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Strategies For Rehabilitating The Mentally Ill Homeless

by Stephen H. Fallowfield

I. Introduction

In light of the imminent danger presently facing thousands of mentally ill homeless individuals across this nation, the recent media focus on the "rights" of those few individuals who would "choose" to remain homeless has been desperately misplaced. For a finite group of civil libertarians, the issue is perceived as one of "lifestyle" which evokes fundamental right to privacy concerns. The unfortunate result of this "hands off" approach, however, has been a refusal to recognize the urgent need of the multitudes of mentally ill homeless who not only desire shelter and an opportunity for self-sufficiency, but who, without immediate attention, may inevitably face further deterioration and death as the debate roars on.

The prospect of having nowhere to turn for shelter should be intimidating to anyone. It is, however, especially foreboding for those individuals burdened with the additional liability of mental illness. These individuals face a cruel paradox. Many are too disabled by their disease to care for themselves, yet not considered sufficiently "dangerous" to others to be hospitalized. More importantly, while these individuals are often the least capable among the homeless of providing for their own needs, they are commonly the "last choice" of emergency shelters which are ill-equipped to deal with their special needs. Consequently, they are frequently left to the streets where they face the very real dangers of starvation, disease, cold or even violence at the hands of others.

Because the federal government has, for all practical purposes, refused to acknowledge responsibility for providing anything eyond minimal emergency assistance[1], most states have been forced to increase homeless services funding substantially. The State of Maryland increased its annual funding by more than 50 percent for 1987, and earmarked an even greater $1.5 million in services for the homeless in 1988. It had a proposed allocation of $1.9 million in 1989.[2]

It is becoming increasingly evident, however, that simply increasing the funding for shelters may never adequately address the complex problem of homelessness. As our nation faces an ever increasing number of homeless individuals,[3] it is imperative that for the present, we prioritize among the unfortunates to assure that the individuals presently facing the greatest danger receive assistance first. The severely mentally ill homeless constitute such a group.

The purpose of this comment is threefold: to discuss the role of the state in protecting and rehabilitating its mentally ill homeless; to review some of the more promising private programs presently operating in this and other states; and generally, to examine the kinds of creative efforts which will be necessary to address a problem of this magnitude. Admittedly, the suggested state administered services would entail a considerable cost to the state and its taxpayers. However, any feasible solution to this problem will require a long-term perspective. If the additional funds spent on such programs prove effective in actually enhancing the individual's capacity for self-sufficiency, then such allocations will have been infinitely more cost-effective than the typical short-term-solution of merely providing temporary room and board.

II. Prioritizing: Who Do We Help First and How?

National estimates of the number of homeless vary widely, from a low of 250,000 to 350,000 given by the Department of Housing and Urban Development,[4] to a high of 3 million, cited by the Community for Creative Non-Violence.[5] Significantly, of the estimated 47,000 homeless in the State of Maryland alone,[6] 26 percent of those able to locate shelter were reported by service providers as having mental health problems,[7] with 21 percent having been former residents of state institutions.[8]

This nation's vastly underfunded and understaffed shelter system has clearly failed to meet the needs of the homeless. A recent study commissioned by the Maryland Department of Human Resources[9] concluded that on any given night, the average number of beds available in the State shelters was 1000, while the conservatively estimated number of homeless requiring shelter was 2900, revealing a shortage of 1900 beds.[10]

Many homeless advocates have espoused the position that society has a type of "moral obligation" to provide shelter for *all* those individuals who truly cannot afford their own. The United States Constitution, however, imputes no such responsibility on the federal government. Further, it is clear that, for at least the foreseeable future, fiscal limitations on the federal and local governments will preclude any serious attempt to implement such an ambitious program.

In November of 1987, Baltimore City residents for the first time confronted the issue of our government's obligation to

provide shelter for all of its citizens. A ballot titled "Question L"[11] proposed an amendment to the city charter which would require the city government to provide housing for *every individual* unless that person already owned or rented a dwelling. The proposal was strongly criticized on the grounds that it was overbroad and conceivably would force the city to house anyone who requested it, regardless of the severity of their financial need. Predictably, the ballot was, however, soundly defeated, reflecting the growing public awareness of the massive cost which taxpayers would necessarily bear for such a program.[12]

Given the obvious inability of the states to provide shelter for all of their homeless citizens, our primary efforts must be directed toward those who appear to be in the most imminent danger. One means of accomplishing this purpose is civil commitment. A state can temporarily commit an individual to a mental institution under either its police power (if the person is deemed to be "dangerous"—usually demonstrated by the commission of a dangerous act)[13] or under its *parens patriae* power (if the person is deemed to be unable to care for himself or herself). Theoretically, *parens patriae* commitments involve a lesser deprivation of liberty, as the individuals who are the focus of such commitments have lost the will or reason necessary for "meaningful personal liberty."[14]

While commitments under the police power are accompanied by many of the procedural safeguards required in a criminal proceeding,[15] such safeguards are relaxed considerably under *parens patriae* commitments. However, there is an important legal justification for this relaxed standard. When the state undertakes a *parens patriae* commitment, it makes an implicit promise to provide rehabilitative treatment. Failure to provide adequate treatment eradicates the constitutional basis for commitment and creates a legal obligation to release a "non dangerous" patient. In *Welsch v. Likens*,[16] for example, a Minnesota federal court observed that "[B]ecause plaintiffs have not been guilty of any criminal offenses against society, treatment is the only constitutionally permissible purpose of their confinement, regardless of procedural protections under the governing civil commitment statute."[17]

As of 1987, the Maryland Attorney General's office decided not to recommend provisions for initial commitment to outpatient treatment, but rather to create a pilot program with sufficient resources to test the existing procedures.[18]

a. Concerns Regarding "Commitment" Standards

Civil libertarians opposing involuntary commitment of individuals who pose no threat to others question how the "state" can accurately determine exactly what form of behavior justifies a finding that the individual is "dangerous to himself." They point to the widely differing definitions used not only by the states,[19] but by psychologists as well. The modern statutory formulations generally require proof that the candidate is dangerous "and/or gravely disabled due to a mental disease."[20]

There are, in fact, serious questions among both lay persons and legal scholars concerning our ability to accurately "pigeonhole" the mentally ill into rigid classifications of "dangerous" or "not dangerous." There is unquestionably a wide range of mental states between normality and extreme mental illness[21] and mental disorders may be manifested in ways that psychiatrists have yet to understand.

To the extent that we are to protect the freedom of healthy individuals, these are legitimate concerns. Excessive reliance on such views, however, is dangerous in its tendency to encourage society to ignore the reality of mental suffering and the need to care for its victims. In addressing a problem of this complexity, society must keep individual rights in mind, but just as importantly, not lose focus on individual needs. One's "liberty" to be "free" must not prevail over his interests in staying alive.

"One's 'liberty' to be 'free' must not prevail in his interests over staying alive."

Secondly, consideration must be given to the increased sophistication of diagnosis and treatment techniques for mental illness.[22] In just the last five years, medical science has made significant breakthroughs in understanding the biological and other causes of schizophrenia, which is widely considered to be the predominant form of mental illness among the homeless.[23] As a result, diagnoses of mental illness may be more accurate, and treatment may be more effective. The fact that psychiatric diagnosis is still an "imperfect" science must not dissuade us from taking full advantage of the considerable benefits which treatment presently offers.

b. Judicial Overprotection of Liberty Interests

American courts, based on their longstanding devotion to the protection of individual liberties, are reluctant to impose confinement on individuals who pose no danger to others. In the American judicial system, any involuntary commitment to a mental institution has been recognized as a "massive curtailment of liberty."[24] Consequently, "civil commitment for any purpose requires due process protection."[25] The primary concerns with regard to commitment of the mentally ill were espoused by the U.S. Supreme Court in *O'Connor v. Donaldson:*

> [D]ue process requires that (the state's power) not be invoked indiscriminately. At a minimum, a particular scheme for protection of the mentally ill must rest upon a legislative determination that it is compatible with the *best interests* of the affected class and that its members are unable to act for themselves.[27]

All individuals have the right to expect due process protection of their liberty interests. While our society may not be particularly accommodating to those who do not choose to conform to its behavioral 'norms', our legal system nevertheless protects the individual's right to choose his own lifestyle. It is critical to recognize, however, that many mentally ill individuals are so incapacitated by their disease that they are effectively rendered unable to make any reasoned choice between commitment and noncommitment.

The Supreme Court recognized these competing interests in *Addington v. Texas*,[28] finding that a person "who is suffering from a debilitating mental illness" is not "wholly at liberty" and that because the complexity of psychiatric diagnosis "renders uncertainties virtually beyond reach" these cases may require "a compromise between what is possible to prove and what protects the rights of the individual."[29] Considering this dilemma, the Supreme Court has correctly concluded that, even where individuals may resist treatment, the states remain vested with the duty to protect "persons under legal disabilities to act for themselves."[30]

In setting unreasonably strict requirements for a showing of mental illness, our courts are denying individuals any opportunity for cure and a normal life. We reach a point of diminishing returns by engaging in perpetual debate over precisely how much evidence of self-neglect and self-danger is required to prove "grave disability." In the final analysis, neither society nor the debilitated individual benefits

from the overzealous advocate's attempt to "distinguish" his client's condition from statutory definitions where, in fact, there can be no realistic doubts about the individual's inability to provide for his own basic needs.

c. Ensuring the Protection of Due Process Rights

If the state is to actively seek out individuals who are in "immediate danger," it is imperative to the success of such a program that individual liberties are not infringed upon in the process. A system of safeguards must be implemented to ensure (a) that the individual is not detained unreasonably before evaluation, (b) that any commitment meets proper standards, (c) that the commitment is for a valid purpose; i.e. treatment of the patient, (d) that the individual will be released as soon as he has progressed sufficiently, and (e) that the state will assist in implementing aftercare programs which are essential to the patient's successful transition to the community.

The task of locating those in danger on the streets should be performed by professionals. New York City recently implemented a program which represents a positive step in this direction.[31] The program began with several "teams" (consisting of a psychiatrist, nurse, social worker and sometimes a doctor) scanning city streets in search of mentally ill homeless individuals who may face "imminent danger" due to exposure to the elements, starvation, disease, or for other reasons. If the team reaches a consensus that the person is in immediate peril, or would soon be in such condition without assistance, then they may transport him to a mental hospital for evaluation and potential commitment for the purpose of treatment. New York's program has been effective up to this point. The major criticism is that it lacks the necessary follow-up services to promote individual autonomy once the individual returns to society. As a result, there is a great likelihood that individuals will experience a relapse and go through the process again.

Once the individual is taken in by the teams, additional safeguards are needed, not only to ensure that the program withstands legal challenges, but more importantly, to see that the individual taken into "custody" receives optimum benefits from the state's efforts. The first requirement should be that the individual receive an expedited hearing to determine his mental status. The states vary widely with regard to what constitutes a "reasonable period." It is widely held that in more "severe cases," where there can be no doubt as to the individual's incapacity to care for himself, the state's interest in protecting his well-being does justify a brief period of detention prior to the hearing as long as a hearing is held "shortly thereafter."[32] Nevertheless, in order to ensure the legality of this program, hearings in all cases should be held within 24 hours of the time the individual is taken into custody. The state could justify this period of detention under its *parens patriae* power.

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The second safeguard concerns the criteria which must be used in deciding whether to commit the individual. In order to commit, the hearing examiners must conclude that state intervention is necessary not only for the individual's welfare, but also for his survival. The Supreme Court demands strict compliance with this criteria:

> A finding of "mental illness" alone cannot justify a state locking up a person against his will and keeping him indefinitely in simple custodial confinement... there is still no basis for confining such a person involuntarily if they are dangerous to no one and can live safely in freedom... In short, a state cannot constitutionally confine, without more, a non-dangerous individual who is capable of surviving in freedom by himself or with the help of willing and responsible family members or friends.[33]

In order to ensure that commitment decisions will pass constitutional challenges, the author would recommend a compilation of the protections offered by various state statutes and a 1988 proposal by the American Psychological Association Task Force.[34] Under this formula, in order to commit, the state must be able to show that: (a) the person suffers from a severe mental disorder; (b) without treatment, he would be likely to cause harm to himself, or to suffer substantial mental or emotional deterioration, or is likely to harm others; (c) he lacks the capacity to make an informed decision of which course is best; (d) if previously hospitalized, the individual has demonstrated noncompliance with the prescribed outpatient treatment within the previous two years; (e) the individual has been presented with an acceptable treatment plan; and (f) the individual has a reasonable prospect of responding to the specified treatment, and will be committed to a facility which has agreed to accept him.

Following these requirements will ensure that the *parens patriae* power is not utilized in an arbitrary and capricious manner, and that people are not removed from the street merely because they have become a visual nuisance to the community.

The third safeguard, that upon commitment the state will undertake a concurrent obligation to provide treatment for the individual, will optimize benefits to both the state and the individual. The Supreme Court has construed this requirement as form of *quid pro quo*

> Where...the rationale for confinement is the *parens patriae* rationale that the patient is in need of treatment, the due process clause requires that minimally adequate treatment be in fact provided.... To deprive any citizen of his or her liberty upon the altruistic theory that the confinement is for humane therapeutic reasons and then fail to provide adequate treatment violates the very fundamentals of due process law.[35]

Finally, there should be a requirement that individuals committed under the *parens patriae* rationale be evaluated regularly to determine their status, to ascertain if they are progressing at the greatest rate possible, and to ensure that they can be released as soon as possible. This could be accomplished by requiring full reports from the hospital staff every fifteen days. After sixty days, the individuals would be entitled to a second full hearing to determine if they are prepared for release. If the individuals are still deemed uanble to meet the criteria discussed above, they should be accorded another hearing every thirty days.

III. Aftercare Programs: The Critical Step to Ending The Cycle of Homelessness

Society must acknowledge that caring for the mentally ill merely until they are no longer "dangerous" to themselves provides nothing beyond a temporary solution to the problem of homelessness. Without additional assistance, very little separates an individual with no money, no place to live, and, invariably, poor employment prospects, from relapse into his previous lifestyle. In order to justify the substantial expenses incurred in the individual's commitment, the state must provide certain aftercare services. The following services are critical in any attempt to successfully reintegrate these people into the community.

a. Transitional Services/Employment Training

A major problem facing the former mental patient is an overdeveloped tendency to depend on others.[36] Unfortunately, the mental facilities themselves may often be a contributing cause, rather than a cure, for helplessness. In institutions, all of the patient's survival needs, including food, clothing, shelter, as well as medical and psychiatric services, are attended to by others. It is unrealistic to expect individuals with mental impairments, and often without any family or social networks, to suddenly be able to obtain for themselves the services that they have depended on in the institution. Consequently, the individual is commonly unable to find adequate employment and ultimately rejoins the ranks of the homeless.

The most important services which can be provided at this point are those aimed at improving the individual's "employability." The individual should be encouraged not only to contribute to society, but to reap the financial and personal rewards of employment as well. Unfortunately, even those former mental patients who are quite capable of performing suitable employment face at least two major obstacles: the stigma attached to mental illness,[37] and the likelihood that the individual has an inconsistent or poor employment record.[38]

Efforts to overcome these rather substantial liabilities must include special preparational services such as highly structured and supervised prevocational training programs, sheltered workshops, and part-time transitional work.[39] The goals will differ, depending on the status of the particular individual. While some will be able to make a continual progression toward normal participation in the work force, the goal for others will be something less than competitive employment.[40] Either way, these programs will enable the individual to reenter the community with increased confidence.

b. Housing Assistance

1. Transitional Housing

Ther is an ever-widening gap in America between the number of homeless individuals and the amount of shelter space available.[40] A considerable body of litigation has been brought in response to the growing crisis. The 1981 decision in *Callahan v. Carey*[41] was the seminal case establishing a right to shelter for the homeless. In that case, a class of destitute and homeless men asserted a constitutional and statutory right to shelter.[42] The plaintiffs alleged that the conditions at the men's shelter, at the time the only public facility in New York City providing shelter services to homeless men, were grossly inadequate, and that the violence and brutality associated with the shelter deterred many men from even applying to the shelter.[43]

A consent decree was entered obligating the city to provide shelter and board to each homeless man who met the needs standard to qualify for relief. The decree also listed the standards that are to be maintained by the shelters and requires that each applicant for shelter be provided with written information regarding public assistance benefits he may be entitled to receive.[44] The ruling was based on the New York Constitution, which makes the state responsible for providing food and lodging to the needy, and on state and city statutory provisions.[45] A subsequent equal protection claim in *Eldridge v. Koch*[46] resulted in the expansion of the *Callahan* decree to include women.

A string of similar rulings in the other state courts[47] evidences the growing recognition of the immediate need to address the problem of homelessness. Unfortunately, enforcement of these decisions has been difficult due to governmental monetary constraints. It is critical that those housing facilities which the states *are* able to provide address the patient's long-term needs so that once they are given their independence, they have the capacity to live independently.

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The State of Maryland has recently made impressive strides toward accomplishing this objective by providing shelter which combines the benefits of transitional housing with extensive transitional services. A good example is Howard County's Harriett Tubman Shelter, which is designed as part of a new system to break "the cycle of homelessness."[48] Under the plan, the County is building twelve shelters in which the homeless may reside for six to nine months. During their stay, residents receive counseling, job training and health services designed to facilitate independence outside of the shelter.[49] This transitional housing also places an emphasis on dignity. Individual housing units resemble efficency apartments and provide greater privacy than emergency shelter would permit. The designers of the program believe that the innovation will serve as a "model program for the homeless which will be replicated in other jurisdictions."[50]

Another unique Maryland program is "Sarah's House," located in Anne Arundel County.[51] The shelter, which was built under a novel collaboration of federal defense money and county funds (discussed under section IV infra) serves as more than a bed-and-board facility for its residents. It also offers a range of services for temporary residents, such as job training programs, transportation to and from interviews and training classes, and such practical amenities as baby sitting for children.[52]

Transitional housing is especially important for the former mental patient because it offers a longer period of time than emergency shelters in which the individual may become stable, seek employment and permanent housing, secure benefits, and receive counseling in preparation for more independent living. Another advantage over emergency housing is that it may be tailored to accommodate the special needs of these individuals. Because these facilities tend to be small and oriented toward self help, residents may feel a greater sense of belonging and self respect than they would in emergency shelters, which are generally much larger. With the exception of those people who are altogether too incapacitated, most mentally ill could benefit greatly from the supportive rehabilitative environment offered by transitional housing programs.

2. Permanent Housing

While the need for effective transitional housing should be considered a first priority, it is also necessary to consider strategies for addressing the inevitable need for long-term or permanent housing. This formidable challenge demands innovative solutions.

We must make an immediate priority of guaranteeing low-income housing. While it is clear that the provision of affordable permanent housing will not eliminate all homelessness, it is equally clear that for many homeless people, the severe housing shortage is the major problem. For more than 400,000 Marylanders living in poverty,[53] the federal government's termination of housing subsidies has been disastrous. A shortage of low-income housing has been documented in every jurisdiction in Maryland,[54] and waiting lists for subsidized housing are long. In Baltimore City, where problems are most severe, there is a fifteen-year wait; in Prince George's County, up to ten years; and in many jurisdictions, three to four years.[55]

Fortunately, some advocates of the homeless have achieved impressive results in their efforts to secure low-income housing.

Some of the most impressive large scale litigation in this area has taken place in Philadelphia. In 1985, the city arrived at an out-of-court settlement with homeless advocacy groups, in which the city promised to provide "adequate and appropriate shelter" to every homeless Philadelphian.[56] Due to the city's noncompliance, however, the advocacy groups were subsequently forced to threaten to sue the city for its breach of the agreement. After three years of marches, sit-ins at the mayor's office, and significant legal wrangling, the city recently agreed to float a $7 million Redevelopment Authority Bond to renovate 200 apartments and single-family homes scattered throughout Philadelphia. These dwellings will permanently house 500 homeless people.[57] The properties, which are mostly a combination of VA/FHA repossessed houses and city owned rehabable units, will be renovated by contractors working with a newly trained and salaried work force of homeless unionists. Sixty percent of the units will be leased to families; singles will lease the remaining units.[58]

Maryland has developed a limited response to the need for permanent housing for the mentally ill. Two principal programs are Project HOME, which houses both physically and mentally disabled adults in the community, and the Community Residential Rehabilitative Program,[59] which provides supportive housing for the chronically mentally disabled. This specialized housing offers a homelike, protective environment in a residential setting for one to eight people. Services to residents include room and board, housekeeping, laundry, and assistance with personal hygiene, grooming and other activities of daily living. Care providers give emotional support and encourage independence, oversee the taking of medication, assist with transportation, and provide social and recreational opportunities. The state's primary contribution to this program has been through the provision of financial supplements for disabled adults who are eligible for the program.[60]

Unfortunately, such services do not begin to meet the demand. There are presently 6560 chronically mentally ill persons in the community in need of such services.[61] Even Project HOMES's modest goal of providing 2000 beds for the chronically mentally ill people throughout the state by the mid-80's, has fallen 800 beds short. About $13.4 million would be required for the 800 bed deficit.[62]

c. Coordination of Services

The establishment of informational networks between different homeless services serves at least four critical purposes. First, it can ensure that patients are "routed" to receive the services most appropriate for their individual needs. Secondly, improved coordination would promote centralized responsibility, which would clarify questions of accountabilty among agencies and services. Next, it could help to avoid both service gaps and duplications, and finally, it could help ensure the most effective service possible.

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The State of Maryland has experienced an especially severe lack of communication among facilities serving the mentally ill. A 1982 statewide study found the greatest problems in facilities attempting to serve the "dually diagnosed homeless client" (one with a combination of problems, such as mental illenss or retardation, or mental illness and alcoholism).[63] Where there is an integrated approach to homeless services, the "dually diagnosed" may be neglected, as agencies unclear about who is responsible, fail to respond to the client's needs.[64]

Maryland Governor's Advisory Board has made several sound recommendations for improving coordination among facilities in this state.[65] First, each state agency serving the homeless should collect data on the number (and names) of homeless clients served and the services provided. The Department of Human Resources (DHR) agencies should then collaborate on the development of a data system to ensure comparable data. The DHR would assume responsibility for data collection.

Next, there should be a stronger relationship between the state DHR and the Department of Health and Mental Hygiene (DHMH). By working together, these agencies could: (1) organize training sessions on service coordination and advocacy techniques for the staffs of shelter and meal programs; and (2) establish a hot line whereby providers may obtain information or assistance in emergencies.[66]

Finally, local governments should form homelessness boards which would assess needs for emergency and transitional housing, case management and support services, and develop policies and plan programs within their own jurisdictions and, possibly, in cooperation with neighboring jurisdictions.[67]

IV. Maximizing the Impact of Volunteer Contributions

a. Recognizing Limitations on Federal and State Funding

Given the alarming rate at which our homeless population is growing, it is highly impractical to believe that our government can sustain any effort to simply "throw money at the problem" until it is resolved. In fact, in the State of Maryland, the government is clearly the minority partner in funding services, with more than two-thirds of all shelter services provided in 1986 funded by charitable and religious organizations and private donations.[68] The state supported only about one-sixth of all shelter services provided and the remaining one-sixth was funded by the federal and local governments.[69]

As of 1987, there was still no national policy or agency operating specifically to address the long term causes and considerations of homelessness.[70] The only major commitment by the federal government to assist homeless citizens has been placed under the auspices of the Federal Emergency Management Agency (FEMA)—an agency which deals primarily with floods, hurricanes, and comparable disasters.[71] Consistent with FEMA's orientation toward emergency services, Congress has appropriated funds for its shelter and food program with stipulations that these funds be used only for emergency needs.[72]

There are, however, fundamental problems with a strategy of battling an ongoing condition such as homelessness with funds intended for emergency need. First, the process of Congress appropriating FEMA funds on an ad-hoc year-to-year basis, outside the normal legislative process, has inhibited long range planning by local service providers.[73] These individuals are simply unable to anticipate how much money may be allocated for their future needs. Secondly, while it does provide desperately needed dollars for homeless services, the program has proven extremely cumbersome and expensive to implement. Based on a complicated voucher system, the distribution of grants requires its own bureaucracy in each state in order to handle all of the paperwork.[74] In sum, FEMA's emphasis on emergency assistance holds little, if any, promise for ever helping to break the cycle of homelessness.

In 1987, the State of Maryland allocated $1.479 million in funds to local jurisdic-

tions to help cope with the problem.[75] The money was used to maintain, and expand the number of beds in existing shelters, to help establish new emergency and transitional shelters, and to provide other emergency services such as motel lodging and food. State funding was increased once again for 1988. Unfortunately, the increase in funding continues to fall further behind the needs of the homeless.

b. Empowering the Homeless

Until recently, the one resource which the homeless lacked even more desperately than money was political "clout." Individuals facing an ongoing struggle merely to survive lack the time, energy and often the wherewithal to effect any changes in their political status. One of the most impressive responses to this problem has been made by the recently formed Philadelphia based National Union of the Homeless. The organization has signed up 18,000 homeless men and women in nationwide conventions, organized sit-ins at government offices, initiated lawsuits, picketed shelters and seized vacant buildings owned by the municipalities. Like traditional unions, the "homeless union" has a constitution, and elected local officers engage in collective bargaining on behalf of dues-paying members.[76] Legal services are provided at minimal charges primarily by public service lawyers.

One of the major accomplishments of the union thus far has been "persuading" the City of Philadelphia to contribute $7 million toward the renovation of apartments and single-family houses, scattered throughout the city. These units will permanently house 500 homeless persons.[77]

Another means of increasing the "clout" of the homeless has been through the *Pro-Bono* efforts of major law firms. These firms often have influence with courts which even the most well-organized advocacy groups may not. They also have the ability to bring sophisticated arguments before courts which may be less receptive to tactics of the advocacy groups. Recently in Los Angeles, thirty-five lawyers from the 150 attorney firm of Irell & Manella joined Los Angeles Legal Aid and other organizations to devote over 5000 hours in preparing a memorandum which was filed in superior court on behalf of homeless in Los Angeles.[78] It is significant that one of the most important lawsuits filed on behalf of the homeless in the Western United States depended so heavily upon the volunteer services of private attorneys.

The suit challenges L.A. County's system of dealing with the homeless. Like other large cities around the country, the county provided lodging vouchers to those who had no place to sleep.[79] The vouchers could be used to pay for rooms in one of 200 authorized hotels, most of which were along Skid Row. In effect, these vouchers represented the housing "safety net" for the homeless.[80]

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Public advocacy groups gathered strong evidence that living conditions in at least four of the hotels were literally not much better than living on the street. The attorneys of Irell & Manella translated the details of life in these voucher hotels into a memorandum of points and authorities. The memorandum combined the declarations of hotel residents with photographs of the living conditions in order to give the judge some sense of what it was like to live in these places.[81]

The county eventually agreed to a pretrial preliminary injunction under which new regulations were instituted. As a result, any homeless person seeking help from Los Angeles County gets not only a voucher for a hotel room, but also a written explanation information him that he is entitled to a place with working toilets, running water, clean sheets, and no rats. If his hotel fails these tests, he is entitled to stay in a different hotel. Also, County inspectors are required to respond to complaints about substandard conditions within twenty-four hours. In addition, a new ranking system has been instituted under which the County sends clients to its best rated hotels first. The ratings are done by the health department.[82]

The injunction was a very satisfying result for the firm, which had spent hundreds of thousands of dollars in lawyer fees and out-of-pocket expenses. But the satisfaction was based on more than the end result. Lawyers say that the effort had a very positive effect on the morale of lawyers who knew that they were benefitting those who were so much less fortunate.

Even those who must concern themselves with the firm's financial "bottom line" were encouraged by this case. It was one of the unusual instances in which *all* parties seemed to benefit. From the outset of the case, some partners had expressed concern that the firm's involvement in such a highly publicized social-issue case might alienate paying clients. The reaction was in fact the opposite. The firm found that large corporate clients expressed pride in the firm's association with the cause, and some even offered to contribute to the effort.[83] This finding has significant implications for other large firms which may be in a position to put forth such large scale efforts. If such charitable efforts are looked upon favorably by present clients, who, in practical terms, may be "paying their share" through their legal bills, it should be attractive to prospective clients as well. The publicity in effect benefited not only the firm's reputation, but that of its clients.

V. Miscellaneous Maryland Programs Designed to End the Cycle of Homelessness

While Maryland, as most other states, has not yet been able to meet the shelter needs of this homeless, it has implemented some novel programs designed to facilitate independence. A few merit discussion.

Creative Shelter Funding

Anne Arundel County's "Sarah's House" is an important example of how creative minds may find wasy to fund shelters. Program coordinators found a way to secure $850,000 of the $1.1 million cost of the shelter through Defense Department money. Under an obscure program set up by Congress, Defense Department funds are set aside annually to renovate vacant military buildings for the homeless. Anne Arundel County was ideally suited to take advantage of the program by utilizing three dilapidated World War II Army barracks located at Fort Meade. With $250,000 in state, county and other federal resources, the county contracted with Catholic Charities, which built and now operates the shelter.[84]

Another Maryland housing program is the Rental Assistance Program (RAP), whose goal is to find decent, affordable housing for low income families. The program provides limited grants from $100 per month to $250 per month, depending on family size, to help keep people who run out of money, out of shelters or to move them from shelters to homes as quickly as possible.

Free Legal Advice

Through the Homeless Persons' Representation Project, the Maryland legal community has become one of the first to offer free legal advice to people at shelters. Volunteer attorneys participating in the program have discovered that these individuals are in need of legal advice on a number of matters. One of the major problems which they experience is in obtaining government disability benefits or food stamp benefits. Also, newly homeless families often need help in contesting illegal

evictions, and former mental patients seek to secure promised out-patient care.

Participating volunteer attorneys go to shelters, soup kitchens, and other places providing homeless services, to interview people residing there, ascertain their legal needs, and to follow through on solving the problem. Lawyers are asked to handle about two cases per year. This is an especially important project because it may enable the indigent to solve individual problems before they become so serious that the legal system must initiate costly proceedings.

Education

Finally, volunteers provide educational services. The Homeless Persons' Representative Project provides GED classes to the homeless. Instructors and their students meet at Salvation Army outposts and undertake high school level courses there. While this may lack appeal for individuals struggling for their next meal, if promoted properly, it could be a promising concept.

Conclusions

The overemphasis of the "liberty interests" of such a vulnerable group as the mentally ill homeless too often serves as a justification for their neglect at the hands of society. In order to truly serve the best interests of these individuals, society must balance its commitment to the protection of individual rights with its equally important obligation of protecting those who are unable to care for themselves. In order to make the necessary personal changes to eventually become self-sufficient, these people need not only temporary room and board, but also job training and referrals, as well as assistance in obtaining permanent housing and employment. Providing such services is not only the humane thing to do; but also serves to minimize recurring episodes of homelessness. Until society is willing to undertake such rehabilitative programs, the cycle of homelessness may be impossible to break.

Footnotes

[1] Tuttle, *The Plight of the Homeless*, 18 Urban Lawyer 925-933 (1986).

[2] *State Officials Urged to Nearly Triple Funds to Help Homeless*, The Baltimore Sun, January 28, 1988.

[3] Tuttle, note 1 *supra*.

[4] U.S. Department of Housing and Urban Development, A Report to the Secretary on the Homeless and Emergency Shelters, p. 18-19 (1984).

[5] Frazier, *Responding to the Needs of the Mentally Ill*, Public Health Reports, Sept.-Oct. 1985, at 464.

[6] *The Baltimore Sun*, note 3, *supra*.

[7] "Where Do You Go From Nowhere: Homelessness in Maryland", a study by the Maryland Department of Human Resources, August 1986, at 10.

[8] *Id.*

[9] *Id.* at 25.

[10] *Id.*

[11] *Question L is Wrong Way to Aid Homeless, City Says*, The Baltimore Sun, December 19, 1987.

[12] *Id.*

[13] Developments in the Law—Civil Commitment for the Mentally Ill, 87 Harv. L. Rev. 1190, 1200-01 (1974).

[14] *Id.* at 1210-11.

[15] *Id.* at 1271.

[16] 373 F., Supp. 487 (D. Minn. 1974).

[17] *Id.* at 496.

[18] Maryland Office of the Attorney General: Report to the Governor on Outpatient Civil Commitment. Baltimore, February 1986.

[19] Brakel, S., *Legal Schizophrenia and the Mental Health Lawyer: Recent Trends in Civil Commitment Litigation*, 6 Behavioral Sciences and the Law, 3-14 (1988).

[20] *See* Brakel, Parry and Weiner, *The Mentally Disabled and the Law*, at 33-41.

Several states have recently shown recognition of the usefulness of severe "deterioration" in mental condition as a criterion for commitment. The trend began in 1983 when the states of North Carolina and Hawaii passed revisions to statutes to permit outpatient commitment for persons who did not, at that time, meet "dangerousness" criteria for involuntary outpatient treatment, but who would, without involuntary outpatient treatment, predictably deteriorate to that point. (North Carolina General Assembly Session 1983, House Bill 124; State of Hawaii, Twelfth Legislature, House Bill No. 1932-84). In 1987, Montana passed a bill (Montana House Bill 0316/3, effective October 1, 1987) authorizing out-patient commitment for persons whose mental illness has resulted in behavior that creates serious difficulty in protecting the person's life or health; is treatable at the facility to which the person is to be committed; has deprived the person of the capacity to make an informed decision concerning treatment; has resulted in the person's refusing or being unable to consent to voluntary admission for treatment; and will predictably result in deterioration to the person's mental condition. In 1986, the State of Georgia passed a similar bill (Georgia Senate Bill 318 (1986)).

[21] A. Brooks, *Law, Psychiatry, and the Mental Health System*, at 26-70 (1974).

[22] *Community Programs for the Mentally Ill Are Far Too Few*, The Baltimore Sun, August, 1987.

[23] *Id.*

[24] *Vitek v. Jones*, 445 U.S. 480, 491-92 (1980); *Humphrey v. Cady*, 405 U.S. 504, 509 (1972).

[25] *See Vitek*, 445 U.S. at 491-92 *Addington v. Texas*, 441 U.S. 418, 425 (1979); *O'Connor v. Donaldson*, 422 U.S. 563, 580 (1975); *Project Release v. Prevost*, 722 F. 2d 960, 971 (2nd Cir. 1983).

[26] 422 U.S. 563 (1975).

[27] *Id.* at 583.

[28] 441 U.S. 418 (1979).

[29] *Id.*at 429-30.

[30] *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 257 (1972).

[31] The New York Times, Jan. 1988

[32] *Burch v. Apalachee Community Mental Health Services, Inc.*, 840 F.2d 797 (11th Cir. 1988).

[33] *O'Connor v. Donaldson*, 422 U.S. 563, 575-76 (1975).

[34] Miller, R.D., Luskin, R.L., Starrett, D., Bloom, J.D., and Weitzel, W. Task Force Report on Involuntary Outpatient Treatment, Washington, D.C., American Psychiatric Press (1988).

[35] *O'Connor v. Donaldson*, 422 U.S. at 581.

[36] Goffman, *Asylums* (1961).

[37] B. Ennis, *Prisoners of Psychiatry—Mental Patients, Psychiatrists, and the Law*, at 145-178 (1972).

[38] Saphire, *The Civilly Committed Mental Patient and the Right to Aftercare*, 4 Fla. St. U. L. Rev. 232, 250-53 (1976).

[39] St. Elizabeth's Hospital, Hearings on Oversight Jurisdictions over Operations and Programs of St. Elizabeth's Hospital Before the Subcommittee on fiscal affairs and health of the House Committee on the District of Columbia, 96th Cong., 1st Sess. at 111 app. (1979)

[40] *Id.*

[41] No. 42582/79 (N.Y. Sup. Ct. Aug. 26, 1981).

[42] Werner, *Homelessness, A Litigation Roundup*, 18 Clearinghouse Rev. 1255, 1256.

[43] Plaintiff's Amended Complain at 4, *Callahan v. Carey*, No. 42582/79 (N.Y. Sup Ct. N.Y. Cty. Aug. 26, 1981).

[44] *See Werner*, Note 42, supra.

[45] The New York State Constitution provides: "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, § 7.

The state and city statutes relied upon by the court were:

(1) Section 62(1) of the Social Services Law, which provides:

Subject to reimbursement in the causes hereinafter provided for, 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) (McKinney 1976)

(2) Section 131(3) of the Social Services Law, which provides in part:

Whenever practicable, assistance and service shall be given a needy person in his own home. The commissioner of public welfare may, however, in his discretion, provide assistance and care in a boarding home, a home of a relative, a public or private home or institution, or in a hospital.

N.Y. Soc. Serv. Law § 131(1) (McKinney 1976)

(3) Section 604.1.0(b) of the New York City Administrative Code, which provides:

It shall be the duty of the commissioner of or the superintendent of any municipal lodging acting under him, to provide for any applicants for shelter who, in his judgment, may properly be received, plain and wholesome food and lodging for the night, free of charge, and also to cause such applicants to be bathed on admission and their clothing to be steamed and disinfected.

N.Y. Admin. Code § 604.1.0(b) (1977).

[46] 469 N.Y.S. 2d 744, 98 A.D. 2d 679 (Sup. Ct. 1983).

[47] Several other states have followed suit. In *Hodge v. Ginsberg*, 303 S.E.2d 245 (W.Va. 1983) a West Virginia court ruled that the state welfare law, which is similar to welfare laws throughout the country, requires that the homeless be provided shelter, food and medical care. In addition, the New Jersey Supreme Court, in a string of cases (*Robinson v. Cahill*, 62 N.J. 473, 303 A.2d 273, *cert. denied*, 414 U.S. 976 (1973); *Southern Burlington County NAACP v. Township of Mount Laurel*, 92 N.J. 158, 456 A.2d 390 (1983) has classified the right to decent housing as a "fundamental right." Finally, in Los Angeles, two injunctions now require Los Angeles County to provide shelter for the homeless on an emergency basis without arbitrary identification requirements. (See Werner, *Homelessness, A Litigation Roundup*, 18 Clearinghouse Rev. 1255, 1258.).

[48] *Bold Plan for the Homeless*, The Baltimore Sun, July 2, 1987, p. A18, Col. 1.

[49] *Id.*

[50] *Id.*

[51] *Transitional Housing for Howard Homeless Planned at Shelter*, The Baltimore Sun, July 24, 1987, p. D22, Col. 1.

[52] *Id.*

[53] *Homelessness: Recommendations for the State*, by the Maryland Governor's Advisory Board on the Shelter, Nutrition, and Service Program for Homeless Persons (1986) at 11.

[54] *Id.*

[55] *Id.*

[56] Reported in *Homeless, Not Helpless: Using Rights to Get Rooms*, Student Lawyer, April 1988, at 22.

[57] *Id.*

[58] *Id.*

[59] *See Homelessness: Recommendations*, note 53 *supra*, at 10.

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] See *Homelessness: Recommendations*, note 53 .

[64] *Id.*

[65] *Id.* at 20.

[66] *Id.*

[67] *Id.* at 21.

[68] See: *Where Do You Go From Nowhere*, note 7, *supra* at 4.

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.* at 5.

[74] *Id.*

[75] *Id.*

[76] See note 56 *supra* at 22.

[77] *Id.*

[78] *Paris v. Board of Supervisors*, Aug. 12, 1986, Superior Court No. C-523361.

[79] See Speizer, *Advocates for the Homeless, 73 ABA Journal 59, 60 (1987).*

[80] *Id.* at 60.

[81] *Id.*

[82] *Id.*

[83] *Id.* at 61.

[84] *See* note 47 *supra*.

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