Homelessness: An Introduction and Bibliography

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ON November 3, 1990, a glorious autumn day, the Villanova Law Review hosted its annual symposium. As we conferred ten miles from a major urban center in a pleasant and affluent suburb, voices reached us. Some were incoherent murmurings, some were articulate statements of anger and some were cries of pain. They came from men, women and many children who live on the streets of America.

Not since the Great Depression has our country faced the phenomenon of such widespread homelessness. In Philadelphia, the number of homeless people approaches thirteen thousand, and, in Center City Philadelphia, nearly two thousand. Nationally, it may exceed three million.

The homeless find homes. Some find refuge in alleyways, some on heating grates, some in temporary shelters and some in cardboard boxes bearing the printed warning: “fragile, do not

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3. See id. (estimating 1,753 homeless).

4. In 1987, the House Committee on Banking, Finance & Urban Affairs estimated that the number of homeless people ranged “up to 3 million.” HOUSE COMM. ON BANKING, FINANCE AND URBAN AFFAIRS, STEWART B. McGINN Homeless Assistance Act of 1987, H.R. REP. No. 100-10(I), 100th Cong., 1st Sess. 17, reprinted in 1987 U.S. CODE CONG. & ADMIN. NEWS 362, 363. Although different studies produces different estimates, all studies agree that the number is increasing. See SENATE COMM. ON LABOR AND HUMAN RESOURCES, HOMELESSNESS PREVENTION AND COMMUNITY REVITALIZATION ACT OF 1990, S. REP. No. 101-435, 101st Cong., 2d Sess. 3 (1990) [hereinafter S. REP. No. 101-435].

(1019)
Old stereotypes about the homeless no longer hold true. Only a few years ago, our image of the homeless was the white skid row derelict cradling a bottle of Thunderbird. Today, it also must include the elderly, the mentally disabled, racial and ethnic minorities and young, single men and women with minimal education and few job skills. Our image also must embrace the fastest growing segment of this population: families with children.

The homeless face more than economic poverty. They also must deal with spiritual poverty. In The Other America, the 1962 book that sparked the War on Poverty, Michael Harrington described the faces behind the statistics. In his introductory chapter, he offered an insight that applies to many of today's homeless. According to Harrington, the poor are no longer part of the larger society. Because they have lost their ties with ethnic culture, religion, clubs and unions, they see only one another. As a result, Harrington argues, their horizons have narrowed and are too narrow to include hope.

As lawyers, we often are uncomfortable with discussing such matters as spiritual poverty. Although we may care deeply, we create distance from the people involved and accept the risk of transforming ourselves into efficient, but detached advocates and social engineers. Yet, commitment cannot persist without passion and involvement.

The contributors to this symposium have maintained an active involvement with those at the margins of society. Norman Siegel is Executive Director of the New York Civil Liberties Union. He has served as counsel to many homeless people and groups and was co-counsel to the protagonist in the well-known Billie Boggs litigation. Edmund Ludwig is a United States District Court Judge for the Eastern District of Pennsylvania and has had primary responsibility for teaching the course in Law and
Mental Health at this law school. His exemplary record of public service includes helping to draft the Pennsylvania Mental Health Procedures Act and serving on the advisory task force proposing revisions of that legislation. Barbara Sard is Managing Attorney at Greater Boston Legal Services and Lecturer at the Harvard Law School. She has forged a distinguished career as a legal services attorney and now heads the Homelessness Unit of her program. Until recently, Ronald Slye was Assistant Clinical Professor at the Yale Law School and taught a class entitled “Workshop on Shelter for the Homeless.” He is co-editor of Homes for the Homeless: A Handbook for Action. The contributors thus bring to this symposium not only academic talent, but also practical experience and commitment.

Norman Siegel discusses the origins of the current crisis and the civil liberties issues that it has generated. As he notes, massive urban redevelopment and gentrification frequently reduce low-income housing and displace the poor. These trends also lead to reduced services, harassment and dramatic rent increases that force tenants to leave their homes. Siegel also explains how the growing housing shortages affects those with mental disabilities. In the mid 1960s and early 1970s states began deinstitutionalizing the mentally disabled. However, they failed to provide adequate services for the former patients. Many of these individuals lived in metropolitan areas in low-income housing. When development and gentrification displaced them, they had nowhere to go except the streets.

According to Siegel, municipalities often have tried to deal with the visibility of the homeless and public outrage with “quick fix” solutions. He offers illustrations from New York City’s experience.

To get the homeless off the streets, the city resorted to ploys that raised serious civil liberties issues. Tactics included committing the homeless as psychiatric patients and rounding them up to take them to shelters, hospitals and, very occasionally, their homes. To reduce their presence in train and subway stations, the transportation authorities banned begging and prohibited blocking the free movement of persons in a transportation facility, for example, by lying on a landing or occupying more than

one seat. To limit access to the parks, some have considered bans on begging and loitering as well as on sleeping and lying on park benches. Siegel examines the litigation that such actions have generated.

As for solutions, Siegel proposes six measures: create more affordable low income housing, rehabilitate existing structures to make them viable for housing, implement remedial measures to ameliorate the impact of urban redevelopment on the poor, create an experimental voluntary job training program for the homeless, establish a constitutional right to counsel in landlord-tenant eviction cases, and convey a positive message about the homeless.

Judge Edmund Ludwig discusses issues confronting a substantial segment of the homeless: the mentally ill. He recounts the role of anti-psychotic drugs, revised civil commitment laws and the economy in bringing about massive deinstitutionalization. He also discusses the increased use of expert testimony in commitment cases.

According to Ludwig, the history of deinstitutionalization begins in the 1950s when hospitals started employing pharmacotherapy. Hospitals found that they could make long-term institutionalization unnecessary for many patients by using Thorazine and other anti-psychotic drugs. At the same time, states and courts were revising civil commitment laws. The resulting statutes permit involuntarily institutionalizing only individuals who present a clear and present danger to themselves and others. They also impose other requirements that reduce the number of involuntarily committed patients. During the same era, the forces of inflation made deinstitutionalization very attractive to government officials worried about budgets.

As Ludwig points out, state officials promised to accompany deinstitutionalization with aftercare services in community programs. The funding, however, was never adequate. As a result, former long-term patients, usually indigent, found themselves in marginal living arrangements often with no support services.

Ludwig also discusses the increased use of testimony by mental health experts and the concomitant questioning of whether their testimony is reliable. He brings his analysis to bear on the Billie Boggs case, which dealt with whether a street person

should be committed. In that case, the hospital called four psychiatrists who testified that she was psychotic, and she called three psychiatrists who disagreed.15

With respect to assisting the mentally ill who are homeless, Ludwig advocates placing them in therapeutic families. Under this arrangement, they would live in clustered single-living arrangements with facilities typical of a boarding house.

Barbara Sard takes a pragmatic view and offers strategies for making existing subsidized housing available to the homeless. As she notes, homelessness exists because the supply of affordable housing is inadequate for people with very low incomes. While the long-term solution is to increase the supply of low cost housing and to increase the incomes of the homeless, attaining these goals requires hurdling substantial political and economic barriers. Sard, therefore, proposes a short-term solution: increase the proportion of existing subsidized housing that goes to the homeless and imminently homeless.

Sard outlines six strategies to maximize access to deeply subsidized housing: first, compel owners of subsidized housing and public housing authorities to use all available, contracted federally-funded subsidies; second, force them to follow federal regulations in giving preference to three types of applicants—those occupying substandard housing (including the homeless), those involuntarily displaced and those paying more than fifty percent of their income as rent; third, insist that they give top priority to homeless applicants; fourth, require them to submit information about the likely availability of units to a central state or regional clearinghouse; fifth, eliminate procedural barriers to applying for subsidized housing; and sixth, end discrimination against applicants who are disabled or handicapped, but whose mobility is not impaired.

Sard recognizes that these strategies have long-term implications, particularly because favoring the homeless takes away housing from others in need. She concludes her article by reflecting on this dilemma.

Ronald Slye discusses an alternative to litigation: building community institutions. Slye illustrates the limits of relying on a litigation strategy by chronicling the history of a Connecticut lawsuit.16 He uses the case as a basis for four observations: first, some courts, particularly federal courts, are unsympathetic to the

15. See id. at 1084-86, 522 N.Y.S.2d at 408-10.
poor; second, as interpreted, the United States Constitution provides little protection for the poor, and international treaties recognizing economic and social rights are judicially unenforceable; third, litigation is a poor tool for addressing broad social issues that require long-term structural solutions; and fourth, the impact of specific legislation depends on the political context in which it takes place.

Slye then discusses Community Institution Building, the strategy of community organizing to build collective institutions. Building community institutions requires different lawyering skills than those of the trial attorney. In litigation, the attorney is the primary strategist. In Community Institution Building, however, the attorney creates opportunities for clients to assert their own rights and exercise control over their own lives. Slye illustrates Community Institution Building with examples drawn from his experience with organizations in New Haven, Connecticut.

The symposium's contributors thus cover a range of issues concerning the homeless. They define the problem, but also point to solutions. They have heard the voices of the homeless and have responded with passion and commitment.
SELECTED LEGAL BIBLIOGRAPHY ON HOMELESSNESS*

This bibliography covers a period from January, 1985 through August, 1991. Cases are listed, with federal cases first, in reverse chronological order. Articles are listed in alphabetical order by author.

I. SHELTER AND HOUSING

A. Cases

Red Bull Assocs. v. Best Western Int'l, Inc., 862 F.2d 963 (2d Cir. 1988) (deciding judicial forum of case in which motel claimed hotel association terminated its membership because the motel housed homeless persons).

Community for Creative Non-Violence v. Pierce, 814 F.2d 663 (D.C. Cir. 1987) (finding plaintiff had standing to challenge the accuracy of HUD report on homelessness).


City of Beacon v. Surles, 161 A.D.2d 945, 558 N.Y.S.2d 196, appeal dismissed, 76 N.Y.2d 936, 564 N.E.2d 675, 563 N.Y.S.2d 65 (1990) (holding homeless shelter and private home for those who function without supervision were not "similar" for purposes of zoning regulation that prohibited overconcentration of similar facilities).


* In an effort to make this Bibliography easier to read, we have not followed the standard typeface conventions for citations.
In re Duncan for C.O.T.S., 584 A.2d 1140 (Vt. 1990) (approving issuance of zoning permit to convert bingo hall into homeless shelter).

Love v. Koch, 161 A.D.2d 209, 554 N.Y.S.2d 595 (1990) (stating summary judgment did not preclude determining whether city has a duty to provide residential care to mentally ill homeless persons not in need of hospitalization).

Universal Motor Lodges, Inc. v. Seignious, 146 Misc. 2d 395, 550 N.Y.S.2d 800 (Justice Ct. 1990) (holding that homeless person was month-to-month tenant of hotel and entitled to 30-day notice to vacate).


Wilson v. Westchester County Dep't of Social Servs., 133 Misc. 2d 131, 506 N.Y.S.2d 633 (Sup. Ct. 1986) (granting homeless person's request for temporary emergency shelter in her home community).

Wilkins v. Perales, 128 Misc. 2d 265, 487 N.Y.S.2d 961 (Sup. Ct. 1985) (denying homeless persons' suit to enforce regulations that establish maximum limits for capacity of each shelter facility).

B. Articles


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II. LEGISLATION ON HOMELESSNESS

A. Cases

National Coalition for the Homeless v. United States Veterans Admin., 715 F. Supp. 392 (D.D.C. 1989) (holding Department of Health and Human Services did not violate McKinney Act by determining that certain property could not be made available for the homeless because of conditions in lease and possible asbestos contamination).
failing to comply with McKinney Act in selling surplus government property that might assist the homeless).


In re Curran, 128 Misc. 2d 306, 488 N.Y.S.2d 983 (Fam. Ct. 1985) (upholding constitutionality of provisions of the Runaway and Homeless Youth Act, which authorized state to provide temporary shelter to children seeking such shelter).

B. Articles


III. MENTALLY AND PHYSICALLY ILL

A. Cases

Heard v. Cuomo, 150 Misc. 2d 257, 567 N.Y.S.2d 594 (Sup. Ct. 1991) (holding city has obligation not to discharge patients from psychiatric hospitals unless patients have obtained appropriate housing).

Palmieri v. Cuomo, 170 A.D.2d 283, 566 N.Y.S.2d 14 (1991) (holding city has no regulatory, statutory or constitutional duty to provide homeless drug abusers with drug treatment).


Board of Supervisors v. Superior Court, 207 Cal. App. 3d 552, 254
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Cal. Rptr. 905 (1989) (upholding statute limiting dollar amount of county's mental health obligations).

B. Book


C. Articles


IV. HOMELESS FAMILIES AND CHILDREN

A. Cases

Orozco v. Sobol, 703 F. Supp. 1113 (S.D.N.Y. 1989) (denying motion to dismiss homeless child's claim that residency requirement for a child to attend public school was unconstitutional).


B. Articles


Comment, Homeless Families: Do They Have A Right To Integrity?, 35 UCLA L. Rev. 159 (1987).


V. Welfare Laws, Benefits and Aid

A. Cases

Younger v. Turnage, 677 F. Supp. 16 (D.D.C. 1988) (holding Veterans Administration had no duty to provide assistance to homeless veterans).

Nelson v. San Diego County Bd. of Supervisors, 190 Cal. App. 3d 25, 235 Cal. Rptr. 305 (1987) (denying motion to dismiss action to invalidate regulation requiring any general relief recipient to first obtain a valid address).


B. Articles


VI. Constitutional Rights of the Homeless

A. Cases

Young v. New York City Transit Auth., 903 F.2d 146 (2d Cir.), cert. denied, 111 S. Ct. 516 (1990) (holding ban on begging in subways did not violate first amendment).

American Fed’n of R.R. Police, Inc. v. AMTRAK, 832 F.2d 14 (2d Cir. 1987) (holding railroad’s policy of ejecting homeless persons from trains did not violate civil rights of police who were required to enforce
policy and that labor union that represented police lacked standing to assert the constitutional rights of the homeless).


Penley v. Zakar, 1988 WL 48691 (S.D.N.Y. 1988) (granting motion to dismiss claim that not enough time was allocated for homeless vote registration rally).


Connecticut v. Mooney, 218 Conn. 85, 588 A.2d 145, cert. denied, 112 S. Ct. 330 (1991) (holding homeless person had fourth amendment right to privacy in a duffel bag and closed cardboard box which served as his home).


United States v. Powell, 563 A.2d 1086 (D.C. 1989) (holding homeless persons who remained in subway overnight could be charged with unlawful entry).


B. **Book**


C. **Articles**


VII. REPRESENTING THE HOMELESS

A. Articles


VIII. GENERAL

A. Books


B. Articles


