in permanent housing.

HAWAII

Housing and Community Development Corporation of Hawaii

<http://www.hcdch.state.hi.us/homeless.html>

This website contains information on homeless programs available on the four largest Hawaiian islands. It has a very helpful table of service providers and their contact information, as well as information on homelessness in Hawaii.

IDAHO

Community House, Inc.

<http://www.cinemarquee.com/cine/commhse.htm>

Community House strives to help homeless individuals and families to live independently. The group runs an emergency shelter, transitional housing program, child care facility, and single room occupancy housing. Their focus is on providing a range of support services to those in need. The site describes Community House's programs and contains a "wish list" of needed items and services.

ILLINOIS

Community Emergency Shelter Organization (CESO)

<http://www.cl.ais.net/ceso/Index.html>

This site proclaims itself to be a management resource for homeless service providers. The CESO operates three different program divisions, all of which aid homeless individuals in metro Chicago. These include the Partnership to End Homelessness, Management Supportive Services, and the Homeless Helpline. The site describes each program in detail and provides visitors with an extensive list of links to other homeless organizations and information on the internet.

Illinois Coalition to End Homelessness (ICH)

<http://www.illinoiscoalition.org>

ICH is working on a statewide level to eliminate homelessness through "systemic reform." The site chronicles the group's accomplishments, provides visitors with printable documents ICH has produced, and gives a plethora of facts on homelessness in Illinois.

Interfaith Council for the Homeless

<http://home.sprynet.com/~infaith>

From Chicago hails this site endeavoring to “forge a united response in Chicago through education, support and service” to help the homeless. Organized in 1984, the Interfaith Council for the Homeless has many effective programs such as its shelter partnering program and an education and advocacy program.

INDIANA

Indiana Coalition on Housing and Homeless Issues (ICHHI)

<http://www.angelfire.com/in/ichhi>

This is a state organization devoted to dealing with homelessness and affordable housing issues. The site contains a number of items which would be of interest to advocates, including a landlord tenant form and several publications produced by the ICHHI.

IOWA

The Center for Homeless Education and Information

<http://www.wmpenn.edu/PennWeb/LTP/LTP2.html>

Based at the William Penn College in Iowa, this site provides a discussion board on homelessness in Iowa, as well as press releases, advocacy programs for homeless children, and related educational materials. Though not as expansive as other university-based websites, the William Penn site does contain links to all homeless information in Iowa, including a directory of shelter providers and official state contacts.

KANSAS

No sites were located.

KENTUCKY

The Coalition for the Homeless

<http://www.homelesscoal.org>

This site allows visitors to check on the availability of emergency beds and transitional units in a number of shelters and programs throughout the state of Kentucky. It also contains facts about poverty and homelessness in the state, lists the services the Coalition provides, and discusses the results of three surveys done by the group concerning homelessness among women, men, and families.

LOUISIANA

Bridge House

<http://www.bridgehouse.org>

This organization’s goal is to help homeless men, women, and adolescents who are substance-dependant break the cycle of addiction and find housing. The site contains contact information for the group; facts about their services, which include an in-house treatment program and an adolescent drop-in program; and the monthly newsletter they produce.

Recovery Works, Inc.

<http://www.acadiacom.net/recovery/homeless.html>

“Helping the homeless find the way home,” this organization features a four-step program encompassing stabilization, responsibility, restoration, and independent living. Based out of New Orleans, this site also has contacts to assist one in starting a Recovery Works program of one’s own.

MAINE

Mid-Maine Homeless Shelter (MMHS)

<http://members.mint.net/judid/mmhs/welcome.html>

This is a shelter which provides emergency food and shelter to the homeless of mid-Maine. The site has a lot of information on the plight of the homeless in Maine, events at the shelter, what the shelter

does, and their newsletter on-line. It also outlines an in-depth Homeless Prevention Program to try and prevent individuals from ever needing the shelter's services.

MARYLAND

The Center for Poverty Solutions

<http://www.ctrforpovertysolutions.org>

This nonprofit organization devoted to ending the causes of poverty assists those in the Baltimore area. Explaining the Action for the Homeless program, in addition to nearly twenty others, this site presents information and solicits volunteers.

Penn-Mar Organization, Inc.

<http://www.penn-mar.org>

This nonprofit agency, based in Pennsylvania and Maryland, offers support services to those with human service needs. Including information on residential assistance, in-home support, and supported employment, this site could be used as a springboard for ideas to implement in other areas of the country.

MASSACHUSETTS

Rosie's Place

<http://www.rosies.org>

Calling itself "a solution, not a shelter," Rosie's Place explores way to assist poor and homeless women. Begun by a Bostonian over twenty-five years ago, this project has helped thousands of women who are dealing with traumatic experiences put their lives back together.

MICHIGAN

Wellness House of Michigan

<http://members.aol.com/DorisRD/wellness.htm>

The Wellness House is dedicated to preventing and ending homelessness for HIV/AIDS patients. The organization runs two houses and provides food for homeless individuals. It also focuses on providing needed medical care to fit the particular needs of HIV/AIDS patients. The site contains a wealth of information on nutritional and food needs and has links to other resources to help visitors better understand homelessness and HIV/AIDS.

MINNESOTA

Surplus Services

<http://www.mmd.admin.state.mn.us/mn03002.htm>

Responsible for the redistribution of furniture, medical supplies, clothing, and many other items, Surplus Services takes unneeded state and federal products in Minnesota and provides them to needy groups. Centered in Minnesota, this organization strives to put all of its state's resources to use in a "Robin Hoodian" way, receiving from the rich and giving to the poor.

MISSISSIPPI

The Seashore Mission

http://www.mississippi-umc.org/seashore_mission_biloxi.htm

The Seashore Mission, based out of Biloxi, is funded by the United Methodist Church. It provides a place for homeless men and women to receive basic necessities and services, as well as social services like counseling, health care, and support groups. The site chronicles the Mission's work and provides all the necessary information about where they are located and when they are open.

MISSOURI

Christian Service Center

<http://www.cscstl.org>

The largest twenty-four hour shelter for families in St. Louis, the Christian Service Center provides not only beds, but food, laundry facilities and, skills training. Individuals are welcome to stay up to 120 days, during which they attend living skills classes and have access to job and housing referrals.

City Union Mission

<http://cumission.org>

The Mission, based out of Kansas City, runs a large shelter which offers services that are primarily emergency in nature, but also some that are more long-term, like stabilization programs and programs to help homeless individuals into transitional housing. This group has a holistic approach towards homelessness. The site details all of the Mission's programs and how people can get involved.

MONTANA

Montana People's Action (MPA)

<http://www.mtpaction.org>

This is a group made up of low and moderate income Montana residents working for better wages, healthcare, and housing. They have projects to build affordable housing for low-income families, along with many others. The site contains links to other groups in Montana and the United States which work toward similar goals.

NEBRASKA

People's City Mission

<http://www.city-mission-lincoln.org>

Serving as a "channel between the Christian community and those who are less fortunate," the People's City Mission out of Lincoln works to help the homeless in Nebraska. Included here are ideas about how to make a difference, as well as enlightening facts about the diversity of the homeless population.

NEVADA

Volunteers of America Northern Nevada

<http://www.voa-nevada.org/index.htm>

This group provides several different housing programs for the citizens of Nevada, including a children's emergency shelter program for children removed from their homes because of abuse, transitional housing for homeless single women and their children, and a program to provide affordable housing and services to the elderly.

NEW HAMPSHIRE

The Friends Program

<http://www.nhhelpline.org/agencies/friends.html>

This nonprofit organization, an agency of the United Way, works to implement community-based programs. These include, among others, mentoring programs and emergency housing for homeless families. The site explains the full-range of the Friends' Program services and provides links to other agencies and a helpline for New Hampshire.

NEW JERSEY

Housing and Community Development Network of New Jersey

<http://www.ahnnj.org>

This is a conglomeration of over 250 affordable housing and community development corporations, individuals, and organizations committed to creating affordable low-income housing opportunities. The site contains information about supportive services, readable/printable publications, and information on new "hot" topics.

NEW MEXICO

Albuquerque: Help for the Homeless, Inc.

<http://home.flash.net/~ahhinc>

Street News, a newspaper whose proceeds go to fund Help for the Homeless's efforts, is one of the group's two main projects. The paper provides homeless and at-risk people with a way of earning income by selling the paper. More recently the group started its second project, a thrift store, which provides both clothing and training in the area of retail marketing to homeless individuals.

NEW YORK

Brothers of the Poor

<http://hometown.aol.com/brotherofthepoor/myhomepage/profile.html>

A “non-profit, semi-religious brotherhood of Catholic men” devoted to helping New York City’s homeless and needy, this organization offers a multitude of services from hygiene (such as haircuts and shaves) to laundry services and basic education. This site is chock-full of information and ideas pertaining to helping the inner-city homeless.

Coalition for the Homeless

<http://www.coalitionforhomeless.org/who.htm>

Created by an organization in New York City, this site presents information on several programs available in the NYC area. Most notable are the summer sleep-away camp for homeless children, a community voice mail program, and the Junior Coalition which seeks to get adolescents involved in the search for a solution to homelessness.

The Doe Fund, Inc.

<http://www.doe.org>

A New York based nonprofit organization centered on helping formerly homeless men and women, the Doe Fund is “inspired by the notion that helping the homeless is more than just giving them a handout.” The site houses extensive information about its programs, most specifically its program “Ready, Willing, and Able” which “targets the segment of the homeless population considered the hardest to serve: single, able-bodied adults.”

The Muslim Women’s Help Network

<http://www.muslimonline.com/mwhn>

Based in inner-city New York, this organization longs to enable families to overcome such hardships as homelessness and extreme poverty. Utilizing the teachings of Islam as a guiding force, this organization helps both Muslims and non-Muslims alike in their times of need.

The Partnership for the Homeless

<http://www.partnershipforhomeless.org>

A coalition of various faith communities in New York City, the Partnership for the Homeless maintains the nation’s largest number of private shelters. This site contains information regarding the organization’s six separate programs, encompassing a wide variety of needs such as First Team, a mobile outreach program, and Peter’s Place, a program designed to assist the homeless elderly.

NORTH CAROLINA

McDowell Mission Ministries

<http://www.mcdowellmission.com>

This organization runs a number of shelters for men, women, and children in McDowell County, North Carolina. Residents of the shelters are provided with shelter, food, clothing, job assistance, and financial counseling and help. The site details the programs the organization provides, including one which helps shelter residents to earn points to establish longer term residency in the Mission’s double wide unit.

NORTH DAKOTA

No sites were located.

OHIO

Caracole, Inc.

<http://www.caracole.org>

Named after the French word describing an encircling shell, Caracole serves as a refuge and shelter for those homeless individuals in Ohio suffering with HIV/AIDS. Based in Cincinnati, Caracole offers a subsidized rental program, a recovery community, and SOPHIA, the social services online personal helper and information assistant.

Care Alliance

<http://www.carealliance.org>

This organization, an extension of the United Way in Cleveland, seeks to improve health care for the homeless. Providing numerous outlets for the homeless, this site provides more textual information than related interaction on the web.

OKLAHOMA**Transition House**

<http://www.telepath.com/thouse>

Transition House's goal is to provide transitional housing and supportive care to those individuals suffering from mental illness, who without the group's help would be homeless or at-risk for becoming homeless. The group wishes to help their clients become self-sufficient and emotionally independent. The site has a wide range of information about the organization, including an in-depth treatment of the programs they sponsor. It also has more general information on mental wellness and the criteria an individual must meet to be eligible for the House's programs.

OREGON**Oregon Coalition on Housing and Homelessness**

<http://www.systemsolver.com/ochh/>

The Coalition is working to eliminate homelessness in the state of Oregon by providing secure and accessible shelter and affordable housing, and by setting up systems to address the social problems underlying homelessness like domestic violence, mental illness, and substance abuse. The site contains information on the organization and links to homeless statistics.

PENNSYLVANIA**Operation Safety Net**

<http://trfn.clpgh.org/safenet/pages/what.htm>

This organization out of Pittsburgh seeks to assist the area's homeless through several venues such as the Street Outreach program and Street Medicine "clerkships" for medical students. Operation Safety Net, up and running for eight years, focuses primarily on unsheltered individuals and their health needs.

Penn-Mar Organization, Inc.

<http://www.penn-mar.org>

This nonprofit agency, based in Pennsylvania and Maryland, offers support services to those with human service needs. Including information on residential assistance, in-home support, and supported employment, this site could be used as a springboard for ideas to implement in other areas of the country.

Project H.O.M.E.

<http://www.projecthome.net>

Project H.O.M.E. (housing, opportunities, medical care, education) focuses on chronically homeless Philadelphians and sources of assistance for them. Of particular interest is the information on Project H.O.M.E.'s coupon book program which allows one to give a meal ticket to a homeless individual instead of money.

RHODE ISLAND**The Key: A Resource for Rhode Islanders**

<http://www.the-key.org>

Operated by the group People to End Homelessness, this site contains unique links to such items as "Off the Beaten Path," which names various local shelters and soup kitchens, and a Street Life Photo Gallery, housing pictures taken by the homeless of Providence. Don't let the tiny size of Rhode Island

negate this site's strength; Providence's close proximity to such major areas as Boston assures the state has its share of homeless individuals.

SOUTH CAROLINA

Crisis Ministries

<http://members.carol.net/~umcadsn/crisis-prov.htm>

This is an interdenominational organization set up to provide emergency services to those in need. The group also runs Camp Providence, a summer camp for kids who would otherwise not be able to have the chance to attend camp. There is definitely a Christian theme running through this organization and its website, but the group says its programs are meant for those of any religious persuasion.

SOUTH DAKOTA

The Seventh Circle

<http://www.geocities.com/Heartland/Pointe/7293/>

The Seventh Circle is a not-for-profit based out of Rapid City that provides affordable housing to the homeless to try and restore their dignity and give them a foundation rooted in traditional Native American culture. The program is community-based and aims to find its clients not only housing, but the confidence to learn the skills necessary to contribute as a member of the larger community.

TENNESSEE

Partners for the Homeless

<http://www.msopath.org>

Partners strives to "serve as a catalyst in promoting a community public/private partnership to insure effective services for the homeless." The site contains a lot of information about the homeless situation in Memphis/Shelby County, Tennessee. It also has a page where one can search for a shelter in the Memphis area by narrowing the search to a particular category of need or individual in need of help.

TEXAS

The Texas Homeless Network

<http://www.thn.org>

Though created in Texas, this site contains links and information on homelessness at a national level. More useful, however, is the extensive list of Texan contacts and shelters for the state's ten regions.

UTAH

Mamma's Hands

<http://www.mammashands.org>

This nonprofit organization out of Seattle focuses its energy on reuniting the homeless with their families. Additionally, the organization's Houses of Hope, in both Seattle and Salt Lake City, assist women and children in crisis.

Wasatch Homeless Health Care Program/Fourth Street Clinic

<http://www.inconnect.com/~homeless>

This group provides comprehensive health care to the homeless of Salt Lake City. They also work through the University of Utah to train future medical professionals in homeless health care. The site contains a number of articles on homeless health services and general information about homelessness in Salt Lake City.

VERMONT

Committee on Temporary Shelter

<http://www.cotsonline.org>

This site is designed to be used both by those who wish to aid the organization's efforts and by the homeless seeking their services. The group provides "case management, vocational training, immediate referrals for medical and mental health care, outreach to the street and encampments, and transitional and permanent housing." They seek both to help in emergency situations and to find a

lasting solution to homelessness and poverty. The site has a wealth of information about homelessness and the program.

VIRGINIA

A Society Without a Name for People Without a Home

http://aswan_society.tripod.com

This site, based out of Virginia, is snappy and creative, but narrow in scope. Centered on the state of Virginia, the site includes newsletters, reactions to changes in public policies, and limited links to related topics. Though a bit outdated, it may be quite valuable to Virginians and those residing in the vicinity.

WASHINGTON (state)

Crisis Clinic

<http://www.crisisclinic.org>

Since 1964 the Crisis Clinic has served the needs of the residents of King County, Washington. It is made up of a number of different hotlines, tailored to particular issues and people. The Clinic also offers services for the callers and helps to connect them with the care they need. The Crisis Clinic receives a number of calls from the homeless, and has on hand information and phone numbers of service providers to meet the needs of homeless callers. The site describes each of the hotlines and gives their phone numbers.

Mamma's Hands

<http://www.mammashands.org>

This nonprofit organization out of Seattle focuses its energy on reuniting the homeless with their families. Additionally, the organization's Houses of Hope, in both Seattle and Salt Lake City, assist women and children in crisis.

WASHINGTON, DC

See District of Columbia.

WEST VIRGINIA

The Clarksburg Mission, Inc.

<http://clarksburgmission.inweb.com>

For twenty-nine years this group has been feeding, sheltering, and clothing the poor and homeless of Clarksburg, West Virginia. They serve three meals a day Monday through Saturday and two meals on Sunday. Though the site is very limited, it does give enough basic information about the shelter to get one there to access the services.

WISCONSIN

Campus Homeless Project

<http://www.wisc.edu/homeless>

This site is sponsored by the University of Wisconsin at Madison. The project was formed in 1995 to address issues of safety and the needs of homeless individuals on the campus in Madison. The site contains interviews with homeless individuals on campus, links to other sites pertaining to homelessness, a form to submit questions, information about the homeless situation on campus, and a referral form for those in need of help.

Crossroads/ The Next Step

<http://gbit.com/crossroads>

This is a shelter in Green Bay, Wisconsin. The site contains information about the group and quite a few back issues of its newsletter. There are also links to several sites, both national and in-state, to help in locating resources for the homeless.

WYOMING

Wyoming Coalition for the Homeless

<http://www.vcn.com/~wch/index.html>

This site, maintained by the Wyoming Coalition for the Homeless, features a plethora of information to assist and empower the homeless via non-violent methods of voicing their views. Over thirty additional links address such issues as Native American homeless individuals, art and writing, and the innovative Sleeping Bag Project.

ABA Activities, Policies & Publications

In 1986 the ABA resolved to “encourage public and private initiatives to increase the supply of habitable low-cost housing in the United States; and ... encourage lawyers to assist the homeless and to help implement this recommendation.” The Commission on Homelessness and Poverty educates lawyers about homelessness, trains them in relevant areas, and helps bar associations create programs where lawyers, law students and law firms can donate legal assistance. There are now about 80 programs offering pro bono legal help directly to homeless clients or donating business or real estate law services to organizations developing low-income housing. Nationwide, more than 5,000 lawyers and law students volunteer through these programs.

The ABA has policy protecting the due process rights of public housing tenants threatened with eviction (August 1990). Other policy supports community reinvestment programs in financial institutions and placing funds in banks with outstanding or satisfactory programs (February 1991). The ABA adopted policy supporting the Social Security Outreach Act (August 1991), which requires SSA to go to shelters and soup kitchens and help eligible homeless people apply for disability benefits. In 1992 the ABA adopted policy opposing cuts in welfare payments to poor people and any linkage of public assistance to needy persons which infringe upon the right to travel. In 1993 the ABA enunciated its support of efforts that would ensure the participation of homeless people in the electoral process. The recommendation stated that laws, regulations, and policies should not hinder or prevent registration and voting by homeless persons or those residing in non-traditional abodes who are otherwise qualified to vote.

In August 1994 the ABA adopted policy supporting provision of free legal representation to low-income tenants and homeowners facing eviction. It also urged the creation of programs to give poor families information about social and financial resources available to them to prevent eviction and, ultimately, homelessness.

In 1995 the ABA adopted policy that encourages development of creative and comprehensive measures to address homelessness by eliminating illegal residential segregation, increasing the availability of affordable transitional housing, improving the accessibility of such housing to employment, schools, transportation and human services, and building affordable housing in integrated communities through measures such as density bonuses and incentive zoning, reaffirming in principle policy adopted in 1972.

In 1996 the ABA adopted policy that supports legislative and administrative actions to preserve the earned income tax credit.

In 1998 the ABA adopted policy that recommends that all jurisdictions provide adequate resources to ensure representation by counsel for indigent defendants, at their initial judicial appearance where bail is set. In October 1998, the ABA filed an *amicus curiae* brief in *Anderson v. Roe*, a case before the U.S. Supreme Court, which involved a constitutional challenge to California’s limiting the welfare benefits available to new California residents during their first year of residency in the state. On May 17, 1999, the Supreme Court ruled in favor of the position taken by the ABA.

At the 1999 Annual Meeting, the ABA adopted policy that encourages support for utilizing various housing and economic development initiatives to promote self-reliance and sustainability in low- and moderate-income communities.

At the 2001 Annual Meeting, the ABA adopted policy that encourages support for legislation and initiatives to establish and support technology-based access to justice, including free and reduced cost legal services, self-help materials, and other legal resources. This policy

addresses the “digital divide” by calling for increased access to technology and technology skills for underserved communities. The ABA also adopted policy calling for due process protections for TANF recipients, particularly notice and an opportunity to be heard before the imposition of financial sanctions against families for noncompliance with program requirements. Finally, the ABA adopted policy supporting the amendment of Title IV-E of the Social Security Act to provide direct access to foster care and adoption services for Native American children.

The Commission has developed several resource books designed to help lawyers who represent homeless clients and their advocates. These publications and films target issues that either affect homeless people or prevent homelessness, and include a videotape series devoted to the production of decent low-income housing, and manuals on microenterprise development, that is, the lawyer’s role in representing very small businesses or the nonprofit organizations that offer technical and financial assistance to microentrepreneurs. The Commission has also written a book on the Community Reinvestment Act, federal law that seeks to ensure that low-income and minority borrowers have fair access to home mortgages and other credit programs. In May 1998 the Commission published a second manual on microenterprise law, *A Legal Guide to Microenterprise Development: Battling Poverty through Self-Employment*.

Most recently, the Commission and the Steering Committee on the Unmet Legal Needs of Children released *NIMBY: A Primer for Lawyers and Advocates*. The primer is designed to help lawyers and advocates working with housing or social service organizations that seek to house organizations that provide services to the homeless or poor in residential neighborhoods.