

The Housing Crisis Facing Low Income Families[†]

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Either we have hope within us or we don't; it is a dimension of the soul, and it is not essentially dependent on some particular observation of the world or estimate of the situation. Hope is not prognostication. It is an orientation of the spirit, an orientation of the heart

Hope, in this deep sense, is not the same as joy that things are going well, or willingness to invest in enterprises that are obviously headed for early success, but rather an ability to work for something because it is good, not just because it stands a chance to succeed.

Hope is definitely not the same thing as optimism. It is not the conviction that something will turn out well, but the certainty that something makes sense, regardless of how it turns out It is also this hope, above all, which gives us the strength to live and continually try new things, even in conditions that seem as hopeless as ours do, here and now.¹

First of all, I want to thank Professor Paula Franzese for giving me this opportunity to reflect on the questions and challenges posed by the subject of this symposium: Housing and Hope. It is fitting and not at all surprising that Professor Franzese sees the importance of framing compelling issues of law and society in ways that will inspire us as we apply ourselves, our energy, and our intellect in the legal profession. In this regard, it is also significant that she made sure, as she put it, that the struggle at the "front line" helps to frame the extremely difficult question of society's role in ensuring the existence of decent affordable housing. In this regard, I thank Professor Franzese for giving me the opportunity to try to share with you the reality

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¹ VACLAV HAVEL, *DISTURBING THE PEACE* 181 (1990).

that low-income tenants confront on a day-to-day basis in the knowledge that sharing this information will, by its very nature, inform and nurture hope itself. For that reason, having this opportunity is very important both for me and for my sense of hope, as well as for you as you all embark on your careers as lawyers and are in a position to influence and become part of the solution, part of the hope.

As Professor Franzese mentioned in the introduction, I work at Essex-Newark Legal Services (ENLS), a twenty-five attorney, non-profit law firm that provides free legal assistance and representation in civil matters to very low-income residents of Essex County, New Jersey. Every day scores of people come to our offices in a state of crisis. Most of the families applying for our help are having difficulty securing or maintaining minimal public assistance or emergency benefits, are hungry, or are facing the loss of their children or the devastation of domestic violence.² Very often, the crisis facing the families who seek our help is the threatened loss of their home — a great many are already homeless.

A significant amount of ENLS's work involves providing advice, assistance, and representation to low-income residential tenants. The primary goal in these cases is to avoid involuntary displacement, and to prevent the loss of their homes. If we are lucky, we will have a week before an eviction case goes to trial. Often, the case has already gone before a court and the family has been served with a warrant for eviction. If the family becomes homeless, we know that it is difficult to predict when they will find affordable housing again — if they are lucky, they will have someone with whom they can double-up. The effects of homelessness on the family's work prospects and on the children's health and schooling will be devastating. As stated earlier, a great many have already been physically evicted from their homes and are homeless.

An indication of the housing challenges faced by the low-income population in Essex County is evidenced by the sheer number of eviction cases. The Essex County tenant population consists of about 276,869 tenant households.³ For the past several years, between 50,000 and 55,000 eviction actions were listed for trial in Essex County annually — double the volume of the next highest county

² In addition to a specialized Housing Unit, ENLS also has a Government Benefits Unit, a Consumer Law Unit, a Family Law Unit, an Elder Law Unit, as well as attorneys working in the area of Welfare Reform.

³ See NATIONAL LOW INCOME HOUSING COALITION, *Out of Reach: Rental Housing at What Cost?*, (Oct. 1998) <<http://www.nlhic.org/oor98/intro.html>> (citing 1990 United States Census data).

(Hudson). This number of annual eviction filings means that more than 200 eviction cases are listed for trial each and every day. The court itself is overwhelmed, underfunded, and understaffed. The overwhelming number of cases involve "pro se" tenants, ignorant of their rights and terrified at the prospect of losing their homes. Notwithstanding New Jersey's generally strong tenant protections, in 1998 the New Jersey Supreme Court found a need to further protect "pro se" tenants and directed the establishment of uniform statewide procedures to ensure that evictions did not result from grounds other than those provided by law.⁴

In contrast to the number of eviction actions listed for trial, each year ENLS assists between 4,500 and 5,000 families and individuals facing the threat of losing their homes. It is abundantly clear that, as in other areas where we provide legal assistance, we are barely able to scratch the surface of the existing need.

To view hope in the deepest sense, hope as "an orientation of the spirit," requires a sober understanding and assessment of the nature of the housing problem facing ENLS's very low-income clients. Such an assessment is necessary to discern the challenges that we as a society must overcome, the challenges that confront hope. Succinctly stated, across our nation there exists a housing crisis that forces millions of American families to choose between keeping a roof over their heads and feeding and clothing themselves and their children.⁵ The daily robbing of Peter to pay Paul forces adults and children to live and grow in a state of extreme material deprivation, the consequences of which, especially for children growing up in such a condition, border on the incomprehensible. Despite my many years doing this work, I am still unable to imagine how our clients survive. The consequences of this daily "choice" are often catastrophic for those involved, and their aftereffects can only tear at the fabric of our society. Moreover, the consequences affect every one of us, no matter how distant the problem may seem.

The consequences of choosing to pay rent over food are starkly related in a report on the effects of inadequate housing on children's health by pediatric residents and faculty at Boston Medical Center & Boston's Children's Hospital. The report notes that the lack of af-

⁴ See *Community Realty Mgmt., Inc. v. Harris*, 155 N.J. 212, 239 (1998) ("We believe it is appropriate to create statewide procedures for landlord/tenant courts based on this Court's exclusive jurisdiction to regulate the practice and procedures in the various courts.")

⁵ See Jason DeParle, *A Growing Choice: Housing or Food*, N.Y. TIMES, Dec. 12, 1991, at A4.

fordable housing resulted in 21,392 children up to the age of three suffering stunted growth and 120,202 children between six months and six years old suffering iron deficiency anemia as a result of unaffordable housing.⁶ Respectively, these conditions cause problems with cognitive development, affect school performance, and cause behavioral problems. The Boston Children's Hospital report goes on to cite other salient pediatric medical manifestations of the housing crisis, including the high incidence of asthma and respiratory disease, disfiguring radiator burns, injuries from fire and street violence, as well as lead poisoning and the effects of poor living conditions on other chronic diseases.⁷ On November 24, 1998, *The New York Times* reported that in Newark a three-month old baby girl was crushed to death while sharing a couch with her mother in a one bed-room apartment shared by seven people.⁸

As I try to contextualize the contours of this crisis, it must be clear that a problem of this magnitude cannot be adequately represented in a short presentation such as this one, and I can only point to some of its most salient features. Nevertheless, it is obvious that because it concerns where people live — where people go at the end of the day — it is a crisis that manifests itself in every community and cuts across all racial and ethnic groups. It touches on all aspects of social life — schools, the ability to work, health — and affects the individual's ability to function and contribute to society, to participate in our institutions, and to live in our communities.

The crisis in rental housing reflects a longstanding, deeply rooted phenomenon in our economic system: The private sector economy cannot produce housing affordable to the entire spectrum of the United States population. The inability of the economy to deliver decent, affordable housing for lower income people has been clear for some time. The National Housing Act of 1937 ("NHA"), as amended in 1974, provides:

It is the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to remedy the unsafe and unsanitary housing conditions

⁶ See DOC4KIDS PROJECT, *Not Safe at Home: How America's Housing Crisis Threatens the Health of Its Children*, at 18 (Feb. 1998) <<http://www.bmc.org/program/doc4kids/execsum.htm>> (citing two studies that describe the correlation between housing subsidies and pediatric nutrition).

⁷ See *id.*

⁸ See *Baby's Death Attributed to Accidental Crushing*, N.Y. TIMES, Nov. 24, 1998, at B5.

and the acute shortage of decent, safe, and sanitary dwellings for families of lower income⁹

The NHA's declaration of policy clearly reflects the reality that without federal assistance to address the acute housing shortage, the states themselves cannot meet the need for decent, affordable housing for low-income families.

Given the utter inability of the market to meet the most basic housing needs of a significant segment of the population, the practical choices available to policy-makers over time were either to build publicly owned housing, devise ways to reduce the costs to the private sector to develop, operate and maintain affordable housing, or supplement the amount of rent poor households can reasonably be expected to pay. Since the 1930s, the federal government has pursued all of these approaches in the form of "public housing," various mechanisms and subsidies to private owners to develop affordable residential housing, and certificates and vouchers made available to tenants to enable them to find housing in the private market.¹⁰ Federal subsidies are generally designed to make housing affordable for low and very-low-income families by requiring tenants to pay no more than 30% of their gross income toward the cost of shelter, which is considered the standard for affordability in housing.¹¹ As a result of the federal government's efforts, approximately five million households receive some form of federal rental assistance today.¹²

Nonetheless, the total number of assisted households represents less than half the need nationally. Despite significant public investments during more than half a century, the United States Census Bureau and the Department of Housing and Urban Development's (HUD) 1993 American Housing Survey found that "for approximately *ten million* American families, housing is too expensive, sub-

⁹ 42 U.S.C. § 1437 (1994).

¹⁰ See, e.g., 42 U.S.C. § 1437a (public housing); *Id.* at § 1437f (various project and tenant based "Section 8" rent subsidy programs); Section 221(d)(3) Below Market Interest Rate Program, 12 U.S.C. § 1715 (d) (1994); Section 236/Rental Assistance Program, 12 U.S.C. § 1715z-1; Section 202 (for elderly and handicapped) 12 U.S.C. 1701(q).

¹¹ The cost of shelter includes rent plus all utilities (heat, hot and cold water, cooking gas, and electricity). This "standard" of affordability (increased from 25% in the early 1980s) is itself deceptive. For a very low income household, "spending 30 percent . . . leaves very little for all other necessities, whereas for middle income families, it is an appropriate . . . level." Nancy O. Andrews, *Trends in the Supply of Affordable Housing* (visited Mar. 18 1999) <<http://www.nlhic.org/mahn/supply/picture.htm>>.

¹² United States Department of Housing and Urban Development, *A Picture of Subsidized Households in 1998* (visited Mar. 18, 1999) <<http://www.huduser.org/publications/punasset/picture.html>>.

standard, or both.”¹³ In 1995, the American Housing Survey found that between 1970 and 1995, the number of poor renters increased nearly 70%.¹⁴

Presently, well more than one million families throughout the country are on waiting lists for federal rental assistance — most of which are closed to new applicants. Average waiting lists for public housing and tenant vouchers and certificates average between two and four years. In Newark alone, more than 10,000 families sit on closed waiting lists for assisted housing, and the waiting list for a housing voucher is up to ten years! As summarized in the Executive Summary to HUD’s 1999 report, *Waiting in Vain: Update on America’s Rental Housing Crisis*, the waiting time for federal housing subsidies continues to grow:

For the largest public housing authorities (PHAs) . . . the average wait went from 22 to 33 months — a 50 percent increase in just 2 years. Waits are now a staggering 8 years in New York; 6 years in Oakland; and 5 years in Washington, D.C., and Cleveland . . . Nationally, the average Section 8 [voucher, used to help families rent privately owned apartments] waiting time rose . . . to 28 months . . . Here too, the larger PHAs have experienced the greatest growth in waiting times . . . now 10 years in Los Angeles and Newark, 8 years in New York, 7 years in Houston, and 5 years in Memphis and Chicago.¹⁵

The economy’s inherent inability to provide decent, affordable housing for low-income people is compounded by the ongoing loss of affordable units to gentrification, fire, and general attrition. Jennifer Daskal, a research assistant for the Center on Budget and Policy Priorities, states that the “shortage of 4.4 million affordable housing units is the largest shortage on record” and that “[i]n 1995, there

¹³ *Not Safe at Home*, *supra* note 6, at 6 (emphasis added); *see also* Jennifer Daskal, *In Search of Shelter: The Growing Shortage of Affordable Rental Housing*, at 1 (visited June 15, 1998) <<http://www.cbpp.org/615housing.htm>> (analysis of 1995 American Housing Survey).

¹⁴ *See* Daskal, *supra* note 13, at 2.

¹⁵ United States Department of Housing and Urban Development, *Waiting in Vain: Update on America’s Rental Housing Crisis* (Mar. 8, 1999) <<http://www.hud.gov/houscris.html>> [hereinafter *Waiting in Vain*]. In Chicago, a waiting list for tenant based certificates was opened and 100,000 applications were received in less than two weeks — 75% of these will wait five years or more for assistance. *See* United States Department of Housing and Urban Development, *Rental Housing Assistance—The Crisis Continues: The 1997 Report to Congress on Worst Case Housing Needs* (April 24, 1998) <<http://www.huduser.org/publications/affhsg/rental3.html>> [hereinafter *Rental Housing Assistance*] (citing HUD Secretary Andrew Cuomo’s letter to Congress transmitting HUD’s report).

were nearly two low-income renters for every low-cost unit."¹⁶ In its 1997 report to Congress, HUD detailed the particular impact of the loss of affordable units, noting that the "stock of rental housing affordable to the lowest income families is shrinking, and Congress has eliminated funding for new rental assistance since 1995."¹⁷ Between 1993 and 1995, 900,000 or 9% of rental units affordable to very low-income families were lost.¹⁸ For extremely poor households, this figure represented a loss of 16% of the units affordable to this segment of the population.¹⁹

To complicate matters, the 1990s brought to the fore two major developments that have worsened the crisis in affordable housing and increased hardship for families struggling to secure and maintain a roof over their heads: the ascendancy of a conservative fiscal agenda that undermined the nation's commitment to affordable housing, and the problem of pre-payments and contract expirations in the privately owned, federally subsidized inventory.

First, the continued fiscal commitment to support and increase the supply of federally assisted housing peaked in 1981, giving way to the tax cutting government-reducing politics launched by the Reagan Administration. Federal spending for housing assistance is the largest so-called "discretionary" spending line in the federal budget. In the 1990s, the Republican-dominated Congress's attack on HUD, along with attacks on assistance programs for the poor, such as food stamps, Medicaid, and public welfare benefits, led to the Clinton Administration's efforts to revamp and scale back housing programs so as to avoid outright elimination by Congress. As a result, HUD sought to "re-invent" itself and, among other initiatives, established as a goal the demolition of 100,000 units of high rise public housing by the year 2000,²⁰ a goal that can only worsen the problem caused by an absolute physical lack of affordable units.

Congress, for its part, refused to appropriate monies for additional housing assistance. In 1996, for the first time in more than 30 years, these political trends matured into an outright reduction in the aggregate number of federally assisted units. Despite documented increases in the need for assistance, the nation suffered an actual net loss of federally assisted housing units made available to

¹⁶ Daskal, *supra* note 13, at 1-2.

¹⁷ *Rental Housing Assistance*, *supra* note 15.

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *See Proposed Rules for the Department of Housing and Urban Development*, 62 Fed. Reg. 47,740, 47,740 (1997) (to be codified at 24 C.F.R. pt. 968).

low-income people as units were demolished and no new funding was approved.²¹ Even *The New York Times* was moved to declare in its Sunday *Magazine* cover that was "The Year Housing Died."²²

Second, the maturation of political trends undermining federal housing assistance came at a particularly dangerous time for the existing federal housing programs. Specifically, the late 1980s and early 1990s coincided with the expiration of restrictions and subsidy contracts entered into with private developers twenty to thirty years earlier to develop and maintain housing affordable to low income families. The expiration of these restrictions and contracts, at a time of ascendant fiscal conservatism and Congressional antagonism to the needs of low-income Americans, resulted in legislation that failed to provide adequate funding to maximize the number of units protected and renewed, thereby permitting further reduction of subsidized units from the affordable housing inventory.²³ As a result, hundreds of thousands of the previously affordable units are currently in danger of being removed from the affordable housing inventory — placing millions of low-income tenants at risk.

Needless to say, it is the lowest income families who face the most dire housing situations. As summarized by HUD in its 1997 report:

The most serious housing needs are concentrated among households with the lowest incomes. *Almost 4 million of the 5.3 million households with worst case needs have extremely low incomes — below 30 percent of median. Almost 7 of every 10 such households pay more than one-half their income for rent or live in severely inadequate housing when they are not assisted.*²⁴

In both 1996 and 1997, HUD found that despite the record economic growth and unprecedented employment figures, 5.3 million households (8 million adults and 4.5 million children) faced "worst case" housing scenarios, defined as a household with income

²¹ See *id.* (noting that Congress has not approved funding for new housing development since 1995). Between 1996 and 1998, the number of assisted dropped by 51,000. See *Waiting in Vain*, *supra* note 15.

²² See Jason DeParle, *Slamming the Door*, N.Y. TIMES, Oct. 20, 1996, (Magazine), at 52.

²³ See, e.g., Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), Pub. L. No. 105-276, 112 Stat. 2461 (1997); see also H.R. 1433, 105th Cong., § 2 (1997) (stating that 1.8 million units are set to expire in 1998, 2.7 million units between 1998 and 2002; 90% of affected families are elderly, persons with disabilities, and low-income families with children — at risk of losing their homes from resulting sharp rent increases).

²⁴ *Rental Housing Assistance*, *supra* note 15 (emphasis added).

below 50% of the area median, paying more than 50% of their income in rent or living in severely substandard housing.²⁵

Perhaps a more useful way of describing the housing crisis then, the flip side of the coin so to speak, is to recognize that it is essentially an income crisis. In effect, to say that there exists a structural inability in the United States economy to provide decent affordable housing to low-income families, is another way of saying that the economy has not, does not, and, in the foreseeable future, will not provide sufficient, adequate-paying jobs to enable significant numbers of people to afford the available residential rental housing stock.

In fact, the most disturbing of HUD's 1997 "worst case" findings focuses on the worsening of this housing crisis on working families in particular:

The fastest growth in worst case needs in the 1990s was among working families. Full-time work should provide a family with an income sufficient to afford a decent place to live. In fact, having a low-paid job is increasingly unlikely to lift a family out of poverty or resolve worst case housing needs. Between 1991 and 1995, worst case needs rose by 265,000, or 24 percent, for renters with annual earnings of at least one full-time worker at the minimum wage. By 1995, there were 1.4 million such households with worst case needs.²⁶

To illustrate the significance of describing the housing crisis as an income crisis, we can examine income and affordability in New Jersey and Essex County in particular. Notably, the focus of attention is on those families "at or below 50% of the area median" income. The Census Bureau's 1995 estimates show Essex County's annual median income is \$36,365, above the national median income of \$34,076.²⁷ Thus, the people most gravely affected by the severe shortage of decent affordable housing are Essex County families making below 50% of the area median (\$18,183) and especially those making below 30% of the median income (\$10,910).

A person working forty hours a week for fifty-two weeks at the minimum wage makes \$10,712. By comparison, the national 1995 poverty threshold as established by the federal government is \$15,569

²⁵ See *Rental Housing Assistance at a Crossroads, A Report to Congress on Worst Case Housing Needs, 1996* (Mar. 14, 1996) <<http://www.huduser.org/publications/affhsg/rental2.html>>.

²⁶ *Rental Housing Assistance, supra* note 15 (emphasis added).

²⁷ See *Small Area Income and Poverty Estimates Program 1995, United States Census Bureau* (data released: February 12, 1999) <<http://www.census.gov/hhes/www.saip93/estimate.pl>>. New Jersey's median income of \$44,345 far exceeds the national median. See *id.*

for a family of four and \$12,158 for a family of three. The Census bureau's 1995 estimates are that 16.7% or 125,637 people in Essex County live below the poverty line, with more than 48,000 of these being children.²⁸

Before detailing the relationship of these income figures to housing costs in Essex County, it is extremely important to consider that, not including the disabled, more than 25,000 Essex County residents depend on public assistance.²⁹

The income of public assistance or welfare households pales in comparison to even the minimum wage figure above. A single destitute individual who is considered able to work receives \$140 per month. Similarly, assuming full benefits, a single parent with one child receives \$322 per month (\$3,864 per year for two people) plus food stamps. A single parent with two minor children receives \$424 per month (\$5,088 per year for three people) plus food stamps, or less than one-half the poverty rate for a household of three. A single parent with three minor children receives \$488 per month (\$5,856 per year for a household of four) plus food stamps or about 35% of the poverty level for a four-person household. *These benefit levels have not increased in more than fifteen years.* Further complicating matters is welfare reform, which has failed to provide the level and type of assistance needed to shift families from welfare to work and which equates the punitive purging of the welfare rolls with success.³⁰

²⁸ See *id.*

²⁹ See 20 C.F.R. § 416.410 (1996) (noting that single, permanently disabled individuals depend on supplemental security income and that annual benefits are capped at \$531 per month).

³⁰ Welfare reform, though outside the scope of these comments, directly affects households well below 30% of median — households that suffer disproportionately from the housing crisis. Both the federal and state governments are unwilling to recognize (financially) the importance of housing stability to employment. In actuality, Temporary Assistance to Needy Families (TANF) block grant funds have gone unspent as states have failed to utilize available funds to provide the necessary services and housing support needed by working families — as of September 30, 1998, New Jersey had not spent 55% of its TANF block grant. See Ed Lazere, *Unspent TANF Funds at the End of Fiscal Year 1998*, (revised Mar. 19, 1999) <<http://www.cbpp.org/pubs/recent.html>>. The significance of welfare reform on this discussion serves to highlight the likely effect of forcing additional persons to compete in, and thereby depress wages for, the lowest paid employment sectors. In fact, none other than Bill Clinton's ex-Secretary of Labor Robert Reich has pointed out that welfare reform became a political necessity as a result of the general decline in the standard of living for the bottom 40% of the population as the share of income among the lowest paid in the economy worsened, bringing the lowest paid workers within reach of the welfare population. See Robert B. Reich, *Clinton's Leap in the Dark*, (Mar. 2, 1999) <<http://www.epn.org/reich/rr990302.html>>. Literature on the loss in real value of wages, and the minimum wage in particular, is extensive. In addition to having to raise the minimum wage to match the poverty standard, the present day

These families are competing directly with those making between 30% and 50% of the median for the same scarce affordable housing units — and only 20% of these extremely poor families are in assisted housing.

A parent working a full forty-hour week at the minimum wage (\$5.15 x 40) will gross only \$10,712 per year (or 29% of the Essex County median income). The best way to evaluate where this family can afford to live is to examine the actual cost of rental housing by using HUD's legislatively required annual survey of Fair Market Rents (FMRs) for every region of the country. By regulation, HUD sets the FMRs at the 40th percentile of rentals in the six months preceding the survey by HUD to establish the FMRs, in effect focusing on the less expensive housing units in a given area.³¹ The FMR reflects the total cost of rent plus all utilities (heat, hot and cold water, cooking gas, and electricity). For the Newark area, the FMRs established by HUD are as follows:

TABLE A.
NEWARK AREA HUD FAIR MARKET RENTS PER MONTH (40TH PERCENTILE)

<i>Studio</i>	<i>1Br</i>	<i>2Br</i>	<i>3Br</i>	<i>4Br</i>
\$533.00	\$681.00	\$820.00	\$1,033.00	\$1,306.00

By contrast, Table B sets forth various Essex County income ranges and the corresponding affordable monthly rent:

TABLE B.
ESSEX COUNTY INCOMES >> RENT (30%)/MONTH

<i>Median Income</i>	<i>50% of Median</i>	<i>30% of Median</i>	<i>Min. Wage x 40hr</i>
\$36,365–\$909/Mo.	\$18,183–\$454/Mo.	\$10,909–\$273/Mo.	\$10,712–\$268/Mo.

From these tables, it is clear that a single head of household earning the minimum wage would have to pay more than 60% of gross (pre-tax) income for rent in order to rent one of the cheaper studios in Newark and more than 70% of income for rent in order to rent a one bedroom apartment! Table C compares the income, likely

minimum wage, adjusted for inflation, is just catching up to the 1979 level. See Jared Bernstein & Lawrence Mishel, *Wages Gain Ground: Workforce Benefits in 1998 From Tighter Labor Markets, Higher Minimum Wage*, Economic Policy Institute, Issue Brief # 129 (Feb. 2, 1999) <<http://www.epinet.org/Issuebriefs/Ib129.html>>; see also Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 601 (1998); N.J. STAT. ANN. §44:10-55 (West 1998).

³¹ See 63 Fed. Reg. 52,857, 52,894 (1990) (codified at 24 C.F.R. § 888).

household/apartment size, and several income situations to show the severity of the crisis facing low-income households in Essex County. For purposes of Table C, "net" income (i.e., the remainder after taxes), has been used as follows:

TABLE C.

Apt Size	FMRs @ 40%	TANF Grant (#children)	WFNJ Grant (single adult)	<i>Min. Wage</i>	<i>@ 2x Min. Wage</i>
				Net Monthly Income†/%	Net Monthly Income††/%
0-	\$533	\$322(1) XX**	\$140 XX	\$670 (80%)	\$1138 (47%)
1bdr	\$681	\$322(1) XX	\$140 XX	\$670 XX	\$1138 (60%)
2bdr	\$820	\$424(2) XX	————	\$670 XX	\$1138 (72%)
				<i>x 2 wage earners + children</i>	
3bdr	\$1,033	\$488(3) XX	————	\$1,340 (77%)	\$2276 (45%)
4bdr	\$1,306	\$552(4) XX	————	\$1,340 (97%)	\$2106 (62%)

** XX = Probably appropriate unit size, but rent far exceeds income.

† 5.15x40-25%tx

†† 10x35-25%tx

First, it is clear that rents at the 40th percentile far exceed the income of all public assistance households. If we use a "net income" (after taxes) figure to ascertain the required rent for a studio, the cost to a single head of household earning the minimum wage climbs to 80% of monthly income. This effectively leaves the same household with \$137 for all other monthly expenses including all employment-related transportation and clothing. While eligible for food stamps,³² this household will need to supplement its food stamps and must also pay for all non-food personal items, transportation to and from work, and work-related clothing needs (a telephone is a luxury). If, as assumed, this head of household has a child, the cost, if any, of child care must also come from the \$137 as well as any and all other clothing expenses for the child. Effectively, this single-parent and child household cannot afford to live in a studio renting at 40% of area median rent (much less a one bedroom apartment). A hypothetical person who makes ten dollars per hour (at thirty-five hours per week) could more easily afford a studio apartment, but he would be paying closer to 50% of his on-hand income to rent.

³² Food stamp shelter cost exclusion is capped at \$275 per month if no elderly or disabled person in the household. See 7 C.F.R. § 275.9(d)(8).

In an October 1998 study, the National Low Income Housing Coalition analyzed the affordability problems facing renters throughout the country. The study concluded that in New Jersey, a minimum wage worker needed to work 124 hours per week to afford a two-bedroom apartment (to pay 30% of income to rent).³³ New Jersey ranked second, behind only Hawaii, in the percentage of the Federal Minimum wage required to afford a two bedroom apartment (309% vs. 368% for Hawaii).³⁴ New York and the District of Columbia followed with 306% and 303%, respectively.³⁵

Thus, it is not surprising to find that nearly 50% of the homeless people in Newark are the so-called "working poor."³⁶ A study carried out by the Institute for Children and Poverty, a New York-based advocacy group, in April 1998 found that 44% of the homeless in the survey had never received welfare and 14% had received welfare for less than one year.³⁷

Despite the well-documented housing shortages, the push to compel families on public assistance to work no matter what the cost has not been accompanied by commensurate policies to ensure that, as families make this transition, at least some of the TANF block grant monies are made available for housing assistance. Alternatively, steps have not been taken to permit the working poor to retain as much of their earned income as possible. Several factors come into play. First, New Jersey is among the numerous states where the income tax threshold is triggered when earnings reach 50% of poverty! In fact, New Jersey is one of six states where substantial personal income tax cuts were enacted that continued to tax workers earning below the poverty rate.³⁸ Moreover, marginal tax rates for people making the transition from welfare to work can also have devastating effects on families seeking to become self-reliant. The marginal tax rate results from the simultaneous phasing out of government assistance and imposition of various taxes on earned income (i.e., income tax, sales taxes, etc.) — resulting in an effective tax rate of more than

³³ See *Out of Reach: Rental Housing at What Cost?*, *supra* note 3.

³⁴ See *id.*

³⁵ See *id.*

³⁶ See Barry Carter, *Working Poor Fight Life on the Streets*, STAR-LEDGER (Newark, N.J.), Nov. 20, 1998, at 43 (citing Institute for Children and Poverty, *Up the Down Staircase*, Oct. 1998) (study on file with author).

³⁷ See *id.*

³⁸ See Nicholas Johnson & Elizabeth McNichol, *State Income Tax Burdens on Low-Income Families in 1998: Assessing the Burden and Opportunities for Relief*, at 4 (March 1999) <<http://www.cbpp.org/3-4-99sttax.pdf>>.

100% on earned income.³⁹ Finally, burdensome social and tax policies that fail to maximize the income of poor working families are compounded by the economy's failure to create adequate paying jobs. Bureau of Labor Statistics occupational projections for the 1996-2006 period indicate that more than half of new jobs will be in occupations paying below the median earning rate. More significantly, 40% of new jobs are projected to be in occupations earning the lowest quartile.⁴⁰

There can be little doubt that the housing crisis facing poor working people in this country is deeply rooted and pervasive. The bleak housing picture facing millions of poor and working Americans and their children requires a clear and consistent commitment both to increase the production of affordable housing and to pursue policies that support and enhance both employment and the incomes of poor working families. It is imperative that these strategies be pursued at both the federal and state levels. Historically, housing affordable to millions of low-paid Americans, those on public assistance, and the disabled poor cannot exist without a significant federal commitment. On the state level, it is necessary to face up to the necessity for significant expenditures to promote job creation and housing development. Such efforts must be coupled with myriad choices about income tax levels, the creative use of resources to support housing (from TANF and all areas), and social policies that support working families as they struggle to house, clothe, and feed themselves.

The value of these remarks lies in the degree to which each of us as individuals, as law students, as future lawyers, and as professionals recognizes that the depth of the problem and its negative consequences touch the whole of our society. We must recognize that millions of people must not be forced to make the choices that the lack of affordable housing poses each and every day. Only in this way can we have hope and work to improve this situation imbued with, in Vaclav Havel's words, "the certainty that [our efforts] make[] sense . . ." ⁴¹ We must be open to the many different ways that we can immediately begin to help by educating ourselves, by fulfilling our moral and ethical pro bono obligations, so as to confront this reality

³⁹ See Daniel M. Shaviro, *The Effective Marginal Tax Rate on Low-Income Households*, (Feb. 1999) <<http://www.epionline.org/shaviro02.htm>>.

⁴⁰ See George T. Silvestri, *Occupational Employment Projections to 2006*, Monthly Lab. Rev., (Nov. 1997) <<http://epinet.org/webfeatures/snapshots/archive/022499/snapshots022499.html>>.

⁴¹ HAVEL, *supra* note 1.

directly, by insisting that as a society the necessary policies and resources needed to alleviate this suffering be brought to bear and are made a reality.