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# Litigation on Behalf of the Homeless: Systematic Approaches

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# LITIGATION ON BEHALF OF THE HOMELESS: SYSTEMATIC APPROACHES

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This article will leave to others the discussion of whether Americans have a "right to shelter" arising under the Constitution. What concerns practicing poverty lawyers are not matters of abstract right, but the daily desperate existence of individual homeless clients and the forces at work in society that lead to homelessness. This is not to say that the question of a "right to shelter" is not an important issue. American society will eventually answer the question of which the "right to shelter" is but a part: Do people have a right to life simply by reason of their humanity or citizenship? Put another way, shall we permit people to freeze to death in the winter, to starve, to die from the effects of preventable disease, merely because they are poor, insane, or addicted to drugs? In the long run, the ways in which our society responds to that fundamental question will determine far more than the plight of the homeless. It will define our civilization.

In the short run, however, both the homeless and their advocates must deal with the concrete problems of obtaining shelter. Advocacy can only succeed if based on an objective and empirical understanding of the systems and institutions that place people on the streets and keep them there. Homelessness as a social phenomenon is clearly related to the loss of low income housing, drastically increased "structural" unemployment, and the failure of the mental health system. At both the federal level and the state level a complex array of "social safety net" programs exists. The very existence of these programs would seemingly render homelessness impossible. The homelessness of large num-

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bers of people, however, can often be traced directly to one or more holes in the "social safety net." Governments have intentionally created some of these "holes" in order to achieve other goals, like controlling costs. Although the examples used in this article are primarily from Los Angeles, conversations with advocates across the country suggest that the processes at work in Los Angeles are nearly universal.

Litigation on behalf of the homeless in Los Angeles County has been conducted by a "Homeless Litigation Team," comprised of lawyers and legal workers from eight public interest law firms[1] and by an occasional private law firm's *pro bono* contributions.[2] In Los Angeles County, state law obligates the county to "relieve and support" the indigent and disabled who are not otherwise supported,[3] an obligation the county meets by means of a general assistance program known as General Relief. In the early stages of looking at the legal aspects of homelessness, a seeming contradiction struck these advocates. An emergency shelter system existed as part of the General Relief program. This system ostensibly provided hotel vouchers to any homeless applicant who needed assistance. While thousands of people lived in the alleys, streets, and parts of Los Angeles, hundreds of vacant rooms existed in the county's voucher hotel system. Through interviews with dozens of homeless people in the welfare office, some of the reasons for the contradiction became obvious. The local welfare bureaucracy had constructed two simple but effective barriers to the shelter system that served to control the flow of homeless persons into the emergency shelter system and, therefore, into the General Relief system itself.

The first of these barriers was an arbitrarily stringent documentary identification requirement. A homeless person applying for emergency shelter was required to produce a certified copy of a birth certificate or a drivers license. A fact of life on the streets is that people tend to keep their identification with their valuables, and both are frequently lost to thieves. The identification requirements, therefore, kept many people on the streets. An intermediate level welfare bureaucrat revealed that the requirements varied with the seasons; in the winter when demand

1. Legal Aid Foundation of Los Angeles, American Civil Liberties Union Foundation, Western Center on Law and Poverty, Inner City Law Center, Mental Health Advocacy Services, Center for Law in the Public Interest, Protection and Advocacy, Inc., and San Fernando Valley Neighborhood Legal Services.

2. Several major law firms, including Irell and Mannella; Donovan, Leisure, Newton and Irvine; and Munger, Tolles and Olson, have made important contributions.

3. CAL. WELF. & INST. CODE § 17,000 (Deering 1985).

was high, the county insisted on birth certificates. In the summer, lesser forms of identification might suffice.

The second barrier was simpler, but no less effective. Some welfare offices established quotas for the number of homeless people they would assist. People who came in after the quota was full, no matter how desperate their situation, were told to return at a later date. Both of these practices were ended by a temporary restraining order in *Eisenheim v. Board of Supervisors*,[4] the first case brought by the Homeless Litigation Team.

The identification and appointment systems utilized by the Los Angeles County Department of Public Social Services are typical of the bureaucratic devices that government agencies impose in order to achieve organizational goals. These goals include controlling the approved caseload and, ultimately, adhering to the budgetary bottom line established by political decision makers. If one thinks of welfare systems such as the general assistance program in Los Angeles County as "systems" in the generic sense,[5] one can analyze them empirically and objectively, despite the fact that the "throughput" involved is human life. Viewed in this way, the regulations enjoined in *Eisenheim* are "input control," regulating the flow of homeless peoples into the county welfare apparatus. Though this coldhearted analysis may offend the sensibilities of those charged with advocating the human rights of the poor, it is exactly the kind of analysis that leads bureaucrats and politicians to make the decisions that advocacy litigation seeks to reverse.

There are several other kinds of "input controls" that have drastic consequences for homeless people. Perhaps the most Kafkaesque is the requirement that one must have an address in order to receive benefits. Such a regulation presents an almost classic Catch-22 for the homeless poor. In order to receive an income, one must have an address. In order to pay rent to establish an address, one must have an income. Courts have at times struck down these regulations;[6] at other times they have upheld them as necessary to control fraud.[7] The Alice-in-Wonderland character of these regulations makes them an appealing target for litigation. Advocates of the rights of the homeless considered challenging the address requirement of the General Relief pro-

4. No. C47953 (Los Angeles County Super. Ct. December 20, 1983).

5. *See, e.g.*, C. WEST CHURCHMAN, THE SYSTEMS APPROACH (1979).

6. Martin v. Milwaukee County, No. 656-770 (Milwaukee County Cir. Ct. January 9, 1985).

7. *See, e.g.*, Adkins v. Leach, 17 Cal. App. 3d 771, 95 Cal. Rptr. 61 (1971).

gram in Los Angeles County. Investigation of welfare statistics revealed, however, that the county rarely denied assistance to homeless people just because they lacked an address. An address would, in fact, result from the referral of the homeless person to one of the county's skid row hotels. Litigation focused on this regulation might have been intellectually interesting, but would have had neither an effect on the streets nor a measurable benefit for homeless people. Scarce advocacy resources must be targeted toward meaningful ends, based not upon an *a priori* supposition, but upon a solid factual analysis of the systems causing the harm.

Other "input controls" should be analyzed in the course of developing a litigation strategy for homeless people. Some can be determined only by spending days in the welfare office, observing the process as it exists in reality, as distinguished from the process that regulations describe. Perhaps the most insidious input control is the complexity of the application and intake process itself. There is no concensus on the percentages of the homeless population who are mentally disabled, although a greatly disproportionate number of the homeless suffer from mental illness.[8] It is equally clear that the application process required to obtain even emergency shelter is often so complex and challenging that individuals with any significant mental impairment have little chance of successfully completing the process. This complexity is often intentional. In Los Angeles, a high ranking welfare official admitted that the "welfare application process . . . was designed to be rough. It is designed quite frankly to be exclusionary."[9] Whether by design or not, the application process may present to a mentally disabled homeless person as insurmountable an obstacle as does a stairway to a paraplegic. Because local governments often use federal funds to support the welfare system, such barriers may violate section 504 of the Federal Rehabilitation Act of 1973[10] or similar state laws.[11]

Another "input control" arises, paradoxically, from the emergency

8. *See, e.g.*, Arce, *Identifying and Characterizing the Mentally Ill Among the Homeless*, in THE HOMELESS MENTALLY ILL (H. R. Lamb ed. 1984).

9. Address by Robert Chaffee, Director of Bureau of Assistance Payments, Los Angeles County Department of Public Social Services, to Los Angeles Countywide Coalition on the Homeless (Oct. 9, 1984).

10. 29 U.S.C. § 794 (1982). The Rehabilitation Act prohibits discrimination against the handicapped.

11. An action challenging the discriminatory impact of the General Relief application process on the mentally disabled is currently pending in the Los Angeles County Superior Court: Rensch v. Board of Supervisors, No. C595155.

shelter itself. If the emergency shelter is dangerous, dirty, and degrading to homeless people, they will make a rational decision to remain on the streets. Thus, in a very practical sense, a 'shelter' that does not meet minimal standards of cleanliness, warmth, space and rudimentary conveniences is no shelter at all.[12]

Homeless parents may choose to remain on the streets with their children rather than subject them to life in a dormitory-style shelter housing an undifferentiated population of homeless adults. Indigent individuals may forego assistance rather than give up their privacy in a county-sponsored poorhouse.[13] In Los Angeles, the Homeless Litigation Team, after obtaining court orders mandating provisions for shelter, found that their clients refused to use vouchers for skid row hotels. The homeless clients felt that the hotels were more dangerous and unsanitary than the parks and alleys to which they had access.[14]

Despite the relative effectiveness of the "input controls," some homeless people succeed in obtaining benefits. In Los Angeles County, for example, each month approximately 5,000 homeless people seek emergency assistance from the county. Of these, about 40% will eventually qualify for general assistance. In order to control the budget of the welfare department, then, the bureaucracy must devise a means of insuring that people do not remain indefinitely on the welfare roles. This is not necessarily an inhumane goal. If a general assistance program serves as a "bridge" to income maintenance programs for the disabled, like Supplemental Security Income, or as a source of support for the employable young person while he or she finds work, the program is working as most people believe it should. Unfortunately, it costs more to achieve these worthy goals than to terminate recipients for little or no reason. Thus, in Los Angeles County, approximately 2,500 people per month are terminated from General Relief and given a "sixty day penalty" that prohibits them from reapplying for assistance within two months of termination. The county imposes the "sixty

12. McCain v. Koch, 127 Misc. 2d 23, 484 N.Y.S.2d 985 (N.Y. Sup. Ct. 1984) *aff'd as modified*, 117 A.D.2d 198, 502 N.Y.S.2d 720 (1986).

13. In Robbins v. Superior Court of Sacramento County, 38 Cal. 3d 199, 695 P.2d 695, 211 Cal. Rptr. 398 (1985), the California Supreme Court enjoined county officials from utilizing such a mandatory "poorhouse" in Sacramento, California as a means of controlling general assistance costs.

14. Another lawsuit, Paris v. Board of Supervisors, No. C523361 (Los Angeles County Super. Ct.), was filed challenging uninhabitable conditions in the voucher hotels. The court issued interim orders requiring *inter alia*, that homeless persons not be sent to hotels that do not furnish heat in the winter.

day penalty" for violation of one of several program rules: being late for the work project job, failing to turn in a form on time, or failing to document the required twenty job searches per month. At any given time, then, nearly 5,000 destitute persons are added to the ranks of the unassisted homeless in Los Angeles County alone. In defense of its policy, the Los Angeles Welfare Department argued that eliminating the sanction would cost approximately $11 million per year.[15] In *Bannister v. Board of Supervisors*,[16] the plaintiff challenged the sixty day penalty on both procedural and substantive law grounds. The procedural challenge succeeded, at least on paper, leading to regulatory changes requiring that violations of welfare rules be "willful" before the welfare department can impose sanctions. The substantive challenge, based on the proposition that punishment should be somewhat related to the offense,[17] remains in litigation.

Although there is obviously no single "correct" approach or litigation strategy to deal with the problems of the homeless, there is a test for a successful litigation strategy. The litigation must have some chance of success in court, and this success must translate into concrete results on the streets. Legal analysis may help lawyers to measure the first criteria, but only hard, empirical field research can provide answers to the latter. In order to make scarce resources effective, attorneys engaged in institutional litigation must develop "models" of the systems that victimize clients. These models must be constructed on the basis of objective and accurate information. Most large bureaucracies maintain extensive management information system (MIS) reports that detail statistically the consequences of policy and program. In order to fully understand a system affecting human beings, attorneys must leave the office or the law library and spend time on the streets and in the welfare office waiting rooms, talking to people and viewing the "system" in its most human terms. It is necessary to have accurate information to guide a litigation strategy. More importantly, it is necessary to bring the often abstract pursuits of attorneys back down, quite literally, to the cold concrete—to face the miseries that mock all pretensions of a just society.

15. Bannister v. Board of Supervisors, No. C535833 (Los Angeles County Super. Ct. filed Feb. 25, 1985).

16. *Id.*

17. *See* Hale v. Morgan, 22 Cal. 3d 388, 584 P.2d 512, 149 Cal. Rptr. 375 (1978).