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## Beyond Homelessness: Ethics, Advocacy, and Strategy

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# BEYOND HOMELESSNESS: ETHICS, ADVOCACY, AND STRATEGY

MARIA FOSCARINIS\*

## I. INTRODUCTION

In recent years, attention has been focused on lawyers' ethical obligations to the poor.<sup>1</sup> In legal circles, discussion often centers on the existence, nature, and extent of such an obligation.<sup>2</sup> While generating significant disagreement, such debates generally proceed on a shared premise.<sup>3</sup> Typically, the relevant ethical issue is assumed to center on the threshold question of involvement: whether lawyers have an ethical obligation to the poor.<sup>4</sup>

In contrast, relatively little attention is given to ethical issues that arise following involvement.<sup>5</sup> While legal ethics generally focus

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1. A variety of rationales may be offered to support such an obligation, ranging from the formal dictates of the Code of Professional Responsibility to more abstract notions of lawyers' role in our system of justice. A.B.A., MODEL RULES OF PROFESSIONAL RESPONSIBILITY Canon 2 (1982); William J. Carroll, *Current Professional Issues: Addressing Obligations and Exploring Opportunities*, 62 N.Y. ST. B.J. 8, 9 (Feb. 1990); Michael Millemann, *Mandatory Pro Bono in Civil Cases: A Partial Answer to the Right Question*, 49 MD. L. REV. 18, 19-24 (1990).

2. Esther F. Lardent, *Mandatory Pro Bono in Civil Cases: The Wrong Answer to the Right Question* 49 MD. L. REV. 78, 86-88 (1990); Justin L. Vidgor, *Pro Bono Service: Mandatory or Voluntary?* 62 N.Y. ST. B.J. 32, 33 (May, 1990); Marsha Chambers, *Lawyers Find Loopholes in Pro Bono*, NAT'L L. J., Oct. 1, 1990 at 13.

3. Jennifer Gerarda Brown, *Rethinking "The Practice of Law"*, 41 EMORY L.J. 451 (Spring 1992); Cf. Millemann, *supra* note 1.

4. See Barlow F. Christensen, *The Lawyer's Pro Bono Publico Responsibility*, AM. B. FOUND. RES. J., 1 (1981) (argues that "[l]awyers have a pro bono publico obligation, arising from both the profession's tradition of service before gain and from the lawyer's essential and monopolistic position in the justice system.").

5. Lucie E. White, *Representing the "Real Deal"* 45 MIAMI L. REV. 271 (1991); Stephen Wizner, *Homelessness: Advocacy and Social Policy* 45 MIAMI L.

on post-involvement issues, in the area of representation of the poor, ethical inquiries appear to decrease once a commitment to involvement is made.<sup>6</sup> The implicit assumption is that, having taken that first step, we have fulfilled all our obligations. In a sense, it is almost as if a future of stasis is envisioned: having taken the plunge, the "ethical" lawyer merely continues to perform good deeds.

One example of this relative lack of attention involves lawyering for the homeless. Over the past decade, as the number of homeless people in this country dramatically increased,<sup>7</sup> many concerned individuals and groups have stepped forth to help address the problem.<sup>8</sup> Perhaps to an unusual degree, the legal profession has played a prominent role.<sup>9</sup> Indeed, lawyers have been active in undertaking both representation of individual homeless people, and working toward systemic reform.<sup>10</sup> Some, including this author, have left more traditional legal careers to pursue full-time work in this area.<sup>11</sup>

The efforts of such lawyers have received significant attention.<sup>12</sup> Frequently, these lawyers are seen as exemplars of good: embodiments of the high ethical standards of the profession.<sup>13</sup> While encouraging, this additional focus on the initial involvement may have contributed to the relative lack of attention to post-involvement ethics.

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REV. 387 (1991).

6. See Jennifer Hochschild, *The Politics of the Estranged: Poor*, 101 ETHICS 560 (1991); Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L. J. 947 (1992).

7. See, e.g., UNITED STATES CONFERENCE OF MAYORS, A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES: 1992 (Dec. 1992) (average estimated rate of increase in requests for emergency shelter was fourteen percent in 1992); MARTHA BURT, 'OVER THE EDGE: THE GROWTH OF HOMELESSNESS IN THE 1980'S, 1-2, 26, 211 (1992) (homelessness almost tripled between 1981-1989 in every region of the country and in cities of all sizes and levels of prosperity); Stephen Heilbrunner, *Homelessness Continues Unabated Nationwide*, UPI, Dec. 16, 1987, available in Lexis, Nexis Library, UPI File; *The Homeless: Who, Where, and How-Many? Shelter from the Storm*, 18 NAT'L J. 1972 (1986).

8. See JOEL BLAU, *THE VISIBLE POOR* 95 (1992).

9. Robert D. Raven, *Homelessness: Lawyers Join the Fight*, 75 A.B.A.J. 8 (July 1989).

10. See *id.*; Alexander Wohl, *Gimme Shelter; Lawyering for the Homeless* 76 A.B.A.J. 58-61, (1990).

11. See, e.g., Crystal Nix, *The New Social Reformers*, N. Y. TIMES, Oct. 26, 1986, § 6 (magazine) at 107.

12. *Id.*; Raven, *supra* note 9; see also *Homeless Action*, 25 NAT'L L. J., 9 (1993).

13. See, e.g., Raven, *supra* note 9. While this characterization gives much-needed encouragement, it may also threaten to polarize: the exclusive focus on the fact of involvement may also create a division between the "good" exemplars and everyone else.

This Essay ~~looks~~ beyond the ethics of initial involvement to the ethical dilemmas facing lawyers who become involved. In doing so, it also revisits the original premise, concluding that the reason for involvement is relevant to the manner in which that involvement is later carried out. In conducting this inquiry, the Essay draws on the author's own experiences as a lawyer working on behalf of homeless people.

The Essay first outlines ethical issues lawyers working on behalf of homeless people may face and briefly describes the recent phenomena of "institutionalization" and "legitimization"<sup>14</sup> of homelessness. The Essay then focuses on these issues by considering a case study: the campaign for an emergency federal legislative response to homelessness. Reviewing the author's experience, the Essay describes strategic decisions and trade-offs made in carrying out that campaign. The Essay describes the immediate, positive results following the success of that effort, as well as the later, more negative effects of that initial success, and discusses the ethical concerns these developments appear to raise. The Essay concludes that the stasis that followed the initial success, rather than the trade-offs made in the course of the campaign, accounts for those concerns.

The Essay proposes that to overcome these dilemmas, lawyers working on behalf of homeless clients have an obligation to work towards long-term solutions to end homelessness. It concludes by discussing three strategies or models for carrying out that work: charity, justice and enlightened self-interest. The Essay concludes that the latter two approaches are the most appropriate for the task of moving beyond emergency relief to permanent solutions to end homelessness.

## II. DEFINING THE PROBLEM: TRADE-OFFS AND THEIR CONSEQUENCES

Initially, the ethical obligations governing a lawyer representing individual homeless persons may seem no more complicated than those governing representation of other clients. In contrast, efforts at systemic reform, which often involve the lawyer in policy issues, appear to raise more complex ethical issues. Nevertheless, while it may be initially appealing, this distinction between individual representation and systemic reform is not at all clear-cut. Indeed, this Essay concludes that similar ethical considerations govern each form of legal undertaking.

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14. As used in this Essay, the term "legitimization" is different from, though it may be related to, the term "legitimation" used in *Critical Legal Studies*. See, e.g., Mark Kellman, *A Guide to Critical Legal Studies* 262-68 (1987).

In general, clients may have trouble identifying legal issues; the Rules recognize this and require the lawyer to help in that identification.<sup>15</sup> In addition, in order to obtain adequate assistance with a specific legal problem, clients may also need a broader form of assistance. For example, a corporate client may seek advice in meeting its legal obligations under existing tax laws. But the same client may also have a financial interest in changing existing law, and would expect to be advised and assisted in this by counsel.

Similar considerations apply to representation of homeless clients. First, the obligation to assist in the identification of legal issues clearly applies to homeless clients: at a very minimum there is an obligation to determine whether a homeless client is receiving benefits for which he may be eligible. Moreover, as in the case of corporate clients, the obligation may go further. While in some cases, homeless clients may simply want assistance with a narrowly defined legal problem, more typically, such clients also seek assistance in obtaining housing; employment, and social services.<sup>16</sup> In short, these clients want assistance in escaping homelessness, and they may well—and quite rationally—look to lawyers and the legal system for that assistance.

If the obligation to zealously represent a client's interest is taken seriously, efforts at systemic reform are imperative.<sup>17</sup> The current legal system does not provide sufficient assistance to homeless people. Indeed, it expressly excludes homeless people from rights available to others.<sup>18</sup> Therefore, systemic change may be necessary

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15. See A.B.A., MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 2-2 ("The legal profession should assist lay-persons to recognize legal problems because such problems may not be self-revealing") and EC 7-8 ("A lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations"). See also A.B.A., MODEL RULES OF PROFESSIONAL CONDUCT, RULES 1.2(a), 1.4, 2.1 (1991).

16. In the author's own volunteer experience staffing a legal clinic in a shelter, a very common request was assistance in obtaining housing, employment, or both. Such requests may implicate specific legal issues (as in cases where the client is eligible to apply for some program or assistance), as well as systemic issues (which may arise when any such programs or assistance are non-existent or patently inadequate). See, e.g., NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, ABANDONED TO THE STREETS (1992); NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, SOCIAL SECURITY: BROKEN PROMISE TO AMERICA'S HOMELESS (1990).

17. MODEL CODE OF PROFESSIONAL RESPONSIBILITY CANON 7 (1981) ("A lawyer should represent a client zealously within the bounds of the law."); Kenneth L. Penegar, *The Five Pillars of Professionalism*, 49 U. PITT. L. REV. 307, 354 (1988).

18. For example, homeless people may be denied assistance available to other poor people because they lack a permanent address. See, e.g., *Nelson v. San Diego County Bd. of Supervisors*, 235 Cal. Rptr. 305 (Cal. Ct. App. 1987)

to properly serve a homeless client's interests.

Pursuing such reform raises difficult ethical issues. Of particular interest here are ethical dilemmas arising from the nature of the involvement itself. First, political realities often require trade-offs. For example, to achieve real-world results, politically attainable and ultimately inadequate relief may have to be traded for necessary but politically infeasible solutions. Second, the achievement of the interim goal may further impede pursuit of a more complete, but also more difficult, solution.<sup>19</sup>

Such dilemmas are arising in efforts at systemic reform on behalf of homeless persons. Successful initial efforts to secure relief such as emergency shelter have resulted in a kind of institutionalization that threatens to convert temporary measures into permanent "solutions." Similarly, successful efforts at reform through existing channels of the political system have involved a process of "legitimization" that threatens to taint "the homeless" as just another special interest group.

#### A. Institutionalization

During the 1980s, there was an enormous outpouring of public concern for the homeless. Newspaper articles carried frequent features depicting the plight of particular individuals or families.

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(denying motion to dismiss action to overturn a regulation requiring any welfare recipient to have a valid address); *Homeless Mother Denied Benefits*, IN JUST TIMES (June 1990). They may be denied the right to vote because they lack a permanent address. See, e.g., *Pitts v. Black*, 608 F. Supp. 696 (S.D.N.Y. 1984); *Committee for Dignity & Fairness for the Homeless v. Tartaglione*, No. 84-3447, slip op. (E.D. Pa. Sept. 14, 1984); *Collier v. Menzel*, 221 Cal. Rptr. 110 (Cal. Ct. App. 1985); *Board of Election Comm'rs v. Chicago/Gary Area Union of the Homeless*, Misc. No. 86-29 (Ill. Cir. Ct. Sept. 26, 1986); *Disenfranchisement of Homeless Persons*, 31 J. URB. & CONTEMP. L. 225 (1987). Or they may be singled out under loitering, public drinking, or public sleeping laws that are not enforced against other, non-homeless persons. See, e.g., *Loper v. New York City Police Dept.*, 135 F.R.D. 81 (S.D.N.Y. 1991) (certifying a class action against the police department for discriminatory enforcement of loitering laws against the homeless.); *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992); *Blair v. Shanahan*, 775 F. Supp. 1315 (N.D. Cal. 1991). See also NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, GO DIRECTLY TO JAIL (1991) [hereinafter GDTJ] (reviewing cases).

19. Other related issues arise as well. For example, as the lawyer becomes involved in reforming existing or making new laws, the lawyer becomes a kind of policy-maker. Since homeless people often are not organized—as a trade group might be, for example—the lawyer attempting to generalize policy positions may have little direct client guidance. This may add a special burden on the lawyer attempting to do the right thing. ABA, *Lawyering to House the Homeless: Creative Tools* (ABA satellite seminar Dec. 7, 1989).

Concerned persons of all sorts volunteered to help.<sup>20</sup> Lawyers became involved, first in the courts, then in Congress.<sup>21</sup>

But as homelessness persists, and continues to grow, there is a tendency towards acceptance: What was originally perceived as an intolerable crisis may be evolving into an accepted social condition.<sup>22</sup> At the same time, organizations originally created to address the crisis of homelessness on a short-term basis are becoming established, possibly even acquiring a stake in their continued existence. Institutionalization is beginning to characterize the problem, and the mechanisms designed to address it.

Actions taken initially in response to a crisis have now become part of an ongoing process. The provision of emergency relief—such as soup kitchens and shelters—has become a permanent operation. As emergency measures become entrenched, they become part of the mechanism that may allow homeless people to survive but not to escape their plight.<sup>23</sup> Similarly, shelter operators, once advocates, may also become part of the *status quo*, perhaps pushed to a more passive role by the receipt of government funds.<sup>24</sup>

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20. More recently, a spate of articles have proclaimed a shift in public attitudes toward homelessness. According to these articles, the public has grown weary of the homeless; the initial wave of sympathy has turned sour. See, e.g., Isabel Wilkerson, *Shift in Feelings on the Homeless: Empathy Turns Into Frustration*, N.Y. TIMES, Sept. 2, 1991, at 1; Gwen Ifill, *Sympathy Wanes for Homeless; Funding Drop, Arrests Herald New Attitude*, WASH. POST, May 21, 1990, at A1. In an ominous development, some city governments are taking measures to "sweep" the homeless away. See, e.g., GDTJ, *supra* note 15 (surveying such measures); Larry Rohter, *Judge Orders 'Safe Zones' for Homeless*, N.Y. TIMES, Nov. 18, 1992, at A16; *Attitudes Toward Homeless a Shame*, L.A. TIMES, Dec. 27, 1992, at B11; Daniel B. Wood, *Homeless Problem Tests Public Sympathy*, CHRISTIAN SCI. MONITOR, Dec. 23, 1992, at 6; see also RUSH H. LIMBAUGH, *THE WAY THINGS OUGHT TO BE* (1992). Nevertheless, public opinion polls report that when asked, the majority of the public supports measures to help the homeless. See, e.g., BARRETT A. LEE AND BRUCE G. LINK, *IMAGES OF THE HOMELESS: PUBLIC VIEW AND MEDIA MESSAGES* (1991); GDTJ, *supra* note 15 (summarizing recent poll results).

21. See Raven, *supra* note 9; Wohl, *supra* note 10.

22. See, e.g., White, *supra* note 5 at 291-302; Eve M. Kahn, *SOM's Sensible Shelters*, WALL ST. J., Aug. 31, 1992, at A8 (architecture column discussing "[h]ousing for the homeless"); cf. BERNARDINE DOHRN, *A LONG WAY FROM HOME: CHICAGO'S HOMELESS CHILDREN AND THE SCHOOLS 10-11* (1991) (noting that while others refer to them as "homeless," families who lose their housing do not; instead, they say they are facing a housing crisis);

23. See, e.g., UNITED STATES CONFERENCE OF MAYORS, *supra* note 7, at 36-37 (the length of time people are homeless increased in 58% of the cities surveyed).

24. See, e.g., Alice K. Johnson, Larry W. Kreuger, & John J. Stredts, *A Court-Ordered Decree for the Homeless: Process Conflict and Control*, J. SOC. SOCIAL WELFARE 29, 40-41 (Sept. 1989); NATIONAL ALLIANCE TO END HOMELESSNESS, *ISSUE OF SERVICE DELIVERY* (July/Aug. 1992); see generally



### B. Legitimization

At the same time, an analogous development is occurring at the political level. Initially, homelessness was considered a subject appropriate primarily for private sector volunteerism.<sup>25</sup> It was not seen as an issue to be addressed through the political process. As a result, efforts at systemic reform faced a formidable barrier: entry into the system.

Following persistent advocacy efforts, and public pressure, homelessness gained acceptance as a social issue—and thus an issue for government action. This change signals success in crossing that threshold barrier. And in the process of gaining entry into the political process, homelessness has undergone a transformation: it is now considered a “legitimate” political issue.<sup>26</sup>

Such “legitimization” may seem to have—and may in fact have—significant benefits. But it also has had significant negative effects: homelessness, as a “legitimate” political issue, has been tainted by the system into which it has gained entry. The danger is that the success of the effort may convert “the homeless” into just another “special interest” group.<sup>27</sup>

### C. Defining the Problem: Some Questions

The institutionalization and legitimization of homelessness raise questions of strategy: To what extent can political trade-offs be justified? And given such trade-offs, and their consequences, how should efforts at systemic reform proceed? For the lawyer working on behalf of the homeless, these questions give rise to ethical con-

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Dennis P. Culhane, *The Quandaries of Shelter Reform: An Appraisal of Efforts to “Manage” the Homeless*, SOC. SCI. REV. (Sept. 1992).

25. This was certainly the position of President Reagan, and the Federal Task Force on Food and Shelter for the Homeless—an entity created by his Administration. Lou Cannon, *Reagan cites ‘choice’ by homeless; shelters available, President says*, WASH. POST, Dec. 23, 1988, at A8; GENERAL ACCOUNTING OFFICE, HOMELESSNESS: A COMPLEX PROBLEM AND THE FEDERAL RESPONSE 40-41 (1985).

26. Gwen Ifill, *Homelessness Takes Hold as National Issue: Frustrated Local Officials Turn to Federal Government for Help*, WASH. POST, Feb. 5, 1989, at A1 (discussing President Bush’s inauguration as a symbolic turning point in the acceptance of homelessness as a legitimate national issue).

27. Conservative publications began referring to “the homeless lobby” some time ago. Martin Morse Wooster, *The Homeless Issue: An Adman’s Dream*, REASON, July 1987, at 20. More recently, some more mainstream references have begun to appear. Martin Morse Wooster, *Federal Aid is Wasteful*, U.S.A. TODAY, Oct. 8, 1992, at 14A.

cerns as well.

These questions are loosely translated into the language of legal ethics as follows: First, to what extent does the duty of zealous representation permit—or, alternatively, require—trade-offs in order to achieve real-world results? Second, to what extent does success bring a danger of conflict of interest, and what should be done to avoid such a conflict?

Questions of strategy and ethics are intertwined. Strategic decisions—such as trade-offs—raise ethical questions. Ethical concerns—such as avoiding conflicts of interest—may influence the development of strategies to advance the effort. In addressing these questions of strategy and ethics, the Essay will focus on the process surrounding the passage of the McKinney Act.

### III. THE MCKINNEY ACT: A CASE STUDY

During the early 1980s, the primary response to the increasing number of homeless people across the country was at the local level.<sup>28</sup> In some cases, local governments responded, but under pressure.<sup>29</sup> In all cases, efforts by private non-profit groups, religious institutions, and concerned individuals, played a prominent role.<sup>30</sup>

Responding to the immediate needs of a perceived crisis, the relief offered was emergency in nature. For example, emergency shelters and soup kitchens were opened.<sup>31</sup> As a result, the manner and substance of response was a patchwork one, driven by necessity.

At the federal level, the official position of the Administration was that homelessness was a local, not a national problem.<sup>32</sup> A more ominous version of this disclaimer of responsibility was that homelessness was a "life-style" preference, and by implication not a social problem at all.<sup>33</sup> Indeed, the sole federal contribution, begin-

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28. BLAU, *supra* note 8; Marlin Fitzwater, Commenting at the White House on the Increase in Homelessness during the Reagan Administration, Fed. News Service, Dec. 19, 1988, available in Lexis, Nexis Library, fednew file.

29. *E.g.*, Callahan v. Carey, No. 42582-79 (N.Y. Sup. Ct., Aug. 26, 1981).

30. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, A REPORT ON THE 1988 NATIONAL SURVEY OF SHELTERS FOR THE HOMELESS 18 (1989).

31. Adrian C. Markusen, *Salvation Army Considers Reviving Soup Kitchens*, UPI, Dec. 27, 1981, available in Lexis, Nexis Library, UPI file.

32. *Washington News*, UPI, Mar. 24, 1988, available in Lexis, Nexis Library, UPI file (President Reagan tells high school students that the homeless problem belongs primarily "at the state and local level" and not under the federal government); GENERAL ACCOUNTING OFFICE, *supra* note 25.

33. See Cannon, *supra* note 25; Steven V. Roberts, *Reagan on Homelessness: Many Choose to Live in the Streets*, N.Y. TIMES, Dec. 23, 1988, at A26; Laurence Schiff, *Would They be Better Off in a Home? Why do People Become Homeless?*, NAT'L REV., Mar. 5, 1990, at 33, (in the context of discuss-

ning in 1983, was a series of appropriations for emergency food and shelter.<sup>34</sup>

In 1985, advocates began a concerted campaign to pressure the federal government to respond to what was becoming a national crisis.<sup>35</sup> To mount this campaign, we developed a two-part strategy: federal litigation would be used to pressure the Administration and legislative advocacy would be used to pressure the Congress.<sup>36</sup> A Washington office would be set up to carry out the strategy.<sup>37</sup>

My involvement began while working at a Wall Street law firm in New York. I volunteered time to work on a *pro bono* case representing homeless families who were being denied emergency shelter. I spent two years working on the case, together with an advocacy group, the National Coalition for the Homeless.<sup>38</sup> In late

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ing how the welfare state encourages homeless to stay homeless, author quotes President Reagan saying ". . . one problem that we've had, even in the best of times, and that is the people who are sleeping on the grates, the homeless who are homeless, you might say, by choice."

34. Emergency Job Appropriations Act of 1983, Pub. L. No. 98-8 (1983). These appropriations were not authorized by any separate legislation. As a result, they were made on a purely *ad hoc* basis.

35. By then, numerous sources had documented the growth of homelessness across the country. Moreover, it was clear that homelessness was affecting a broad cross-section of the population, both in its demographic and geographic impact. Maria Foscarinis, *Federal Legislative and Litigative Strategies: An Overview*, 1 MD. J. CONTEMP. LEGAL ISSUES 9 (1990); see generally White, *supra* note 5.

36. See generally, Foscarinis, *supra* note 35, for an overview of the two-part strategy.

37. Many important advocacy efforts aimed at the Federal government had been mounted previously. Congressional hearings held by Rep. Henry Gonzalez (D-Tex.) in 1982 helped focus public attention on the issue. Iver Peterson, *Congress is Urged to Help Homeless*, N.Y. TIMES, December 16, 1982, at A16. Similarly, a hunger strike by Mitch Snyder of the Community for Creative Non-violence in 1984 galvanized the national public. VICTORIA RADER, SIGNAL THROUGH THE FLAMES: MITCH SNYDER AND AMERICA'S HOMELESS 216-29 (1986); *Mitch Snyder's Victory*, WASH. POST, Nov. 6, 1984, at A20. Earlier Federal court litigation established important legal rights. See, e.g., *Canton v. Barry*, 500 F. Supp. 45 (D.D.C. 1980). Without these efforts, the subsequent work would not have been possible, and the account here is not intended to diminish their importance in any way. Rather, the point is that the 1985 campaign initiated an organized effort aimed at securing nationwide relief from the federal government. For a description of the initiation of this effort, see Julie Kosterlitz, *They're Everywhere*, 19 NAT'L J. 492 (1987); JERRY HAGSTROM, BEYOND REAGAN: THE NEW LANDSCAPE OF AMERICAN POLITICS 256-57 (1988).

38. *Koster v. Webb*, 598 F. Supp. 1134 (E.D.N.Y. 1983), later *proceedings sub nom. Koster v. Perales*, 108 F.R.D. 46 (E.D.N.Y. 1985), *aff'd*, 903 F.2d 131 (2d Cir., 1990) (a class action suit against Nassau County and New York State). The Coalition for the Homeless and Nassau/Suffolk Law Services filed the original papers; I became involved when Robert Hayes, then at the Coalition, approached Sullivan & Cromwell, where I was a litigation associate, seeking addi-

1985, I left Wall Street to establish an office in Washington D.C. for this group, which until then had been based solely in New York, and to press for a federal response to homelessness. ....

The two-part plan, litigation and legislation, developed out of necessity: making and enforcing laws seemed to be the tools available to a lawyer to address this social problem.<sup>39</sup> Litigation was difficult at first because there was a limited number of federal laws that addressed, or could be argued to address, the needs of homeless people. Substantively, legislation initially offered more possibilities.<sup>40</sup>

Working with other national groups, we developed a legislative blueprint which outlined steps that needed to be taken at the federal level to address homelessness.<sup>41</sup> Because it was drafted without regard to political "reality," some members of our group called this proposal a "wish list."<sup>42</sup> Particularly as the group expanded, a variety of different strategic and substantive approaches emerged. Some, apparently influenced by the then-prevailing political climate, wanted to take a more "fiscally conservative" approach, while others favored a broader approach. Titled the "Homeless Persons' Survival Act," the proposal as finally drafted contained three main titles: emergency relief, preventative measures, and long-term solutions.<sup>43</sup> Each of these titles contained many subparts.<sup>44</sup>

To promote the proposal in Congress, we settled on a two-pronged strategy. We would seek introduction of the proposal as a whole, but we would also seek to have the subparts introduced separately. We would use the whole proposal as a rallying point, while

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tional, *pro bono* assistance.

39. Foscarinis, *supra* note 35.

40. This is not to understate the importance, even at that early date, of federal litigation. Strategically, as well as substantively, federal litigation played an important role. See, e.g., *Bruce v. U.S. Dept. of Defense*, No. 87-0425-LFO, slip op. (D.D.C. June 16, 1987). Indeed, the *Bruce* case helped mark the move of homelessness into the national pages—and to define it as a national and federal issue. But for purposes of the present discussion, this Essay focuses on the federal legislative effort, and specifically, the work that led to the McKinney Act.

41. Foscarinis, *supra* note 35. The groups involved in this initial process included: National Housing Law Project, National Low Income Housing Coalition, National Mental Health Association, Mental Health Law Project, Food Research and Action Center, Children's Defense Fund, Center on Law and Education, Institute For Policy Studies, National Senior Citizens Law Center, and the Community for Creative Non-Violence.

42. See Kosterlitz, *supra* note 37.

43. Homeless Persons' Survival Act, on file with the author.

44. *Id.* See also Kim Hopper and Maria Foscarinis, *Model Legislation: The Homeless Persons' Survival Act of 1986*, in BOSTON FOUNDATION, HOMELESSNESS: CRITICAL ISSUES FOR POLICY AND PRACTICE 59-61 (1987).

also having more manageable, and "realistic," pieces available for passage. In this way, we hoped to obtain the organizing advantage of idealism, while also maintaining the practical advantage of realism.<sup>45</sup>

The initial approach to Congress provided a harsh dose of political reality. First, we approached our "allies", the liberal Democrats, but were quickly sent on our way in no uncertain terms. In some cases, we were told that the proposal was sensible, necessary and—of course—morally right, but there was an election coming up, and homeless people did not vote. In other cases, the response was blunter still: I remember being laughed at by staffers who could not imagine that homelessness could be taken seriously as a "legitimate" legislative issue.<sup>46</sup>

Whether or not homelessness was a "legitimate" issue was the key: the initial struggle was to convince Members of Congress, and their staffs, that this was an appropriate subject for legislative action. In some cases, the problem seemed philosophical: some congressional offices viewed homelessness as a matter for private philanthropy, not an issue for government action. In other cases, the problem seemed practical: no staffer had been designated to work on this "issue," and there was simply no one to talk to.<sup>47</sup>

Nevertheless, after many visits and meetings, we found initial sponsors in both the House and Senate.<sup>48</sup> Subsequent support was progressively easier to obtain. Eventually, in June of 1986, the bill was introduced in both houses with significant support.<sup>49</sup> As planned, smaller pieces were introduced separately.

Later that year, the two-pronged legislative strategy began to pay off, and the first small pieces of the bill became law.<sup>50</sup> These pieces, titled the Homeless Eligibility Clarification Act, were designed to remove permanent address and other requirements that

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45. Foscarinis, *supra* note 35.

46. Maria Foscarinis, *The Politics of Homelessness: A Call to Action*, 46 AM. PSYCHOLOGIST 1232, (Nov. 1991).

47. These problems may have been related, or even identical. For a description of some of these events, see Kostercilz, *supra* note 37; *The Homeless Become an Issue*, N.Y. TIMES, Feb. 7, 1987, at 8.

48. Our initial sponsor in the House was the late Rep. Mickey Leland (D-Tex.); in the Senate, our initial sponsor was Sen. Al Gore. I had previously met Sen. Gore's wife, Tipper, when she invited me to speak about homelessness at a tea she had organized for congressional wives concerned about the issue. I told her about the legislation, and her interest was significant in facilitating my subsequent meeting with the Senator, as well as his agreement to serve as the initial sponsor in the Senate.

49. List on file with author. There was a total of 70 initial sponsors, 68 in the House and 2 in the Senate.

50. Homeless Eligibility Clarification Act, Pub. L. No. 99-570, 100 Stat. 2307-167 (1986) (codified at 7 U.S.C. § 2011 (1988)).

prevented homeless people from gaining access to existing federal assistance programs.<sup>51</sup> Because the agencies took the position that no significant numbers of homeless people were being denied access to these benefits, the congressional budget office estimated the cost of these measures as zero.<sup>52</sup> Given that estimate, bi-partisan support was ensured, and we had our first legislative victory less than a year after opening the office.<sup>53</sup>

But this success produced more than just our first victory, in a number of respects. First, an allied group, which had worked in Washington, primarily at the local level, for years prior to our arrival, began making visits to Capitol hill following passage of the Eligibility Act. Second, apparently because of the groundwork laid by that earlier effort, congressional offices appeared much more receptive to these visits. These two developments intersected when Mitch Snyder, leader of the allied group, approached us with a proposal to work together legislatively.<sup>54</sup>

Mitch's proposal involved a change of strategy. Instead of the two-pronged approach, which kept sight of the big picture while also maneuvering for incremental measures, he proposed an all-or-nothing strategy.<sup>55</sup> Mitch wanted to pick a sum of money that was substantial but not completely out of reach politically, and mount a major campaign to press Congress for passage of legislation reflecting that sum. Essentially, the idea was to press for the outer limit of what was possible politically—and get it.

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51. *Id.* Covered programs included Supplemental Security Income, Food Stamps, Medicaid, Veterans benefits and the Job Training Partnership Act.

52. Unpublished memoranda on file with author. This was a case where the Reagan Administration's refusal to acknowledge homelessness as a serious national problem was beneficial. The agencies predicted that no additional cost would result from making these programs available to the homeless.

53. In fact, Senator Peter Domenici (R-NM), was our chief sponsor. Senator Domenici's concern for homeless people appeared to be based on a moral sense of basic human decency; he did not appear to view the issue as political or ideological. See Kosterlitz, *supra* note 37. His support was critical in securing co-sponsorship by other Republicans, including Jesse Helms, (R-SC). Also critical was the *pro bono* assistance provided to our efforts by Roderick DeArment, a partner at the law firm of Covington & Burling, who had been chief of staff to then-majority leader Bob Dole (R-KS), and retained important ties to Republican Senate offices.

54. See Kosterlitz, *supra* note 37. Of course, as described earlier, the success of the Eligibility Act in large part depended on efforts that preceded that effort. The allied group, the Community for Creative Non-Violence, had played a critical role in those earlier efforts. See *supra* note 41.

55. Fundamentally, Mitch seemed offended by the idea that we had taken advantage of agency hypocrisy and embraced the zero cost estimate, even though this had worked to our advantage: we had obtained measures that would surely cost something for nothing.

According to this approach, we would press for emergency relief, and we would mount the campaign that winter. This was part of the political calculus: we could prevail only if we relied on the crisis nature of the problem—and on the emergency nature of the solution. In this way, we would take advantage of the prevailing view of homelessness as a temporary crisis, to be solved by temporary, emergency measures.<sup>56</sup>

Initially, I opposed this approach for fear of contributing to that view. I felt the original two-pronged strategy was preferable because it offered the best chance to retain principle while also pursuing politics. But I could not dissuade Mitch, and eventually it began to seem necessary to defer to his greater and longer experience.

Mitch's sense that an all-out, all-or-nothing approach was necessary to make headway may have been correct. The first victory had been to a large extent dependent on the zero cost estimate. It seemed probable, given our initial reception on Capitol Hill, that further efforts involving money would be very difficult. Also, it was one thing to ensure that homeless people could take advantage of existing programs, but a very different thing to create new programs.<sup>57</sup>

There were also urgent practical considerations which favored Mitch's strategy. To succeed, the original two-pronged strategy would require time and an immense organizing effort. For homeless people losing time meant losing a chance to survive. Each winter, or summer on the streets meant more deaths. Organizing was also very difficult: our most natural constituents were homeless people and service providers. For homeless people—engaged in a gruelling daily battle for survival—organizing was terribly difficult. For providers—typically small, underfunded non-profits—it was not much easier. To effectively organize, they would have to divert scarce resources from immediate, concrete needs to more abstract, albeit ulti-

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56. See RADER, *supra* note 37, at 141, for a description of an earlier use of the strategy of "defining the issue as a winter emergency," during a 1981-82 campaign by CCNV aimed at forcing the District of Columbia to provide additional shelter space.

57. Of course, the all-or-nothing strategy was also the approach Mitch generally favored. See, e.g., *I give to People who are Suffering*, NEWSWEEK, July 16, 1990, at 25 (discussing Snyder's efforts and hunger strike); Jason DeParle, *Mitch Snyder, 46, Advocate of Homeless*, N.Y. TIMES, July 6, 1990, at A16 (discussing Mitch Snyder's life and apparent suicide on July 5, 1990); Jason DeParle, *Service for Snyder Brings Celebrities*, N.Y. TIMES, July 11, 1990, at B6. Skill in using a particular strategy may influence the decision to use it. In addition, Mitch's group operates one of the largest—if not the largest—shelters in the nation. These points may raise issues similar to those discussed in the Essay, but will not be pursued here.

mately more significant, long-term goals.<sup>58</sup>

Finally, there were internal political realities. Our allies, leaders in the movement, were set on the all-or-nothing strategy. Refusing to agree would have meant a break with critical allies. Disunity would make all efforts much harder. We agreed to press for \$500 million in emergency aid. We also agreed to mount jointly the winter campaign for passage.

If there was a specific moment when homelessness became a "legitimate" issue, it was during that campaign.<sup>59</sup> With the prospect of further—and potentially controversial—legislative action, homelessness became further objectified: "the homeless" became a group to support or oppose, to vote for or against, to speak out for or to shun. At this point, members of Congress were pressed to take positions on the issue of homelessness.

Because we committed ourselves to the all-or-nothing approach, our effort focused almost exclusively on securing passage of the \$500 million emergency package. In our lobbying, organizing and press efforts, we focused on the need for this emergency relief, implicitly defining homelessness as an emergency issue. Some effort was made to moderate this emphasis by stressing the need for long-term relief. However, the primary focus was clearly on emergency aid.<sup>60</sup>

Of course, we did not have anything resembling complete control of the process, and I do not want to overstate the degree to which our own strategy contributed to the definition of the issue. But our strategy played directly into the desire of the political community to view homelessness superficially, and as amenable to emergency fixes. This was not accidental: our strategy was consciously designed to take advantage of the political *status quo*. We adapted our approach to the prevailing system of political expediency.

Our lobbying methods also reflected this strategic decision. Mitch and other members of CCNV set up camp on a heat grate outside the Capitol: Mitch spent the entire winter there.<sup>61</sup> When he

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58. The Hobson's choice posed by this dilemma—and by the lack of adequate funding—continues. See unpublished correspondence from service providers on file with the author. See also RUTH MCCAMBRIDGE, *GIVING TO END HOMELESSNESS* (1992) (documenting the lack of funding for advocacy efforts to address causes of homelessness, as opposed to funding for direct services which can only alleviate its symptoms, despite funders' belief that advocacy for systemic reform is more effective).

59. *Washington Talk; The Homeless Become an Issue*, N.Y. TIMES, Feb. 7, 1987, § 1, at 8.

60. But see Robert Pear, *President Signs \$1 Billion Bill to Aid Homeless*, N.Y. TIMES, July 24, 1987 at A1.

61. In order to generate publicity for the legislative push, representatives of



and I went on lobbying visits, I was a lawyer in a suit, he was an activist in an army jacket. We brought the sense of emergency, as well as the aura of legitimacy, into the congressional offices we visited.<sup>62</sup>

In pursuing our strategy, we made a non-partisan appeal: homelessness was a moral, not a partisan issue. We were successful in this, and that Spring our legislation was passed by large, bi-partisan majorities in both houses.<sup>63</sup> This helped ensure that when the bill finally reached the President's desk, signature was more or less unavoidable.

We were also successful in moving the legislation quickly. By tying our strategy to the weather—again taking advantage of the sense of emergency—we managed to force Congress to conform its activities to seasonal changes: Indeed, Congress expedited the legislative process in order to pass the bill by Spring.<sup>64</sup>

On July 22, 1987, the President signed the bill into law.<sup>65</sup> Bearing a two-year authorization, the Stewart B. McKinney Homeless Assistance Act of 1987 created over a dozen federal programs, including provisions for shelter, food, and mobile health vans.<sup>66</sup> It also created a new "interagency council on the homeless."<sup>67</sup> The total authorization for the first two years was \$1 billion and for the first year, \$500 million was authorized.<sup>68</sup>

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advocacy and service groups from areas around the country, as well as celebrities and members of Congress, came to Washington to join Mitch for a night on the heat grate at various points throughout the winter. Designed to generate publicity for the legislative effort, these events were nonetheless covered in the "Style" pages of the Washington Post. See Chuck Conconi, *Personalities*, WASH. POST, Mar. 2, 1987 at B3.

62. See Kosterlitz, *supra* note 37; Maria Foscarinis, *Mitch Snyder: In Memorium*, IN JUST TIMES (July 1990) (the weekly newsletter of the National Law Center on Homelessness and Poverty).

63. See Helen Dewar, *Senate Votes Homeless Aid; Move to Rescind Pay Raise Repulsed*, WASH. POST, Apr. 10, 1987, at A12.

64. *Id.*

65. According to the official White House statement, he signed it in the evening to indicate his "reluctance" in approving the bill. See, Pear, *supra* note 60.

66. *Id.*

67. In a sense, this further contributed to the "objectification" of homeless people. But it also increased, by centralizing, the responsibility placed on the federal government. This is another example of a kind of trade-off, and another point on which there was some internal debate.

68. Stewart B. McKinney Homeless Assistance Act, 101 Stat. 482-538 (1987) (codified at 42 U.S.C. § 11301-11472 (1987)). Originally titled the Urgent Relief for the Homeless Act, the bill was subsequently named for the late Rep. Stewart B. McKinney (R-Conn.) who had been its chief Republican sponsor in the House, and who died on May 7, 1987. The original McKinney Act has since been re-authorized and amended three times. Stewart B. McKinney Homeless

#### IV. CONSEQUENCES OF THE MCKINNEY ACT: EVALUATION

Perhaps much more than we realized at the time, passage of the McKinney Act had consequences in many different areas and ways. Concretely, the aid it provided had an impact on homeless people. Less obviously, the act also had effects on perceptions in Congress, in the press, and in the advocacy community. Moreover, these consequences appear to have changed, and to be changing, over time.

##### A. Consequences: Round One

The most concrete initial consequence of the McKinney Act was the major increase in federal resources for homeless people. In the space of a few months, federal aid went from small, unauthorized, *ad hoc* sums distributed to shelters and soup kitchens to an express, multi-faceted comprehensive package of emergency aid.<sup>69</sup> In terms of dollar amounts, spending increased approximately ten-fold.<sup>70</sup> In terms of relief to homeless people, it is clear that the McKinney Act saved lives.<sup>71</sup>

In Congress, the process of legitimization initially opened doors. Members and their staffs kept track of McKinney programs in their states and districts, and sought out advocates for information and advice.<sup>72</sup> Committees held hearings to investigate implemen-

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Assistance Amendments Act of 1988, 102 Stat. 3224 (1988) (codified at 12 U.S.C. § 1454); Stewart B. McKinney Homeless Assistance Amendments Act of 1990, 104 Stat. 4673 (codified at 13 U.S.C. § 141); Stewart B. McKinney Homeless Housing Assistance Amendments Act of 1992, Pub. L. No. 102-550, 106 Stat. 113 (1992).

69. Beginning in 1983, Congress had made appropriations for emergency shelter and food under the FEMA, (Federal Emergency Management Agency), disaster relief program contained in the Emergency Jobs Appropriations Act of 1983, Pub. L. 98-8, 97 Stat. 13-37 (1983); *see supra* note 34 and accompanying text. No authorizing legislation accompanied these appropriations, which ranged from \$10-\$70 million annually. In 1986, at the same time the Eligibility Act was moving through Congress, a small, \$15 million emergency shelter grants bill was also passed, 42 U.S.C.A. § 1397d (1987).

70. Stewart B. McKinney Homeless Assistance Act, 101 Stat. 482-538 (1987) (codified at 42 U.S.C. § 11301-11472 (1987)).

71. *See, e.g.*, Kathleen Kennedy Manzo, *Families Get Temporary Homes and a Second Chance*, WASH. POST, Apr 16, 1992 at V1; Jason DeParle, *Bush Homeless Plan: 'Godsend' or False Hopes*, N.Y. TIMES, Feb. 12, 1990, at A1; NATIONAL COALITION FOR THE HOMELESS, NECESSARY RELIEF: THE STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT 4-5 (1988).

72. Telephone interview with Harriet Pritchett, Chief of Staff, Congressman William Clay's Office (Mar. 10, 1993).

tation by executive agencies of the new programs.<sup>73</sup> In some cases, committees also held hearings with a broader scope, looking at more long-term issues and needs.<sup>74</sup>

In the press, the issue of homelessness began to move onto the national pages and into the political news. Previously, press coverage had been extensive, but limited to the metro or style sections. The stories were "soft," features focusing on the plights of specific individuals or families.<sup>75</sup> Following passage of the McKinney Act, homelessness acquired a new seriousness, and a new context as a national political issue.<sup>76</sup>

Finally, passage of the McKinney Act had an immediate effect on the advocacy community. While we previously had credibility as doers of good, we now acquired credibility as effective insiders as well.<sup>77</sup> Without money, power, or an organized constituency, against all odds, we had mastered the game and made it work for us. The result was a reinforced sense of potency and possibility.

Overall, the immediate consequences of the McKinney Act were positive. Each consequence reinforced the correctness of the original strategic decisions that had made this success possible. The trade-offs seemed worthwhile. Judging by these immediate results, those strategic decisions had been correct, and justified.

73. *Implementation of the McKinney Homeless Assistance Act by the Interagency Council on the Homeless: Joint Hearing Before the Government Activities and Transportation Subcommittee and the Employment and Housing Subcommittee of the Committee on Government Operations*, 101st Cong., 1st Sess. (1989).

74. *Homelessness in America—The Need for Permanent Housing: Hearings before the Subcommittee on Housing and Community Development of the Committee on Banking, Finance and Urban Affairs*, 101st Cong., 1st Sess. (1989). This is an example of a way that the McKinney Act functioned as a sort of catalyst, focusing attention on longer-term issues. In cases such as this, it operated as the first prong of our original two-pronged strategy. But this was not a steady, ongoing role, and as described earlier, we had set aside active pursuit of that strategy. Rather, this is an example of what could, perhaps, have been pursued.

75. See, e.g., *Christmas Aid Drive; Need Rises But Donations to Salvation Army Decline*, L.A. TIMES, Dec. 18, 1985, at 14.

76. Of course, this was not just a result of the McKinney Act; indeed, initial passage of the Act received disproportionately little public attention. But the McKinney Act provided a broader federal, and thus national, context. In addition, passage of the Act gave rise to additional federal litigation, which itself played an important role in focusing attention on homelessness as a national, and political, issue. See, e.g., *National Law Center on Homelessness & Poverty v. United States Veterans Admin.*, 765 F.Supp. 1 (D.D.C. 1991) (enforcing McKinney Act provisions that required the use of surplus federal property for benefit of the homeless).

77. See, e.g., *Kosterlitz*, *supra* note 37. This discussion concerns advocacy at the national level; for a somewhat analogous discussion of advocacy at the state and local level, see Carol Biliczky, *Homeless Advocate Knows How to Work Within System*, AKRON BEACON J., Nov. 11, 1990, at G1.

### B. Consequences: Round Two

Now, over five years later, the scene has shifted. The McKinney Act has been reauthorized and amended three times.<sup>78</sup> Thousands of agencies and organizations around the country now receive McKinney funds.<sup>79</sup> A virtual cottage industry has sprung up around the McKinney programs. For example, consultants will, for a fee, guide applicants through the process.<sup>80</sup>

The misery of homelessness continues to grow as each year, more and more people become homeless.<sup>81</sup> More shelters exist today, but a dire shortage of shelters still exists and the average length of stay is growing.<sup>82</sup> What had once been temporary seems to be becoming increasingly permanent.<sup>83</sup> With this comes a sense of increased hopelessness.<sup>84</sup> Five years later, homelessness is becoming—or has become—institutionalized.<sup>85</sup>

In Congress, the process of "legitimization" has begun bearing bitter fruit. Now, homelessness is taken for granted as an issue and we advocates are taken for granted as a kind of "homeless lob-

78. See Stewart B. McKinney Homeless Assistance Amendments Act of 1988, 102 Stat. 3224 (1988) (codified at 12 U.S.C. § 1454); Stewart B. McKinney Homeless Assistance Amendments Act of 1990, 104 Stat. 4673 (codified at 13 U.S.C. § 141); Stewart B. McKinney Homeless Housing Assistance Amendments Act of 1992, Pub. L. No. 102-550, 106 Stat. 113 (1992).

79. See, e.g., INTERAGENCY COUNCIL ON THE HOMELESS, 1990 ANNUAL REPORT 101 (1991).

80. For example, a Philadelphia law firm advertises services involving work with McKinney Act programs (on file with the author). See also ELLIOT LIEBOW, TELL THEM WHO I AM 4-10 (1993) (describing increasing professionalization of the operation of certain shelters).

81. See UNITED STATES CONFERENCE OF MAYORS, *supra* note 7; Heilbronner, *supra* note 7.

82. UNITED STATES CONFERENCE OF MAYORS, *supra* note 7, at 36-37; Ruben Castaneda, *Rise in D.C. Homeless Families, Causes Shelters to Reject Some* WASH. POST Jan. 9, 1993, at B4.

83. See, e.g., Susan Bennett, *Heartbreak Hotel*, 1 MD. J. CONTEMP. LEGAL STUDIES 27, 27-34 (1990) (discussing the "fiction of temporariness"); Jonathon Kozol, *Here Comes Shelter Chic; We Need Homes for the Poor, Not an Empire of Poorhouses*, WASH. POST, Apr. 2, 1989, at C5; *A New Strand in the Net for Homeless*, L.A. TIMES, May 16, 1991, at B6.

84. See Lisa Goodman, Leonard Saxe, & Mary Harvey, *Homelessness as Psychological Trauma*, 46 AM. PSYCHOLOGIST 1219 (1991); Thomas Morgan, *Struggling to Survive Amid Despair and Violence at Care Center for Men*, N.Y. TIMES, Nov. 23 1987, at B6.

85. Daniel Coleman, *Shelter Life: Why It's Hard To Get Out*, N.Y. TIMES, May 24, 1990, at B14; Kozol, *supra* note 83; see also Kim Hopper, *Homelessness Old and New*, in FANNIE MAE, ANNUAL HOUSING CONFERENCE 14 (1991).

by," akin to other "lobbies."<sup>86</sup> Accepted as a legitimate social issue, homelessness lost its specialness, and the connection to the real world that allowed it to retain its sense of urgency, even in the political world of Washington, D.C. Moreover, as an issue it has become tainted with the same sense of hopelessness and lost idealism that affects all "good" social issues: the conventional Washington wisdom is that we "should" be addressing the issue, if only we had the money. Homelessness is an issue, but it is increasingly relegated to the bottom of the list of priorities in Congress.

In the press, we now read reports of a public "backlash" against the homeless. According to these reports, the public is tired of homelessness and wishes the problem would just go away.<sup>87</sup> While the accuracy of these reports is debatable, it is clear that the public is frustrated with both the persistence of the problem and the inadequacy of the "solutions."<sup>88</sup> Polls indicate that the public supports long-term solutions to homelessness, not just short-term solutions like shelters.<sup>89</sup> Indeed, much of the evidence of "backlash" centers on opposition to placement of shelters.<sup>90</sup>

Finally, two phenomena have appeared to affect the advocacy community. First, some advocates, now recipients of federal money, may hesitate in—or even be prohibited from—criticizing government policies.<sup>91</sup> Second, there is the emergence of the "homeless advocate," a sort of professionalization of activism.<sup>92</sup> The recently intro-

86. See Wooster, *The Homeless Issue: An Adman's Dream*, *supra* note 27.

87. See *Rising Problems With Homeless cited in Survey; Cities: Conference of Mayors Says That Demand for Emergency Food Aid Increased 26% This Year. Study Finds Evidence of a Public Backlash*, L.A. TIMES, Dec. 17, 1991, at A20; UNITED STATES CONFERENCE OF MAYORS, *supra* note 7.

88. Marsha Mercer, *A Compassion Fatigued Nation Hardens its Heart to the Homeless*, CH. TRIB., Dec. 26, 1991, at 27; Edward S. Hetman, *Compassion Fatigue*, Z MAGAZINE, March 1992, at 37-38. *But see* GDTJ, *supra* note 18, at table 2 (summarizing polls showing continued high public support for government aid to homeless); Mary Ellen Hombs, *Reversals of Fortune: America's Homeless Poor and Their Advocates in the 1990's*, in NEW FORMATIONS, THE QUESTION OF HOME 119 (Summer 1992) (describing the shift in public reaction to homelessness as reflecting not callousness but powerlessness).

89. E.g. GDTJ, *supra* note 18.

90. Mary B.W. Tabor, *Dinkins Plan for Homeless is Criticized*, N.Y. TIMES, June 28, 1992, at 26. In addition, rollbacks, like the repeal of the right to shelter in Washington D.C., can be viewed as a casualty of institutionalization. A neat, though obviously false, way to keep shelters temporary is to cut them off. This is analogous to the recent increase in "anti-homeless" actions by some local governments: such efforts seek to eliminate homelessness by eliminating the homeless. See Nancy Lewis, *Cities Accused of Hiding the Homeless*, WASH. POST, Dec. 18, 1991, at A20; see also Peter Margulies, *Building Communities of Virtue*, 43 SYRACUSE L. REV. 601 (1993).

91. See Hombs, *supra* note 88, at 121.

92. Foscarinis, *supra* note 46, at 1232; cf. Hombs, *supra* note 88, at 121..

duced bill to reauthorize the McKinney Act contains, for the first time, a section called the "Homeless Advocates Demonstration Grant Program".<sup>93</sup> In both cases, the institutionalization of "advocacy" threatens to become a dangerous new development.<sup>94</sup>

### C. A Preliminary Evaluation

The strategy we used in pressing for the McKinney Act had an immediate positive effect. But given the situation five years later, was that strategy justified? A key question is whether the current problems are related to—or the result of—the earlier success. Were the very factors that permitted the earlier success the same ones that have led to the current problems? And does that initial success now impede further progress? These are the ethical issues.

At the least, the earlier success and the current problems seem related. Making the argument that homelessness was an urgent crisis permitted us to press Congress to act quickly. Arguing that providing the necessities of survival was morally required allowed us to garner the large bi-partisan majorities we needed to get the McKinney Act signed by President Reagan. But the strategy dictated that the solutions provided would be emergency ones. The price of moral consensus may have been the creation of a new lowest common denominator, a lowering of what is the minimum acceptable standard to meet basic needs: shelters and soup kitchens.<sup>95</sup>

As a result, what was temporary has become permanent, what was unacceptable has become at least tolerated.<sup>96</sup> Even the partial co-opting of the advocates may be related to the advocacy strategies we used then: By using outdoor camping as an advocacy tool, we may have reinforced the notion that shelter—coming in from the grate—was the relief we aspired to. Having received shelter—at least in part—we may find ourselves without a comparable method of

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93. *The Introduction of the McKinney Homeless Assistance Reauthorization Act of 1992*, 102d Cong. 2d Sess. 138 CONG. REC. E385 (1992).

94. See Peter Margulies, "Who Are You to Tell Me That?": *Attorney-Client Deliberation Regarding Nonlegal Issues and the Interests of Nonclients*, 68 N.C.L. REV. 213, 230-40 (1990).

95. See BLAU, *supra* note 8 (Blau argues that cutting levels of public assistance for poor has had a ripple effect, redefining acceptable minimums for the middle class as well. Analogizing to the current discussion, in the case of homelessness, even lower levels were defined, and perhaps a new category of poverty); LIEBOW, *supra* note 80, at 221, 224 (quoting a homeless woman describing shelters as created by the government in order for the government to avoid any duty to provide low-cost housing; and discussing homelessness as a result of the falling standard of living).

96. Kozol, *supra* note-83.

demonstration.<sup>97</sup>

In a perhaps deeper sense, this seeming satisfaction of our demonstrated (though certainly not sole) demand may have taken other, enormous personal tolls. With the cry for shelter no longer heard—or believable as a cry for emergency aid—the movement lost its sense of potency. Indeed, the sense of despair and powerlessness may have been a factor in the suicide of my friend and colleague Mitch Snyder.<sup>98</sup>

The McKinney Act strategy accomplished the limited goal intended at the time: to secure an emergency federal response. But, at least according to the original two-pronged strategy, it was never intended to be a long-term solution. Indeed, it was only part one of what was originally the three-part Homeless Persons' Survival Act.<sup>99</sup>

#### V. LESSON OF INVOLVEMENT: THE ETHICAL OBLIGATION

Trade-offs played a central role in our work on the McKinney Act. At the outset, we made a deliberate decision to emphasize the emergency aspects of homelessness—and to press for emergency solutions. We made a decision not to press then for all that we knew needed to be done. We made a decision to press for emergency relief, not long-term solutions.

The fact that homelessness was not seen as an "issue" in Congress created a fundamental problem that dictated this approach. But at the same time, it was also what allowed this approach to work: Seen as an emergency—a human catastrophe, rather than an "issue"—homelessness could be acted on quickly, even in a conservative political climate. The effectiveness of our strategy rested on this paradox.

The paradoxical element is key, because it illuminates the dynamic nature of the strategy. To the extent that our approach rested on a trade-off, it may be seen as an ethically questionable compromise, selling out principle for the sake of political expediency. But to the extent that our approach rested on a paradox, it may be seen as a strategic use of the inherent contradictions in the current operation of our political system. Relying on those contradictions, we adopted a strategy that took advantage of them—and got results.<sup>100</sup>

97. But see Eleanor J. Bader, *The "Housing Now!" March on Washington*, *THE HUMANIST*, Jan.-Feb. 1990 at 5.

98. Maura Reynolds, *Snyder, Activist for Homeless, Is Found Dead*, *L.A. TIMES*, July 6, 1990, at N1.

99. See *supra* note 43 and accompanying text.

100. Essentially, we approached the existing political system as "outsiders" and took advantage of our outsider status to work more effectively within it. In

The strategy—including the trade-offs—worked: that was the whole point. The results it aimed for—and achieved—were limited: that was the trade. But in the real world, these trade-offs created badly-needed emergency relief. In the political world, they drew serious attention to a previously-ignored crisis. Neither result seems inherently wrong: it is hard to see any ethical dilemma here.

Rather, these results set the stage for later developments that are, at best, questionable: institutionalization and legitimization. Both of these developments occur over time. The problem of homelessness becomes accepted by the public and government and loses its sense of urgency when we allow it, and “temporary” solutions like shelters, to persist. Passage of the McKinney Act created the initial structures: the temporary solutions and the political legitimacy. But it did not cause institutionalization and legitimization.<sup>101</sup>

Instead, these developments are the result of the stasis the followed passage. The strategic trade-offs may have set the stage for stasis: we had no developed, agree-upon plan for a shift in gears once our strategy had served its purpose. In a real sense, we became victims of our own success, unable to move on once the strategy was no longer useful. This stasis is part of the way we ourselves became institutionalized.<sup>102</sup>

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a sense, this approach is analogous to the recent campaigning by some female political candidates who successfully campaigned on their “outsider” status and, as a result, now hold offices within the established political system. See Lyric Wallwork Winik, *Crashing the Ultimate Men's Club: More women than ever will be joining the houses of Congress*, S.F. CHRON., Dec. 20, 1992, at 8; cf. Jeffery Schmaltz, *Gay Politics Goes Mainstream*, N.Y. TIMES MAGAZINE, Oct. 11, 1992, at 18-33.

101. Indeed, it would be utterly wrong to conclude from the discussion of the phenomenon of institutionalization here that emergency aid is unnecessary or inappropriate. On the contrary, it is desperately needed and its present levels are clearly inadequate. See, e.g., UNITED STATES CONFERENCE OF MAYORS, *supra* note 7, at 35 (citing the most likely conservative estimate that 23% of requests for emergency shelter went unmet in 1992). Rather, the point is that additional, more fundamental relief is needed to address the causes of homelessness. Such relief is urgently needed, but emergency aid must remain in place until long-term solutions are fully implemented. See LIEBOW, *supra* note 80, at 231-32; *Beyond McKinney: Policies to End Homelessness* (on file with author).

102. This is not to suggest that no thought was given to the next steps; indeed, some of our public comment on passage of the McKinney Act specifically referred to the need for longer-term relief. See *The Homeless Become an Issue*, *supra* note 47; Pear, *supra* note 60. Moreover, we had many discussions, and debates, concerning the next step. But despite these discussions, we were unable to agree internally on what the next step, and the next strategy, should be. As a result, two different pieces of legislation reflecting very different approaches were introduced. An effort was made to devise a strategy that reconciled the two, but it was not generally agreed upon. In the end, neither bill made very much headway.



Ethical dilemmas appear on the landscape of stasis. If we begin to view trade-offs not as strategy but as principle, then we no longer use the political process, but rather become part of it. Making a strategic decision to approach the system in an advantageous way is not selling out, but transforming strategy into principle. Adopting an attitude of stasis—as if we can rest now that we have succeeded—is an express acceptance of the *status quo*. It is a statement that homelessness is an acceptable social condition, that shelters are acceptable “solutions,” and that our role as “advocates” maintaining this situation is acceptable.

If stasis—and not the trade-offs—is the true problem, then the answer to the ethical dilemmas posed must be taking action. Action is needed to go beyond the emergency relief we succeeded in gaining through the McKinney Act. Simply put, our ethical obligation to zealously represent our homeless clients requires us to take additional, effective action to realize their good: to escape homelessness.

In this important sense, our fundamental ethical duty is simple: to represent our clients adequately, we must work to end homelessness. Ethical problems arise when we stop short of this goal—when we allow ourselves and our clients to remain in the middle of an unfinished task. If this is the underlying duty, the next step is clear: to move beyond the McKinney Act.

#### IV. NEXT STEPS: MODELS OF INVOLVEMENT

Moving beyond the McKinney Act requires setting a new substantive agenda: Going beyond the McKinney Act means going beyond emergency relief to permanent solutions. It means addressing the underlying causes of homelessness, not just treating its symptoms. It means housing, employment, and social services.<sup>103</sup>

While in the long-run such solutions may save money<sup>104</sup>—as well as lives—in the short run they will cost money.<sup>105</sup> Given the expense, political action on such an agenda can be expected to be difficult. Moreover, the diminished sense of urgency sur-

103. See *Beyond McKinney: Policies to End Homelessness* (on file with author); see also Foscarinis, *supra* note 46.

104. Some cost savings will appear over time, as the costs of unaddressed social problems decrease, offsetting the initial costs of longer-term solutions. Others will be more immediate. See, e.g., Bennett, *supra* note 83, at 48-54 (discussing the expense of “welfare hotels” relative to housing).

105. Such solutions will be initially expensive in part because they are expansive: The needs they address are not specific only to homeless people but rather affect a broad spectrum of the poor and middle classes. In the context of more systemic relief, homeless people can be seen as the last step along a continuum, rather than as an aberration. BLAU, *supra* note 8.

rounding homelessness—the result of institutionalization and legitimization—can be expected to add to the difficulty.

Effective representation of homeless clients requires pursuit of such an agenda. But effective pursuit may require a new strategy. In developing such a strategy, it may be useful to revisit the threshold question: Why any of us—homeless or not—should help end homelessness. Defining these reasons is critical to marshaling public, and political, support—and to setting an effective strategy.

Three different models may be useful for consideration. Each has been used in past efforts and the categories are based on generalizations from these past efforts. For purposes of this discussion, the three models may be defined as: charity, justice, and enlightened self-interest.<sup>106</sup>

#### A. *The Charity Model*

The charity model is perhaps the simplest and most straightforward of the strategies. It operates on a basic moral premise: we *should* help those who are less fortunate. The charity model focuses on the existence of need, and directs us to respond to that need. So, for example, charities are set up to meet the immediate physical needs of homeless people: shelter, food, clothing.<sup>107</sup> But because the primary focus of charity is on the need itself, rather than on the

106. See A.B.A., MODEL RULES OF PROFESSIONAL CONDUCT RULE 6.1, cmt.1 (1990). ("The ABA . . . has formally acknowledged the basic responsibility of each lawyer . . . to provide public interest legal services . . . in one or more of the following areas: poverty law. . .") The A.B.A., MODEL CODE OF PROFESSIONAL RESPONSIBILITY, EC 2-25 also supports this analysis of the three models: "The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of every lawyer. . . ." While these directives are cast simply as moral imperatives, one comment states that "personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer." A.B.A., MODEL RULES OF PROFESSIONAL CONDUCT RULE 6.1, cmt.3 (1990). A note to the earlier Model Code of Professional Responsibility quotes an article cautioning that unless lawyers voluntarily step forward to help meet the need for "ordinary everyday legal justice," then the government will "take over the job," supplant us, and ultimately dominate us." A.B.A., MODEL CODE OF PROFESSIONAL RESPONSIBILITY, Canon 2, EC 2-24, n.38 (1990) (quoting Smith, *Legal Service Offices for Persons of Modest Means*, 1949 Wis. L. REV. 416 418 (1949)). These formulations suggest the rationales for involvement defined here: charity, justice and enlightened self-interest. See also Jamie S. Gofelick, *Doing Good and Doing Well*, WASH. L. 6 (Mar./Apr. 1993); Bennett, *supra* note 83, at 34 ("[t]he goal of all advocates for homeless people is . . . to assert the rights of their clients to live. . . in a 'home,' with all its connotations of permanency, autonomy and dignity").

107. Often such efforts are religiously motivated. See, e.g., *Matthew* 25:39-45. But they are not necessarily religiously motivated; similarly, not all religiously motivated groups fit the charity model.

reasons for the charity, the help offered is limited. Charity does not provide long-term solutions.<sup>108</sup>

Much of the response to homelessness—private and government—appears to fit this model. Shelters, soup kitchens, clothing drives may all be seen as essentially acts of charity. They express the basic conviction that certain fundamental survival needs should be met, and that we who are not homeless have an ethical obligation to meet them.

Applied to homelessness, this model may imply a set of people—"the homeless"—as recipients of the charitable act.<sup>109</sup> It may also implicitly assume gratitude on the part of those recipients. And it provides relief that is, by definition, temporary. But over time—and without more long-term relief—each of these elements may wear thin.<sup>110</sup>

Applied to advocacy, the driving force of this model is moral outrage: the sense that some bare minimum is morally "owed" to homeless people. At its best, the charity model is a call to a shared sense of what is right. At its worst, charity becomes a kind of self-righteousness: I am sacrificing for this cause, and you should too. The power of this appeal may be inversely proportional to the degree of relief sought: the more minimal the relief, the more effective—and outraged—the appeal may be.<sup>111</sup>

Prolonged over time, the charity model may become part of the institutionalization of homelessness.<sup>112</sup> By definition, charity

108. This is not intended as a criticism of such efforts. Some forms of this model may entail very significant personal sacrifice. Indeed, the fundamental characteristic of this model is one of sacrifice: giving up and giving to others. Rather, it is merely intended to note the inherent limitations of such efforts.

109. Perhaps an underlying assumption of this model is that the homeless are somehow "other"—not us. At bottom, the charity model conceptualizes an ethical duty to others—an obligation to help those others, who are disadvantaged, who are not as fortunate as we are. Cf. JONATHAN KOZOL, RACHEL AND HER CHILDREN 129-39 (1988) (describing societal distancing from the homeless); LIEBOW, *supra* note 80, at 115-47 (discussing the relationship between the "servers" and the "served").

110. It may wear thin on both sides. The recipients may begin to feel or to appear less grateful. Laurence Zuckerman *Can You Spare a Dime — for Bail?: Seattle Cracking Down on Aggressive Beggars*, TIME, Jan. 11, 1988, at 33. Similarly, the givers may begin to feel less generous. See Herman, *supra* note 88; KOZOL, *supra* note 109, at 130; LIEBOW, *supra* note 80, at 124-25; BLAU, *supra* note 8, at 5 (discussing the gift relationship).

111. See, e.g., Hombs, *supra* note 88, at 11; RADER, *supra* note 37, at 250.

112. This approach may have a certain kind of effect on its proponents, as well. It may isolate them, defining them as "other" as well. See *supra* note 109. This may occur through derision, subtle or overt, as advocates are treated as somehow slightly unbalanced. Or, it may occur through adulation, as advocates are treated as saints. Charles E. Cohen & Tom Nugent, *Mitch Snyder Saved*

aims to provide the essentials necessary to survive homelessness, but it does nothing to help homeless people escape homelessness. Of course, charity does not cause the institutionalization of homelessness; rather, the absence of additional aid does. But as homelessness becomes institutionalized, the relief provided by charity may become the form that this institutionalization takes.<sup>113</sup>

### B. *The Justice Model*

The justice model focuses on the underlying inequities that cause homelessness: lack of housing, jobs, social services. Its concern is the nature of the world, not just the immediate needs of particular individuals. The justice model's driving force is a vision of what the world should be like.<sup>114</sup> In essence, it is a model for systemic reform.<sup>115</sup>

The justice model depends on a certain vision of what a just world would be like. Assuming some form of basic equity as its normative principle, this model considers not just what is essential for survival as a matter of empirical fact, but also what is minimally equitable as a matter of justice.<sup>116</sup> In the case of homeless people, it looks beyond their immediate survival needs to their exclusion from fundamental social structures, such as housing, jobs, and health care.<sup>117</sup>

By defining societal systems as the focus of needed effort, this model does not define homeless people as "others." By focusing on the goal of a just society, it defines a common goal—something we all want—that unifies us instead of dividing us. As such, the

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*Many Lives But Finally Took His Own*, PEOPLE, July 23, 1990, at 23. Or both may occur simultaneously. The result may be a sense of separateness, otherness and opposition.

113. Cf. David T. Ellwood, *The Myth of Welfare Dependency: Job Opportunities, not Benefit Cuts, Affect Single Mothers*, L.A. TIMES, Feb. 4, 1986, at 5. In some ways, this discussion may be similar to discussions concerning "welfare dependency." But the point here is precisely not to blame homeless people for not trying hard enough to escape their plight; rather, the point is that by necessity the extremely limited assistance provided through charity virtually excludes the possibility of escape. In that sense, the institutionalization of homelessness is akin to the trap created by a welfare system that provides assistance beneath subsistence levels while also penalizing work and asset accumulation. See also BLAU, *supra* note 8.

114. See, e.g., JOHN RAWLS, A THEORY OF JUSTICE, 333-337 (1971).

115. *Id.* at 11-13.

116. See generally RAWLS, *supra* note 114.

117. Ultimately, the underlying premise here, too, is a moral one, but it is much broader. By focusing on the need for a just society, this model instructs us to correct underlying problems in the world that lead to inequity.

justice model does not instruct us to do for others, but for all of us—and ultimately, for ourselves.<sup>118</sup>

In contrast to the charity model, which relies on moral outrage as its advocacy tool, the justice model relies on organizing. Since its arena is broad, in working on a particular problem—such as homelessness—the justice model must also address related problems outside this particular area, such as housing, jobs, and health care. And since its task—systemic reform—is enormous, joining with other groups is critical to making headway.<sup>119</sup>

The justice model may avoid the pitfalls of self-righteousness and division, but only if its proponents can credibly argue that the notion of justice affects us all.<sup>120</sup> So long as the idea of justice remains an abstraction, this task will be difficult. Concretizing this notion may depend on the third model of enlightened self-interest.

### C. The Enlightened Self-Interest Model

The enlightened self-interest model is a practical model. It operates on a premise that defines “self-interest” primarily in terms of material interest. Based on these considerations, it directs action that also affects others.<sup>121</sup>

Enlightened self-interest may direct owners of businesses to take action to ensure that homeless people have a place to go. These owners have a direct interest in keeping homeless people from sitting, standing, or begging outside their businesses. Similarly, ordinary pedestrians, as they walk, may have a direct, selfish interest in not being approached by beggars.

Self-interest may also exist in broader issues. For instance, property owners have an interest in preventing run-down, overcrowd-

118. See, e.g., Aristotle, *Nicomachean Ethics* 1129, in RICHARD MCKEON, INTRODUCTION TO ARISTOTLE 398-400 (1947); IMMANUEL KANT, THE METAPHYSICAL ELEMENTS OF JUSTICE 35 (John Ladd trans., 1965); JEAN JACQUES ROUSSEAU, THE SOCIAL CONTEXT AND DISCOURSE ON THE ORIGIN OF INEQUALITY 19 (Lester G. Crocker ed., 1974).

119. See, e.g., SAN FRANCISCO COALITION ON HOMELESSNESS, CAMPAIGN TO ABOLISH POVERTY (1992) (discussing the need for advocates for the homeless to join the broader anti-poverty campaign); Hombs, *supra* note 88, at 124 (discussing efforts to join with other groups).

120. Similarly, this model provides greater opportunity for a sense of community and shared purpose, as opposed to self-righteous isolation. Because the defining principle is a just world, extremes of personal sacrifice to demonstrate solidarity with the oppressed may not be so crucial. At the very least, within this model, it may be possible to participate in some of the basic comforts that should be available to all in a just world. Cf. Nix, *supra* note 11.

121. See, e.g., Alan Pike, *Survey of Charity Fund Investment*, FIN. TIMES, Dec. 10, 1992 at 33.

ed, unsanitary structures—such as some shelters—from being erected in their neighborhood. This desire to protect property values usually results in the attitudes and actions that define “NIMBYism.”<sup>122</sup> But a broader view of the neighborhood—or backyard—could lead to self-interested actions to provide more decent structures for homeless people. Indeed, some examples of such actions exist.<sup>123</sup>

Similarly, residents may have a self-interest in ensuring that destitute people are not hanging around idly in their streets and neighborhoods. Again, an immediate, shortsighted action might be to press government to conduct “sweeps” to remove them.<sup>124</sup> But a longer-term view—or a broader view of the neighborhood—might result in pressure to provide jobs.<sup>125</sup>

The advocacy tool for this model is education—enlightenment—with the aim of persuasion. Emphasis on the congruence, not the opposition of interests, is the advocacy approach. The aim is to identify areas of agreement—or common interest—that can form a common ground on which consensus can be built.

Advocates in this model function as intermediaries, explaining why the interests are congruent. For the lawyer who is able to function in each community, this intermediary role may be especially appropriate.<sup>126</sup> On the one hand, a lawyer representing homeless persons makes a strong commitment to the homeless—who are the clients. On the other hand, a lawyer is also a member of a powerful institution—the bar. At least in certain circumstances, this combina-

122. See, e.g., *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992); Reuben Castaneda, *Neighbors of Shelters Feel Left Out in Cold*, WASH. POST, July 27, 1992, at B1.

123. See, e.g., Dennis Hevesi, *Unwanted Homeless Meet an Unusual Backyard*, N.Y. TIMES Apr. 23, 1992, at B3 (residents of a Queens, New York, neighborhood, once opposed to locating homeless shelter in their area, formed a shelter advisory committee and installed education and day-care programs for shelter residents).

124. See, e.g., *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992); see generally, GDTJ, *supra* note 18.

125. Similarly, employers of homeless people may have a self-interest in ensuring that these workers are adequately nourished and rested, and have access to health care. Residents of areas with a decaying infrastructure may have a similar interest in ensuring that workers are available and ready to perform needed work. Residents of areas where parks and streets are used as bathrooms by homeless people with no other options may have a self-interest in ensuring that public toilets are provided. See Castaneda, *supra* note 122.

126. On a personal level, there may be a sense of internal dichotomy, because credibility must be established and maintained in each community. Unlike the justice model, where effort focuses more specifically on the poverty community (and also may create a separate “advocacy community”), here the advocacy effort is to work at once in two disparate communities—the poor and powerless, and the affluent and powerful.

tion can be quite effective.<sup>127</sup>

#### VII. LESSONS OF INVOLVEMENT: SOME CONCLUSIONS

Perhaps one way to summarize the lesson to be learned from the earlier effort is: conform strategy to the existing situation. During the mid-1980's, the political "climate" was universally considered to be terribly hostile to any progressive cause: Advocates were generally demoralized, members of Congress were especially cowed, and Ronald Reagan still reigned untarnished.<sup>128</sup> But despite the formidable odds against us, we were able to get passed significant legislation to benefit a powerless group of people.

At the time, we relied primarily on the charity model—along with the accompanying tone of moral outrage. Essentially, we took advantage of the sharp counterpoint between the extreme position being taken by the Reagan Administration—which deemed homelessness a "life-style" choice and opposed federal aid—and the obvious desperate need. Especially given the moralizing tone already set by the Administration, our attitude of moral outrage seemed both appropriate and effective. And, ultimately, it worked.<sup>129</sup>

The challenge now is to find a way to move forward in a changed political landscape. As before, the key may be to focus on those aspects that—while not necessarily positive in themselves—can be used constructively to move forward. For example, institutionalization cannot be considered a positive development, but it does mean that there is now a much larger constituency of educated and concerned individuals and organizations. Groups of people, including shelter operators, soup kitchen volunteers, and outreach workers, could rally in support of this effort.<sup>130</sup>

Similarly, the legitimization of homelessness has diminished the sense of raw urgency surrounding the problem, but it has also obviated the ridicule factor. The relative seriousness with which the

127. Nix, *supra* note 11, at 107.

128. *Id.*

129. Homelessness also stood in sharp contrast to the blatant materialism that characterized many aspects of the 1980's—the "decade of greed." This contrast may have added the element of guilt that can make the moral outrage approach especially effective. See Kosterlitz, *supra* note 37; see also Alexander Wohl, *Gimme Shelter; Lawyering for the Homeless* 76 A.B.A.J. 58 (1990).

130. Some members of these groups may have a vested interest in maintaining the status quo. See *supra* note 57. But in general, these groups consist of people who are concerned about and educated on the issue—and who vote. Moreover, even those members with a clear vested interest are most likely also motivated by concern, and so could be appealed to with some effect in a campaign to end homelessness.

"issue" is now treated could potentially be used to open doors on Capitol Hill and in the White House. Its move to the national pages in the press could also be potentially useful in pressing for long-term solutions.

In the current climate, the charity—or moral outrage—approach seems less likely to be effective. Without the extreme rejection which marked the Reagan years as a counterpoint, outrage loses much of its power. Moreover, a model based on charity is less appropriate to a quest for long-term solutions, where what is at stake is more than a plea—or demand—for basic survival. What is at stake here is more akin to justice than to charity.<sup>131</sup>

The call to justice may be especially effective in rallying organized homeless (and formerly homeless) people, as well as service providers. It is likely to resonate, and to be an understandable rallying cry, for those dealing daily with the crisis of homelessness. Moreover, it may be important in bringing in advocates from other causes, as a unifying call upon which all agree. The relative expansiveness of the measures called for may be a unifying force that broadens support.

In calling upon the political establishment, however, an appeal to enlightened self-interest may be more effective. Given some greater accessibility as a result of legitimization, advocates may have more opportunity to make this somewhat more complex case. In contrast to the political denial we faced in the 1980s, at least some type of dialogue may now be possible.<sup>132</sup>

Ultimately, these two approaches may converge. Fundamentally, justice involves the kind of world we want to live in and this is a matter that we all may have an interest—our own, self interest—in. Conversely, enlightened self-interest recognizes the interdependence of individuals living in society, and makes judgements about "self-interest" that take that interdependence—and the interests of others—into account. In some basic sense, justice is everyone's interest.<sup>133</sup>

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131. This is not to suggest that moral arguments are no longer needed or appropriate; indeed, both the justice and the enlightened interest models are based on fundamental moral premises.

132. Hobart Rowen, *Greenspan Gives a Thumbs-Up*, WASH. POST Feb. 23, 1993 at A19 (discussing Clinton Administration plans to reverse the Reagan-era policy of reduced social spending).

133. In-part, the potential for such a convergence depends on the breadth with which the relevant part of the world—and our interest in it—is defined. If the community is broadened sufficiently, then enlightened self-interest cannot be satisfied with merely sweeping the "undesirables" away. The competing interactions of many enlightened "selves" may also spur a broader, longer-term approach.



In essence, the intersection of these two models would be something like this: what the world is like is an issue that affects us all. The world around us—including the people around us—affects our own lives. Taking action to improve that world is taking action to improve our own lives. There is a congruence, not a dichotomy, of interests.

#### VIII. CONCLUSION

Lawyers representing homeless people face fundamental ethical challenges. We face the danger of conflict of interest when we become part of a system that maintains people in homelessness without allowing them to escape it. And we face the danger of failing to carry out our duty to represent our clients effectively when we do not work to further our clients most basic goal: to escape homelessness.

Responding to these challenges is no small task. But far from being reasons for inaction, they require further action. Lawyers representing homeless people have an obligation to press for broad reform in order to further our clients' fundamental goal. Lawyers representing homeless people have an obligation to work against what may appear to be our own interest, and instead work to put ourselves out of business.

Yet lawyers also have some special advantages in meeting these challenges. As members of the bar, we have access to and are part of the political establishment. We have the ability to press that system to make change. And by taking our ethical obligations seriously, we set an example for other members of society. Our ethical obligations are not just a set of duties: they are also an opportunity to move forward.