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Nancy A. Wright
Santa Clara University School of Law, nwright@scu.edu

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NOT IN ANYONE’S BACKYARD: ENDING THE “CONTEST OF NONRESPONSIBILITY” AND IMPLEMENTING LONG-TERM SOLUTIONS TO HOMELESSNESS

Nancy Wright

Over twenty-five years ago, Connecticut attempted to force indigents to relocate to other states by enacting legislation that denied the poor any welfare benefits during their first year of residency in the state. The United States Supreme Court invalidated that law on the basis that it interfered with an indigent’s constitutional right to travel freely among the various states. The Court’s invalidation of the statute sent a message to the states that legislation leading to an interstate “contest of nonresponsibility” for the poor is unconstitutional and would not be tolerated. Acting at about the same time, the United States Congress enacted the Economic Opportunity Act (known as the War on Poverty) in hopes of solving the problems faced by millions of Americans who were still living as indigents, despite the fact that the Depression had ended two decades before. At the time of its enactment, political activists and economists predicted that “with an active government and a growing economy,” the War on Poverty could be won in “the near future.”

Unfortunately, the future is now here, and poverty remains. According to Census Bureau figures, in 1993 the number of Americans living below the poverty level reached 39.3 million, the highest number in ten years. Despite the aggregate growth of the overall economy, the average American household experienced a decline in income in 1993, and more than a million Americans fell into poverty. Robert Greenstein, Executive Director of the Center on Budget and Policy Priorities, blames the increasing number of poor Americans on persistent unemployment, widespread cuts in social services by the states, and a failure by the federal government to close gaps in the safety net of public assistance.

Americans living below the poverty level can be roughly divided into three, sometimes overlapping, categories: the working poor, the welfare poor, and the homeless. At one end of the poverty continuum is the first category, the work-
While the number of homeless escalates, intolerance and hostility towards the homeless have also grown.

The working poor encompass nearly one out of every five Americans who work full-time yet remain in poverty. In some cases, the working poor are even worse off financially than those who receive public assistance. The second category, the welfare poor, include fifteen million Americans receiving public assistance, either as their only income or as a supplement to a job that does not pay a living wage. The third and final category, the homeless, occupy the opposite end of the poverty continuum. Ten years after the homeless first began bedding down on the nation's sidewalks, the number of homeless people has increased tenfold, and it is now estimated that as many as three million people in the United States are without homes. The homeless are defined by their lack of a permanent place to live, but also include individuals whose lack of housing is only part of the problem and who have a myriad of physical and mental disabilities as well.

Many poor Americans are moving along the poverty continuum into increasing indigency rather than moving away from poverty. This trend must not continue. The gap between the working poor and the welfare poor may be measured by a loose hold on a job which is made increasingly precarious by the recent economic downturn. An array of grim statistics documents widespread distress among the United States work force, including a drop in average wages after inflation and a startling jump in permanent job losses. Welfare rolls throughout the nation show an alarming increase as more and more Americans are laid off or terminated from the work force. For the first time, there are as many homeless families as there are homeless single men. Nationwide, there are more than 500,000 homeless children.

While the number of homeless escalates, intolerance and hostility towards the homeless have also grown. The source of this “compassion fatigue” is clear: For more than twelve years, Americans have watched in dismay the growing number of homeless people on street corners, in doorways, in cardboard box “homes,” in parks, in libraries, and in every other conceivable public place. Once romanticized as impoverished casualties of an uncaring society, America’s homeless are now more likely to be labelled as pathological predators who spoil downtown areas and threaten suburbia. Americans, as a result, experience “compassion fatigue” and harden themselves to the pain of the homeless by brushing off their entreaties for help and seeking ways to get them out of their sight and out of their communities. If society cannot solve the problems of homeless
people, at least the public can make them disappear by placing them in someone else's backyard.

The escalating problems of homeless people also acts as a catalyst for the spread of compassion fatigue to the welfare poor. Instead of helping those on the poverty continuum as they have in the past, the nation's more affluent citizens now turn their backs and close their pocketbooks on society's less fortunate members, which in turn exacerbates their risk of becoming homeless. The public hostility toward the welfare poor is buttressed by myths that surround society's indigents. Perhaps in an effort to belie their own vulnerability in an unstable economic world, empathy burnout leads many members of the public to blame the poor for their lot in life. In dealing with the problems of America's impoverished citizens, a vicious cycle is created because compassion fatigue and intolerance for the problems of homelessness and indigency leads to more poverty and homelessness.

Much of the public perceives that legislation establishing programs to help indigent people has failed, and that spending more money will only increase the problem. Unfortunately, legislators are responding to the public's dissatisfaction with legislation for the poor and concern with the country's economic instability. Politicians at the federal, state, and local levels have in one way or another tightened welfare requirements and decreased payments, reduced subsidized housing, prohibited sleeping or resting in public places, forbade begging or panhandling, and even criminalized homelessness. These laws are not only ineffective and inhumane public policy but some of this repressive legislation violates constitutional guarantees such as Due Process, free speech, cruel and unusual punishment, Equal Protection, and the right to travel. Rather than enabling homeless and poor people to move along the poverty continuum and then out of poverty, this legislation has caused America's indigents to move in the wrong direction and further into poverty. In an effort to survive in the face of repressive legislation and "catch-all codes" criminalizing homelessness, indigent people have been forced to depart from a particularly indigent-hostile city or state in search of a more indigent-friendly city or state. This migration has led to restrictive regulations in even the most liberal communities because those communities wish to avoid becoming magnets for America's throwaway citizens.

Homeless people are doomed by this cycle of compassion fatigue and legislative repression. Unless the cycle can be broken, there is little hope that the problems of homelessness and indigency will be solved. As Henry Cisneros said: "This fatigue in the battle against homelessness means that the nation's leadership—in Washington, in our state capitals and in our local communities—has to ensure that in their weariness, Americans do not turn this fight into a war on the homeless themselves." If Americans are able to avoid facing poverty problems by pushing indigents from one community to another, those on the poverty continuum will ultimately be denied the basic essentials of life. Carried to its extreme, the "Not In My Backyard" phenomenon will become "Not In Anyone's Backyard."

Breaking the cycle of compassion fatigue and ending the contest of nonresponsibility involve recognizing the many categories of poverty and responding with nationally-mandated assistance programs tailored to the different needs of those on the poverty continuum. For those whose needs are primarily economic, the solutions should provide decent, affordable, and permanent housing and other necessities of life by increasing the availability and the adequacy of public assistance. At the same time, innovative programs must be developed to enable all able-bodied homeless individuals and welfare recipients to move away from poverty toward economic independence. Ultimately, those who work should re-
Homelessness is a continuing problem that will not be alleviated unless cities, states, and the federal government are forced to take some responsibility for homeless people and are prevented from continuing to push them from one community to another in a never-ending contest of nonresponsibility.

This article asserts that homelessness is a continuing problem that will not be alleviated unless cities, states, and the federal government are forced to take some responsibility for homeless people and are prevented from continuing to push them from one community to another in a never-ending contest of nonresponsibility. Repressive legislation and catch-all codes that criminalize homelessness and allow the contest to continue must be challenged. However, these legal challenges are merely interim measures and must be accompanied by the creation and implementation of long-term solutions designed to attack and alleviate the sources of homelessness.

Part I of this article describes some of the complexities of understanding and dealing with the problems of homelessness and indigency with the hope that we can replace compassion fatigue with compassionate understanding and action. Part I initially presents an overview of the escalating numbers of the working poor, the welfare poor, and the homeless, and discusses their increased need for shelter, food, and other necessities of life. Part I then describes the public’s “Not In Anyone’s Backyard” response as well as the executive, legislative, and judicial responses to homelessness. Part II discusses the “semantic” legal challenges that can be brought against anti-camping, anti-begging, and aggressive panhandling ordinances on the grounds that aspects of the regulations violate the Due Process or Equal Protection Clauses of the Constitution. Part II next describes the more broadbased “substantive” legal challenges directed against catch-all codes criminalizing homelessness. These challenges are based on the right to travel, free speech, the Fourth Amendment, the Eighth Amendment, and the Equal Protection Clause. Finally, Part III details the many faces of the homeless and describes some enlightened programs dealing with the sources of their multifaceted problems. These programs provide homeless people with temporary shelter, permanent affordable housing, treatment for mental and physical disabilities, and opportunities for employment.

This article concludes with the hope that if these successful programs can be expanded nationwide, some of the problems of homeless people will be alleviated, if not solved. However, this can only happen if all communities are forced to confront homelessness rather than be allowed to continue the contest of nonresponsibility by pushing their homeless citizens into someone else’s backyard. This article suggests that every community must face the problems presented by homelessness and work together to implement effective and humane solutions. The goal of America’s social policy should be to assist the homeless and the poor to move along the poverty continuum from homelessness, towards the ultimate goal of adequate, full-time employment and economic independence.

I. THE ESCALATING PROBLEMS OF INDIGENCY AND HOMELESSNESS IN THE NEVER-ENDING CONTEST OF NONRESPONSIBILITY

A. Indigency in the United States

In 1992, the number of people living in poverty rose for the third consecutive year to 36.9 million, increasing three times as fast as the overall population.
In October of 1993, the Census Bureau reported that, despite the end of the latest recession, the poverty rate rose in thirty-three states.\textsuperscript{4} By the end of 1993, the Census Bureau revealed that the poverty rate rose to 15% of the population, with 39.3 million Americans living below the poverty level.\textsuperscript{45}

America’s poverty population has shown some other demographic changes since the 1970s. For example, because the population has become much less agricultural and rural than in the past,\textsuperscript{46} poverty has deepened and become more concentrated. In 1990, almost twice as many people as in 1980 were living in census tracts where at least 40% of the residents were poor.\textsuperscript{47} The number of people living in these “ghetto” areas rose from 3.7 million in 1970, to 5.6 million in 1980, and to 10.4 million in 1990.\textsuperscript{48}

The 1993 Census revealed a 22.7% increase in poverty among young children, with 15.7 million of all children classified as poor.\textsuperscript{49} The data show that 47% of all poor children who live in households with incomes less than half of the official poverty level are more likely to suffer extreme poverty than ever before.\textsuperscript{50} In April 1994, a three-year study prepared by the Carnegie Corporation confirmed that 3 million American children, or nearly one-fourth of all infants and toddlers, live in poverty.\textsuperscript{51} The working poor’s precarious economic position means that they are continuously at risk of becoming homeless or not being able to afford adequate food and shelter.\textsuperscript{60} A March 1994 hunger survey, for example, revealed that 44% of the working poor believed that they would not need donations of food to feed themselves and their families, but three months later had to rely on such donations; 28% claimed employment at some level and 21% said that they had been unemployed for less than three months.\textsuperscript{61} The forces behind the trend of full-time or part-time workers living in poverty are well-known. The nation is moving away from higher-paying manufacturing jobs.
in the auto, steel, chemical, and other industries, and towards lower-paying service jobs, ranging from retail stores to fast-food restaurants. In addition, the minimum wage has failed to keep pace with inflation. During most of the 1960s and 1970s, a full-time job that paid minimum wage was sufficient to maintain a family of three above the poverty line. By 1991, a full-time job that paid minimum wage left a family of three nearly $2000 short of the poverty line income and a family of four nearly $5000 below the poverty level. At the current minimum wage of $4.25 per hour, full-time, year-round minimum wage work yields a gross income of only $8500 per year, or about $700 per month.

2. Escalation in the Number of Welfare Poor Who Are at Risk of Homelessness

In addition to the escalating risk of homelessness among the working poor, the risk of homelessness for the welfare poor is on the rise. There are three factors that contribute to this trend: an increase in the number of recently unemployed individuals who need public assistance; an increase in requests for public assistance; and a decrease in AFDC benefits.

To begin, many new members of the welfare poor were part of the low-wage work force until the recent economic downturn resulted in the loss of their jobs. In 1990, even before the recession hit with full force, 2.2 million Americans permanently lost their jobs. Many more people joined the ranks of the unemployed once the recession began. By May 1991, 303,000 people had been out of work for more than twenty weeks and had thus exhausted their unemployment benefits. Only 20% of these unemployed people lived in states that offered extended federal benefits while the remaining 80% had to rely on welfare. As of December 1993, 8.3 million Americans were looking fruitlessly for employment.

Compounding the problem, the average length of unemployment has grown longer in recent years, due in part to rapid changes in technology that made some jobs obsolete. Less than one in nine workers remained unemployed for six months or more in the 1970s, but by the 1980s, that ratio had grown to nearly one in six. In 1992, one in five workers was unemployed for six months or more, with three out of four workers losing their jobs permanently that year.

In addition to the increased number of recently unemployed workers needing public assistance, the escalation of the welfare poor is reflected in the general increase in the number of requests for public assistance. The number of AFDC recipients rose by an average of 659,000 people each year from 1989 to 1994. The number of food stamp recipients also grew by more than one-third between 1990 and 1994. Requests for emergency rent assistance to prevent evictions showed a marked increase as well. According to the Jewish Board of Family and Children’s Services, from July 1992 to May 1993 requests for emergency rent assistance rose by 40%. A “good portion” of the 1350 pleas involved people who lost their jobs or saw their hours drastically reduced after years of employment. The Department of Health and Human Services reported that by June 1993, the number of AFDC families topped 5 million for the first time ever. Nine months later, a record 15 million people were receiving AFDC, including 10 million indigent children and single women who comprised 95% of the adults. One of the country’s leading welfare experts, Democratic Senator Daniel Moynihan of New York, noted that one in three American children born in 1980 and eight out of ten African-American children will wind up on welfare.

The increase in welfare needs occurred even in the country’s most affluent states.
Not in Anyone’s Backyard

For example, in the five years from 1988 to 1993, the AFDC caseload in California grew 47%, which is more than four times faster that the state’s population growth of less than 9%. Some of the most dramatic increases occurred in wealthy counties such as Orange County, which had by far the highest growth rate among the state’s fifty-eight counties, and recorded a staggering 106% increase in caseloads since the 1988-89 fiscal year.

As of March 1994, more than 2.6 million Californians were receiving AFDC. A final trend that is accelerating the risk of homelessness for the welfare poor is the decreasing amount of available AFDC. After adjusting for inflation, direct federal aid to cities to support poverty programs has fallen more than 60% since 1981. According to a study released on March 26, 1991, by the Food Research and Action Center, a Washington-based anti-hunger advocacy group, one in eight American children does not have enough to eat, largely because of inadequate federal assistance programs.

Statistical data show that AFDC benefits declined in real terms over the past two decades. Far from spinning out of control, as of March 1994, AFDC payments, adjusted for inflation, declined 46% since 1970. Between 1972 and 1991, AFDC benefits for a mother of two children with no income declined by 41% in constant dollars. If the same mother earned $7500 per year, her benefits would have declined 93% during the same period. Even after the value of non-cash benefits, such as food stamps, is counted, average welfare benefits decreased an estimated 26% between 1972 and 1992. As of 1990, the combined benefits from food stamps and AFDC amounted to only 72% of the poverty level in the median state. In fact, for a family of three, the average monthly grant in 1990 was set at $377, less than half the poverty level. The combined total from food stamps and AFDC purchased 26% less in 1990 than it did in the early 1970s.

To make matters worse, many states recently decreased the money available for their AFDC programs. In 1992, AFDC benefits were cut more than in any year since 1981, and 43 states and the District of Columbia either cut or froze the benefits, despite a 3% annual increase in the cost of living. In addition, many states tightened the eligibility requirements for AFDC assistance. Because of changes in eligibility, only 58% of poor children received AFDC benefits in 1989, compared with 81% twenty years earlier.

Unfortunately, while AFDC benefits have plummeted, housing costs have skyrocketed. During the 1980s, the country lost nearly 2 million units that rented for $300 per month or less. In many parts of the country, AFDC recipients are at risk of homelessness because of unaffordable rent. As of July 1991, the average maximum AFDC grant for three people was $416 per month, while the average Fair Market Rent level for a two-bedroom apartment was $544 per month. This means that the average rent was $128 more than the maximum AFDC grant.

The disparity between AFDC grants and Fair Market Rent is even greater in the more affluent states. For example, as of May 1994, California was paying the fourth highest level of benefits in the nation—$607 per month for a parent and two children. However, the payment was less than the Fair Market Rent for two bedroom apartments in the major California cities of San Diego ($711), Oakland ($798), Los Angeles ($804), San Jose ($883), and San Francisco ($962).

If cost of living benefits are taken into account, other states pay higher benefits. However, the lack of affordable rentals presents a nation-wide problem. In New York City, as of January 1994, welfare recipients were paying rents exceeding 150% of their shelter allowance. Since 1988, New York welfare payments have been frozen at a maximum of $286 per month for a family of three while the median rent at the beginning of 1994 was $475 per month. The freeze led to a lawsuit by welfare recipi-
Not only is the homeless population far more numerous than once estimated, the problems that accompany homelessness are also far more complex.

B. Homelessness in the United States

The problems related to indigency and homelessness in the United States often go hand in hand. Two factors have contributed to this occurrence: (1) the increase in the homeless population; and (2) the growing number of requests for emergency financial assistance for food and shelter.

1. Increase in the Homeless Population

In 1984, the Department of Housing and Urban Development (HUD) released its first estimates of the size of the homeless population in the United States, revealing that 250,000 to 350,000 people were homeless. Over the past ten years, this number has increased ten-fold and it is now estimated that as many as 3 million people who live in the United States are homeless. A draft of the Clinton Administration's plan to end homelessness, released on February 16, 1994, concludes that the problem is "far larger than commonly thought." In May 1994, the Clinton Administration endorsed the estimate that 7 million Americans were homeless at some point between 1985 and 1990.

Not only is the homeless population far more numerous than once estimated, the problems that accompany homelessness are also far more complex. All too often those on the poverty continuum who are without homes are referred to as though they were a single discernible group. In fact, many different kinds of people are lumped together under the rubric of "homeless," their only common denominator being their lack of a home. For example, the "homeless" include women with children who are no longer able to share an apartment with relatives, Vietnam veterans who bed down at shelters at night and shine windshields during the day, panhandlers, crack addicts, alcoholics, and people who suffer from mental illness.

A report released by the Clinton Administration in February 1994 attributed part of the marked rise in homelessness to the emptying of mental hospitals and the increase in crack cocaine abuse. Additionally, the decline in wages for working Americans who lacked a high school education and the decrease in public assistance payments left many people unable to afford rent. As a result, two pools of people who are at risk of becoming homeless were created. The smaller, but more visible pool, includes the drug addicts or the mentally ill; the larger, but often hidden group, contains those suffering from chronic poverty who are plunged into homelessness by a sudden crisis. Indeed, a 1992 study of New York City's shelters revealed that more than one-third of the single shelter dwellers and two-thirds of the families had become suddenly homeless during the prior year.

Unfortunately, the population of homeless Americans includes an evergrowing number of families. For the first time in the ten years of the 1993 Status Report, there were as many homeless families as there were homeless single men, with each group representing about 43% of the total homeless population. James Scheibel, Mayor of St. Paul, Minnesota and Co-Chairman of the Conference's Task Force on Hunger and Homeless, describes homelessness as having "many faces" and stresses that "it is important for Americans to understand that for every single homeless man they may encounter in the street, there is a member of a homeless family somewhere in their city needing the same help." Perhaps the most astonishing demo-
graphic is that nationwide there are more than 500,000 homeless children, and every night 61,500 to 100,000 homeless children sleep in emergency shelters, welfare hotels, abandoned buildings or cars, or, even worse, they are exposed to the perils of the open street. In addition, there are at least one million runaway teens, who often go unnoticed as part of the homeless population. Besides being too young to work legally or sign rental leases that could get them off the street, these teenagers must confront both their inexperience and their probable inability to handle the pressures of living on the street.

Even in the country’s most affluent states, the homeless population is increasing. California, for instance, enjoys the ninth highest per capita income in the United States; yet, the California Right to Housing Campaign estimated in 1990 that there were as many as 250,000 homeless individuals in the state. Of this number, approximately one-third were members of homeless families. Although ranked only fourteenth in population size, San Francisco had the dubious distinction of having the highest concentration of homeless people in the United States.

2. Increase in Requests for Emergency Financial Assistance for Food and Shelter

The increase in the homeless population is linked to the increased number of requests for emergency financial assistance for food and shelter. The most recent Status Reports reveal that requests for emergency food rose by 22% in 1990, 26% in 1991, and 13% in 1993. Similarly, demands for emergency shelter increased by 24% in 1990, 13% in 1991, and 10% in 1993. The 1993 Status Report also revealed a 30% increase in the number of families with children seeking food and shelter.

Of even more concern, a significant number of cities could not meet the food and shelter needs of their indigent citizens. In fact, the 1993 Status Report showed that the ability of cities to meet families’ needs for shelter had declined over the years and was worse than at any time since the surveys began in 1988. In the 1993 Status Report, two out of three cities reported that they could not provide adequate food for those who requested it. Moreover, an average of 25% of shelter requests by homeless individuals and 29% of requests by homeless families were unmet. Finally, every city surveyed expected requests for emergency food to increase during 1994, and all but three of the cities expected requests for shelter to increase as well.

C. The Not in Anyone’s Backyard Responses Against the Homeless and the Indigent

1. Manifestations of the Not in Anyone’s Backyard Responses in Other Countries

The problem of homelessness, and the resultant Not in Anyone’s Backyard response, is not, of course, limited to the United States. Homeless people are increasingly seen begging in Paris subways, sleeping in Moscow train stations, and camping in London parks. In other countries, homeless people suffer harassment, torture, and are even murdered. Indeed, the continuing escalation of homelessness and indigency in other countries and the injuries that homeless people have sustained, should serve as a wake-up call to the dire consequences of trying to shift responsibility for the poor to someone else’s backyard rather than dealing with the problem directly.

In Europe, hard economic times and the disintegration of nations have left hundreds of thousands of people homeless. Although exact figures are difficult to obtain, European agencies that deal with homeless people report that incidences of homelessness have risen since the mid-1980s. For example, as of February 1992, Germany had 150,000 registered homeless people and about 250,000 people from outside Germany were seeking asylum, many living in shelters while they waited for their cases to
be decided. Poland’s labor minister estimated that in 1992, almost 80,000 people in his country were homeless. France was abruptly reminded of its approximately 500,000 homeless constituents in December 1993, when at least ten “street sleepers” died of exposure. In May 1994, a London rally commemorated the 600 homeless people who die on Britain’s streets each year.

Even more alarming is that according to an April 1993 World Health Organization Study, the number of homeless children varies from 10 million to 100 million worldwide depending on how they are defined. According to April 1991 statistics, the plight of homeless children is especially grave in developing countries. There are up to 40 million homeless children in Latin America, 30 million in Asia, and 10 million in Africa. Worldwide, over 150 million children under the age of five suffer from malnutrition. Every day in the developing world more than 40,000 children under the age of five die of malnutrition, diarrhea, measles, and other preventable causes.

Throughout the world, homeless children are a symptom of a social fabric unraveling. Homeless children in developing countries are often the product of destitute and homeless parents who, unable to find work themselves, send their children to the streets. In some countries, the children can earn more money begging than their unskilled parents can earn working. For example, in Recife, Brazil, children who beg or sell fruit at crowded intersections typically earn two to three times what their parents earn as unskilled laborers. As poverty increases, so does the pressure on the children. Parents become taskmasters who abuse or lock out children who fail to bring home enough cash.

In even more egregious cases, parents in some countries even sell their children for money. Each month in Moscow, for example, desperate Russian parents sell their daughters, some as young as seven years old, for the approximate equivalent of fifty-two American dollars. In Thailand, where an estimated 40,000 children under age fourteen are engaged in prostitution, brothel owners offer the equivalent of a poor farmer’s yearly earnings for a young, nubile girl. For example, a ten-year old girl in Northern Thailand was sold in 1990 by her father for $400 to work in a Bangkok brothel. At the brothel, the child was worth $40 per night while she was still young.

Manifesting as the most extreme Not in Anyone’s Backyard response, the worldwide escalation of homelessness and indigency in other countries has led to numerous instances where the poor have been physically attacked and, in some cases, brutally murdered. For example, in November 1993, three boys between the ages of eight and ten were charged in France with “voluntary injuries, that caused death, without intention to kill,” after they clubbed and kicked a homeless man to death, then threw his body down a well. In the same month in Bogota, Columbia, a homeless paper collector died from internal injuries after he was beaten by a policeman. According to Amnesty International, a Columbian group calling itself Death to Street Children has shot and killed at least twenty homeless youths in an effort to “clean up the streets of the Columbian capital.” These killings have become so “common and systematic” in Columbia that human rights monitors call them “social cleansing,” and the victims are branded as “desechables” or disposable people.

Homeless youth in other countries are frequently beaten by police, increasingly tortured, and even murdered. Since the 1980s, in response to rising crime and homelessness, the number of “vigilante groups” has also increased. Carlos Rojas, an analyst on urban violence for a Jesuit think tank, indicates that the most frequent victims of “social cleansing” are homeless people living in urban areas and youths living in poor shantytowns.
2. Manifestation of the Not in Anyone's Backyard Responses against Homeless People in America

Though efforts of American communities to rid themselves of their homeless citizens only rarely lead to "social cleansing," a growing national impatience with the ever-increasing presence of dirty and desperate people has led to an increasingly serious public relations problem. In their book entitled, A Nation in Denial: The Truth About Homelessness, authors Alice Baum and Donald Byrnes comment that "while the 1980s were marked by compassion for the homeless, the 1990s seem to have become the decade of anti-homelessness."171

The 1990 Status Report of thirty major U.S. cities revealed three clear trends: (1) the rapidly rising number of hungry, homeless Americans seeking help; (2) the inability of America's cities to provide help; and (3) the shifting of the public's attitude toward homeless people from compassion to intolerance and even hostility.172 In 1991, nearly three-fifths of the twenty-eight cities surveyed reported evidence of a public backlash against homeless people.173

Even at the highest levels of government, few appear to understand the desperate plight that homeless people face. For example, former President Reagan stated that people without housing are homeless by choice.174 Edwin Meese, counselor to former President Reagan and later Attorney General, similarly asserted that people go to soup kitchens "because the food is free and that's easier than paying for it."175 In 1991, Democratic State Senator Michael C. Creedon described Massachusetts's General Assistance program as going to "people who are urinating on the floor in the bus station ... and throwing up. They take the $388 and go to the nearest bar and spend it."176 In a recent article in New York Magazine, even liberal columnist Pete Hamill asserted that "homelessness is a public health problem spawned by drunks, crackheads or crazies."177

The attitude of the American public towards homeless people mirrors the compassionless response of its public officials. Direct evidence of the shifting attitude is not hard to find. One example occurred in early February 1994, in New York City's Little Italy, where two well-dressed men stood over an older homeless man and cursed at him as two police officers stood by laughing.178 During that same month, five teenagers shouted curses at a crippled homeless man in another part of New York City.179

The hostile responses of other members of the public are demonstrated in a less direct, but equally insidious, life-threatening way. These members of the public have taken an "out of sight, out of mind" approach and simply want homeless people to disappear to another community, city, or state. For example, Hollywood, Florida's City Commissioner John Williams defended the municipality's anti-homeless regulations by asserting: "It's time [the homeless] moved on to somebody else's backyard. If that sounds cold, my priority has to be the decent people who are afraid."180 Similarly, in New York City, transit police have been diverted from robbery stakeouts to so-called "quality of life patrols," which involve hustling panhandlers from underground subway stations.181 Richard Penner of New York's Coalition for the Homeless commented on this diversion by stating:

I think people have gotten the sense that the problem just keeps getting worse, the numbers of homeless people are just absolutely out of control . . . . The danger is that people may be forgetting that life can be different. Instead of solving the problem, they are willing to just shove it out of sight.182

The increased number of homeless people seeking shelter anywhere they can find has led to a process known as "homeless-proof architecture," which seeks to make both public and private property inaccessible to the indigent.183
Metal bars with spikes are bolted down to lower-level windows so that homeless people cannot sit or sleep on the ledges. Planters outside buildings are made too tall for anyone to sit on their edges, fences are raised around many public places, and gates block storefronts to prevent people from loitering. Also, bus stops now feature hard, narrow, tilting seats to discourage people from sleeping on them. Shrubbery in public parks is pruned so police can see anyone who might be sleeping on benches, and the benches are designed with multiple armrests so that homeless people cannot stretch out on them.

Allan Parachini, spokesman for the ACLU Foundation of Southern California, explained: "People feel economically besieged themselves. They want homeless people out of sight and out of mind, and they're willing to do completely illogical and illegal things to do it." In a few cases, the public willingness to do completely illogical and illegal things has threatened the very survival of homeless individuals in the United States, paralleling some of the atrocities committed in other countries.

For example, in November 1993, a homeless man in San Francisco was critically injured when three teenagers doused him with rubbing alcohol and set him ablaze because "they thought it would be funny to light someone on fire." In another monstrous example of compassion fatigue run amok, the New York City Transit Authority Police reported that there were twenty-one incidents in 1992 in which people tried to set fire to homeless individuals sleeping in subway stations by throwing matches, lighting newspapers under their shoes, or dousing them with flammable liquids. Two of the homeless victims burned to death, and in all but eight cases the perpetrators escaped prosecution. Equally alarming was a report from Gastonia, North Carolina that three police officers pleaded guilty to charges of assault and civil rights violations in connection with the harassment of homeless men. The homeless victims reported that they were beaten and sprayed with cooking oil, coffee, and urine.

**D. Effects of the Public's Compassion Fatigue and the Not in Anyone's Backyard Response**

The public's compassion fatigue with the apparent intractability of homelessness has been communicated to legislators at the federal, state, and local levels. Homeless people are increasingly regarded as the core of an urban problem that needs to be eliminated in order for communities to properly function. Although most citizens and officials believe that homeless people should be given assistance and opportunities, they want the delivery of the services to occur at another—any other—location.

According to a recent study of seventeen cities, conducted by the National Law Center on Homelessness and Poverty (the Law Center), local governments in search of quick solutions to the homelessness problem are "increasingly adopting hostile and legally questionable approaches." Moreover, the study noted that increasing hostility toward their most needy citizens led to the passage of sixteen major panhandling, trespassing, and anti-camping regulations in 1993 alone.
Law Center study revealed that the cities were increasingly enacting and enforcing anti-vagrancy laws to jail homeless people or to remove them from busy areas.\textsuperscript{196} Finally, several cities have enacted catch-all legislation that prohibits homeless people from engaging in a broad range of essential life activities in public, such as sleeping.\textsuperscript{197} These cities attempt to force their homeless citizens to migrate to someone else's backyard or face imminent arrest for engaging in necessary behavior.

Legislation prohibiting the homeless from sleeping or camping in otherwise suitable areas, ordinances banning begging or panhandling in places where the public congregates, and broad-based "catch-all codes" criminalizing homelessness have dire implications for the homeless. These regulations have a two-fold negative effect in that they both endanger the ability of homeless people to survive and they reduce the incentive and the opportunity for the public to respond to the needs of these people. Because of the lack of affordable housing\textsuperscript{198} or available spaces in shelters\textsuperscript{199} (and the frequently intolerable conditions in shelters that have space),\textsuperscript{200} sleeping in a park or on a beach may be the only feasible alternative for a homeless individual. Similarly, because of the cutbacks or unavailability of public assistance\textsuperscript{201} and the difficulty of finding employment in a time of economic malaise,\textsuperscript{202} many homeless people have no alternative means to support themselves besides begging. By criminalizing the performance of essential life activities like sleeping, catch-all codes leave the homeless with no alternative but to face arrest or to relocate beyond the reach of repressive ordinances.

Perhaps of even more concern in the long run is that these regulations make the plight of the indigent disappear from public view as they force homeless people to seek survival in someone else's backyard and allow the contest of nonresponsibility to continue unabated. At least one commentator noted that court opinions sanctioning anti-begging ordinances have national implications in that they condone cities' efforts to restrict begging in an effort "to get beggars out of sight."\textsuperscript{203} Unfortunately, if beggars are out of sight, they are easily forgotten by the very people who might come to their assistance.

1. Decreased General Assistance Benefits for the Homeless

Like AFDC benefits, General Assistance, the primary public assistance program for homeless men and women, has shown a marked decline over the past several years.\textsuperscript{204} As of February 1993, twenty-two states had no GA programs at all.\textsuperscript{205} In the states that do offer GA, the amount of the grants is very limited. In 1990, GA benefits ranged from a low of only 5\% of the poverty line in South Carolina to a high of 77\% of the poverty level in Maine.\textsuperscript{206} Fourteen of the states offering GA in 1990 cut the amount of money paid in their programs in 1991, and eight more decreased the amount in 1992.\textsuperscript{207} As of February 1993, after the cuts, the average maximum benefit was only $215 per month.\textsuperscript{208} According to Dr. Paul Koegel, co-director of a large study on homelessness conducted by the Rand Corporation, the low benefit rate "likely means [a homeless person] has to choose between spending what little money he has on food and clothing or shelter."\textsuperscript{209}

Predictably, the twenty-eight states that provide at least some GA money find themselves inundated with homeless individuals who have been displaced from the backyards of less humane communities. For example, in California, San Francisco Mayor Frank Jordan complained that the lack of a waiting period for a newcomer to receive GA had caused the city to become a "magnet" for the poor, leading other jurisdictions to "send clients to us, calling it Greyhound therapy—a one-way ticket to San Francisco."\textsuperscript{210}

Homeless individuals who have remained in states that have decreased or terminated GA programs have sometimes come to tragic ends. Perhaps the
The best example of the human havoc these cutbacks can cause occurred in Michigan, where 82,614 “able-bodied” adults were dropped from the state’s GA rolls in October 1991, on the theory that the vast majority of those bumped from the rolls were undeserving of public assistance and should be able to find jobs. However, with more than 400,000 people out of work statewide, few former welfare recipients were able to find employment, leading them to join the ranks of the homeless. For example, the Wayne County (Michigan) Department of Social Services estimated that the cuts increased homelessness in Detroit by about 50% in 1992.

In November 1991, two Michigan men died, and a third was hospitalized, after breathing carbon monoxide fumes from a charcoal grill inside a vacant house. But for the fact that these three men became homeless after their public assistance was taken away, these atrocities never would have happened. In addition to the needless cost of human lives, it is doubtful that Michigan will ultimately reap any economic benefits from terminating the aid. Advocates for the homeless estimate that if only 10% of the former recipients wind up in prison or in mental hospitals, any savings realized from the cuts will be wiped out.

2. Decreased Funding for Emergency Shelters for Homeless

While GA money for the homeless has declined, many local governments have also decreased the number and availability of homeless shelters, despite the increased need for such housing. For example, in November 1990, Washington, D.C. voters repealed a 1984 ordinance that guaranteed a city shelter bed to every homeless person who needed it. This led to the closure of two emergency centers by the following summer. In addition, a city ordinance now limits the length of stay in shelters to thirty days for single people and ninety days for families.

Similarly, in January 1990, city officials in Phoenix, Arizona shut down the main downtown shelter’s outdoor camping area, and reduced the shelter’s capacity by 200 beds. In December 1990, the downtown shelter appealed the shutdown to a city zoning board. The board not only endorsed the original closure but also ordered the shelter to cut another 200 beds. Between 1989 and 1992, Philadelphia, Pennsylvania halved the funding it spent on its shelter system and the number of people it sheltered.

The efforts of some municipalities to deal compassionately with the problem of housing the homeless have been derailed by empathy burnout. For example, the “Alternative Pathways” proposal to build twenty-four small specialized homeless shelters in middle-income residential neighborhoods in New York City ran into a “buzzsaw” of opposition from elected officials and city residents. Proposed in October of 1991, the plan was pronounced a failure less than one year later. As a result of its failure, approximately 6000 families were living in New York City’s shelters by June 1992—more than ever before in the city’s history.

3. Decreased Funding for Low Income Housing

There have also been extensive cuts by HUD in financing the construction of low-cost homes, leading private investors to cease building such housing. In the last decade, the federal government virtually ceased funding construction and rehabilitation programs for low and moderate income housing. Between 1980 and 1987, the number of new commitments for the construction of public housing, Section 8 housing, and subsidized housing, fell from 173,249 to 12,246 apartments.

At the same time, budget money allocated for housing programs subsidized by the federal government was slashed nearly 75%, from more than $32 billion in 1981 to $8.7 billion in 1990. As Barry Zigas, Executive Secretary of the Low Income Housing Information Center so aptly put it: “The federal government...
has largely abdicated its responsibility to address housing needs.”

Moreover, more than a decade of nationwide redevelopment schemes, including gentrification, conversion of rental units to condominiums, and abandonment of decayed housing, have demolished the tenderloin districts in many large cities. As a result, the national stock of cheap single-room occupancy housing has been eliminated as well. An estimated one-half million units of low-income housing are lost each year to the collective forces of arson, inflation, abandonment, demolition, and the conversion of low-income housing to other uses.

The 1991 Status Report identified lack of low-income housing as the most frequently reported cause of homelessness in America. This result was confirmed in December 1991 by two non-profit research groups who concluded that poor people are facing the most acute shortage of affordable housing in two decades, with millions at risk of becoming homeless. The studies found that between 1970 and 1989, the number of low-income families seeking affordable rental housing increased by 3.2 million, while the number of affordable rental units decreased by 1.3 million. Moreover, the limited number of rental units that were available were less affordable than in the past. Housing costs, including rent and utilities, are generally considered low-income if they consume no more than 30% of a families income. The studies unfortunately found that in 1989, 3.5 million poor renters spent at least one-half of their income on housing, which made it difficult for them to pay for food, medical costs, and other miscellaneous bills. In fact, according to a November 1992 report from the Center On Budget and Policy Priorities, there were “only 5.5 million subsidized or unsubsidized housing units that met standards of affordability for the nation’s 9.6 million poor households.” According to the Rand Study of homelessness, the “high cost of housing, lack of affordable housing, competition for what low cost housing does exist, absence of federally subsidized housing, and an insufficient number of shelter beds make it extremely difficult for homeless persons to find housing and escape homelessness.”

4. Criminalizing Sleeping and Camping by Homeless People

The decrease in the availability of emergency shelters and low-cost housing has led to an increase in the number of homeless people seeking shelter in doorways, under bridges, in parks, or in other public areas. The distressing sight of these homeless “campers,” and their sometimes unsanitary litter, has added fuel to the fire of compassion fatigue.

Public concern about homeless campers has led legislators at all levels to impose harsher restrictions on homeless people, to reduce their visibility, and, if possible, to force them to relocate in someone else’s backyard. Regulations in many communities prohibit the homeless from sleeping in public areas, like beaches or parks, which would otherwise be ideal settings due to the availability of toilet and other facilities. For example, Santa Barbara, California’s Municipal Ordinance 15.16.085(I), entitled “Unlawful Areas to Sleep,” makes it unlawful for any person to sleep “[i]n any public beach during the period of time from one-half hour before sunset to 6:00 a.m.” In People v. Davenport, the Appellate Department of the Santa Barbara Superior Court found that the ordinance was neither unconstitutionally vague nor overbroad. In reaching this conclusion, the court commented that the “city acts reasonably in lessening the risks to transients from other transients by restricting the areas where overnight sleeping, and thus, vulnerability, can legitimately take place.” This professed governmental concern with the well-being of homeless people is a bit disingenuous, however, because the measure permits homeless people to sleep in “the jungle,” an unsafe public lot overgrown with eucalyptus trees, where homeless people are

According to the Rand Study of homelessness, the “high cost of housing, lack of affordable housing, competition for what low cost housing does exist, absence of federally subsidized housing, and an insufficient number of shelter beds make it extremely difficult for homeless persons to find housing and escape homelessness.”
If, instead of displacing homeless people, cities improve the encampments of their homeless citizens and make them liveable, they would achieve far more humane and effective results.\(^{246}\)

Taking a more humane approach, police in Santa Monica, California agreed not to enforce a recently enacted law forbidding anyone from staying in parks between midnight and 5 a.m., as long as the person is actually sleeping.\(^{247}\) Critics of the policy, including some members of the City Council, contend that Santa Monica's generosity and compassion has attracted more homeless people to the city.\(^{248}\)

Several cities used anti-camping ordinances to "sweep" certain target areas, resulting in the displacement of homeless people to other backyards. For example, San Francisco police in 1990 began to vigilantly enforce against homeless campers a little-known provision of the California Penal Code that makes it a misdemeanor "to lodge in any public place... without the permission of the owner."\(^{249}\) In *Stone v. Agnos*, the Ninth Circuit found that displacing a homeless person from his tent in the park did not violate his or her First or Fourth Amendment rights.\(^{250}\)

In other cities, rather than simply arresting and relocating individual homeless people, police rousted entire encampments of indigents, often destroying their meager belongings in the process. A rather extreme example of the lengths to which communities will go to avoid dealing with the homeless occurred over ten years ago in California, when Los Angeles police herded homeless people found in the parks into Santa Monica.\(^{252}\) Santa Monica responded by sweeping them right back, "creating a kind of wind-shield-wiper effect with the homeless pushed to the middle."\(^{253}\)

More recently, police officers in Miami, Florida roused seven homeless people who were sleeping in a local park, handcuffed them, and burned their belongings.\(^{254}\) In Minneapolis, Minnesota, police routinely raze homeless camps each summer, confiscating or destroying homeless people's identification.\(^{255}\) In Mendocino, California, in January 1994, a Superior Court Judge granted officials the right to evict thirty squatters from a scenic public beach that had been their home for years, pursuant to a new State Department of Parks and Recreation policy restricting camping at the beach to seven days.\(^{256}\) The squatters were forced to leave despite the fact that county officials conceded there were virtually no shelters for the homeless along the coast.\(^{257}\)

The futility of harassing the homeless was perhaps best illustrated in the summer and fall of 1991 in New York City. In June 1991, police in riot gear tore down a shantytown in Tompkin's Square Park and evicted the homeless campers who were living there.\(^{258}\) Then in October 1991, the police swept through nearby vacant lots to tear down a new shantytown, evicting an estimated 200 homeless people many of whom had moved there after being evicted from Tompkin's Square.\(^{259}\) The dual raids made it clear the such sweeps were not attempts to solve the homeless housing problem but were simply attempts to move the problem to a different backyard.

If, instead of displacing homeless people, cities improve the encampments of their homeless citizens and make them liveable, they would achieve far more humane and effective results. Cities and states can expeditiously provide decent encampments because such encampments have been provided in the past when the "campers" were regarded as worthy. For example, in January 1994, the California National Guard began erecting six temporary tent cities to house some of the 14,000 homeless victims only days after the Los Angeles earthquake.\(^{260}\) In less than a month, Congress enacted a sweeping aid package, providing over $8.6 million for immediate recovery and rebuilding needs.\(^{261}\) If similar efforts could be made on behalf of all homeless people, and the restrictions on camping in such tent cities were removed, legislators would make a sizeable dent in the ongoing problem of homelessness.
5. Criminalizing Begging and Panhandling by Homeless People

In addition to the growing compassion fatigue in response to the burgeoning numbers of homeless “campers,” members of the public have expressed disapproval of begging and panhandling by the homeless. Estimates of the number of homeless people who engage in begging vary from as few as 1% to as many as 29%. The public concerns regarding these sometimes unsightly or ill-mannered supplicants led the legislatures of thirty-five states and Washington, D.C. to pass anti-begging ordinances that criminalize personal solicitation.

Backers of anti-begging laws sometimes concede that single acts of panhandling are not the real problem, but that when combined with loitering, drunkenness, or other aggressive acts, begging indicates a breakdown in public order that leads to more serious crime. In fact, many of the bans on begging are part of statutes that regulate other conduct as well. For example, eight states and Washington, D.C. prohibit begging as part of anti-vagrancy ordinances. Six states prohibit begging as part of anti-loitering statutes. In Massachusetts and Mississippi, begging is prima facie evidence that the offender is a tramp. In Hawaii, Michigan, and North Carolina a beggar commits “disorderly conduct” by soliciting. Moreover, at least six states specifically prohibit the use of minors for begging as part of dependency statutes, or as part of regulations prohibiting minors from engaging in such an occupation.

As of February 1992, at least thirteen of the states that do not prohibit begging as a matter of state law, granted statutory authority to city councils, municipal authorities, or parks and recreation boards to do so. Several major cities used this statutory authority to prohibit begging entirely. The cities of Santa Cruz, California; Eugene, Oregon; and Memphis, Tennessee tried a slightly different approach to control panhandling, by requiring each beggar to obtain a license.

Several municipalities specifically restricted panhandling from motorists. For example, in Miami, Florida, indigents who approach motorists at intersections to wash car windows face a fine of as much as $500 and a jail sentence for as many as sixty days. More than 100 people were arrested in 1990 for violating this “no windshield-washing” ordinance. Going even further, in preparation for the 1996 Olympic Games, Atlanta, Georgia passed several ordinances in 1993, not only making it illegal to wash motorists’ windows but also rendering it unlawful to even walk onto a parking lot unless you have a car parked there. Similarly, in February 1994, the South Lake Tahoe City Council unanimously passed an ordinance banning panhandlers who solicit motorists with “will work for food” signs because it “distracts drivers, causes traffic jams and fender-benders, and drives shoppers away from tourist-dependent businesses.”

Other cities, in what may be a trend, recently passed ordinances regulating “solicitation by coercion” or “aggressive panhandling.” Examples of the type of conduct prohibited by recently enacted aggressive begging laws include:

Following before, after, or during the course of asking for money; touching people or screaming at them while asking for money; accosting or blocking the passage of someone while asking for money; asking for money in a confined space such as a bank lobby or a subway tunnel; or asking for money in a clearly inappropriate, threatening or intimidating setting, such as in front of an automated teller machine.

Coercive beggars in Cincinnati, Ohio can receive tickets carrying a $114 fine, and “aggressive panhandler[s]” in Atlanta, Georgia can face criminal penalties of up to $1000 for any violation.

One of the few cities to buck the trend
In a trend the Law Center called both "inhumane and counterproductive," several cities have attempted to enact "catch-all codes" that criminalize a broad range of activities engaged in by homeless people, and authorize police agencies to vigorously enforce the regulations.

6. Criminalizing a Broader Range of the Activities of Homeless People: Catch-All Codes

In a trend the Law Center called both "inhumane and counterproductive," several cities have attempted to enact "catch-all codes" that criminalize a broad range of activities engaged in by homeless people, and authorize police agencies to vigorously enforce the regulations. In an attempt to cling to its reputation for liveability, Seattle, Washington has taken one of the strongest stances nationwide against the homeless. In 1987, Seattle outlawed "aggressive begging," which it defined as using persistent intimidation to get goods and money. In 1993, Seattle broadened this statute by approving six new ordinances that make it easier to jail or fine homeless people, not only for offenses like urinating or drinking in public or aggressive panhandling, but even for the innocent activity of sitting or lying on a downtown sidewalk in front of a business (known as "sidewalk lounging").

Madeline Stoner, a Professor of Social Work at the University of Southern California, describes the trend to turn innocent activities into criminal offenses as "almost a national arms race to criminalize homelessness." Political leaders say that their new posture reflects not just the attitudes of a public fed up with aggressive street people but also the way "new thinking" about homelessness is reflected in public policy. This repressive public policy amounts to a harsh attack on indigents by essentially making it a crime to be homeless. In addition, the foreseeable effect of the criminalization statutes is to displace homeless people from tourist and business areas and force them into less visible places where they can be largely forgotten. Also obscured is the inevitable fact that by herding homeless people out of one neighborhood, localities only force them to take shelter somewhere else.

The forced displacement that can result from criminalization ordinances is graphically illustrated by the experiences of cities in California and Florida. In California, a see-saw effect was created as several liberal municipalities, which had been perceived as "magnets" for homeless people, enacted repressive ordinances to rid themselves of their homeless populations. As homeless people were forced to leave these now-repressive communities, they went to other California cities, which responded by enacting their own repressive ordinances, again precipitating the forced migration of the already displaced homeless to yet another location.

A classic example of criminalization policies and their effects on the rights of the homeless has recently taken place in Northern California. San Francisco has long had a reputation as a "tolerant, let-it-all-hang-out type of place" and a "cradle of liberalism and compassion." However, in August 1993, the city grew tired of its ever-increasing homeless population and started the Matrix program, which was singled out by the Law Center as the nation's "leading example of hostile government action."

The Matrix program encompasses eighteen state and city criminal ordinances that forbid such activities as pub-
lic inebriation, sleeping or camping in public parks, blocking sidewalks, public urination and defecation, littering, removal and possession of shopping carts, solicitation on or near a highway, and aggressive panhandling. As of October 1994, the citywide crackdown cost San Francisco more than $1 million, nearly double the $640,000 San Francisco Mayor Frank Jordan had claimed the Matrix program would cost in his State of the City address several weeks before. The $1 million figure includes over $300,000 for citing or arresting more than 11,000 homeless people for so-called nuisance crimes. An additional $176,000 in costs were absorbed by the Sheriff's Department, including almost $108,000 to book homeless people into the county jail, and over $60,000 to care for them while they are incarcerated.

On November 23, 1993, a class action representing thousands of homeless people was filed by the ACLU and the Lawyers' Committee for Civil Rights alleging that the Matrix program is unconstitutionally vague, restricts the right of homeless people to travel, involves the illegal search and seizure of property, and constitutes cruel and unusual punishment because it punishes the status of being homeless, rather than the illegal conduct of homeless individuals. The suit also alleged that singling out the homeless for Matrix police enforcement violates the right to equal protection because the Matrix program was implemented with the "aim of discriminating against the homeless." After the decision, Greg Winter of the Coalition on Homelessness commented that "the message seems to be that courts are no more hospitable to the interests of homeless people than are the other agencies of government."

The City of San Francisco, therefore, not only won the first round of the Matrix court skirmish, but Matrix also realized its intended, invidious, Not in Anyone's Backyard effect. Homeless people initially moved from San Francisco's downtown areas, where the crackdowns first occurred, to some of the outlying neighborhoods of the city, where homeless people had never been seen before. When San Francisco police then began enforcing Matrix in the suburbs, the displaced persons flooded the nearby Northern California cities of Oakland and Berkeley, prompting a formal complaint by Berkeley officials in December 1993.

As enforcement of Matrix in San Francisco continued unabated, the migration of homeless people to Berkeley's backyards continued as well. In March 1994, claiming that the city had "become 1-800-HOMELESS," the liberal Berkeley City Council responded by passing its own regulation criminalizing homelessness. The Berkeley ordinance bans a wide range of activities by the homeless including panhandling at night or in places where people display money, such as banks, bus stops, and movie theaters. Panhandlers are even forbidden from approaching people who are inserting money into parking meters, buying newspapers from racks, or using pay telephones. ACLU Attorney John Crew described the provisions as among "the worst examples we've seen of the anti-homeless trend" since the rules are "an overly broad attack on the free-speech rights of poor people and would make behavior that is not even aggressive, such as sitting down on the sidewalk, criminal activity."

The effectiveness of a criminalization statute in ridding a community of its homeless population was most recently
demonstrated in the City of Santa Cruz, California.\textsuperscript{316} The fact that reputedly liberal Santa Cruz passed a restrictive ordinance is noteworthy in itself as an indication of the depth and breadth of the public's desire not to have homeless people in their back-yards.\textsuperscript{317} Passed on April 22, 1994, the ordinance requires anyone who begs within the city limits more than five times a year to obtain a free, one-year panhandling permit from the Police Department.\textsuperscript{318} Panhandling is not per se banned under the ordinance, but virtually anything that makes it possible to beg is prohibited.\textsuperscript{319} The ordinance bans all solicitation after dark and prohibits begging at bus stops, benches, outside banks, within three feet of anyone being solicited, within six feet of any building, within ten feet of any doorway, and within fifty feet of automatic teller machines.\textsuperscript{320} It is also illegal to sit on the sidewalk, block a doorway, follow a pedestrian who refuses to donate, or panhandle in groups of two or more.\textsuperscript{321} Beggers are also prohibited from lying about how they will spend the funds that they solicit and from panhandling while drunk or under the influence of drugs.\textsuperscript{322} Tickets for violating the ordinance can cost up to $150 and can lead to revocation of panhandling permits for two years.\textsuperscript{323} Second offenses are categorized as misdemeanors and are punishable by up to six months in jail.\textsuperscript{324} The ordinance was markedly effective in moving homeless people out of Santa Cruz backyards as demonstrated by the approximately 85% of beggars who left the city even before the law went into effect.\textsuperscript{325} In Florida, this scenario was carried to a similar Not in Anyone's Backyard conclusion, ultimately leaving Miami's homeless people without any new communities to which they can travel and without anywhere to engage in the basic necessities of life, as graphically illustrated in 1991 and 1992 in Pottinger v. City of Miami.\textsuperscript{327} In Pottinger, a group of homeless plaintiffs filed suit in a Miami, Florida district court, challenging the city's arrests of thousands of homeless people for such life-sustaining conduct as sleeping, eating, and bathing in the public places where they were forced to live due to the lack of adequate shelter.\textsuperscript{328} The district court granted class certification to homeless individuals who "reside or will reside on the streets, sidewalks, parks and other public places" in a designated area of Miami, who "have been, expect to be or will be arrested, harassed or otherwise interfered with" by local police "for engaging in the ordinary and essential activities of daily living in public due to the lack of other adequate alternatives."\textsuperscript{329} On November 16, 1992, the court found that:

the City's practice of arresting homeless individuals for the involuntary, harmless acts they are forced to perform in public is unconstitutional because such arrests are cruel and unusual in violation of the eighth amendment, reach innocent and inoffensive conduct in violation of the due process clause of the fourteenth amendment and burden the fundamental right to travel in violation of the equal protection clause.\textsuperscript{330}

The court then ordered Miami to provide two "safe zones" where the city's 6000 homeless individuals would be allowed to sleep, eat, and perform other "harmless activities" in public, thus determining that the homeless plaintiffs had to be able to engage in the basic necessities of life in someone's backyard.\textsuperscript{331}

II. LEGAL CHALLENGES TO CATCH-ALL CODES

Battles over homeless people in cities like Miami, San Francisco, Berkeley, and Santa Ana make it clear that legal challenges are a crucial part of the struggle of the homeless. Without court action, many communities would simply drive homeless people out of town. If carried to its logical extreme, repressive legislation that bans begging and camping and the criminalization of various activities will spread from city-to-city and state-to-state until, as occurred on an intra-city
level in Miami, there is no place left where homeless people can engage in the activities of daily life.\textsuperscript{332} The current policy of Not in My Backyard, therefore, will lead to the inability of indigents to engage in life-sustaining activities in anyone’s backyard.

In order to avoid this dire result, those who are homeless, indigent, or both must seek creative ways to mount legal challenges to unfavorable legislation and repressive public policy. The two primary methods of mounting these legal challenges might be classified as “semantic” and “substantive.” In the more limited, semantic challenge, specific regulations prohibiting camping or panhandling might be successfully challenged as being void for vagueness under the Due Process Clause of the Constitution depending on the wording of the statutes involved.\textsuperscript{333}

The other method of legal challenge is to mount a more broad-based, substantive attack on the cumulative effects of catch-all codes criminalizing homelessness. Because this type of repressive legislation effectively deprives the indigent of the ability to engage in the basic necessities of daily life, these laws are subject to challenge as impinging on indigent people’s fundamental right to travel, violating the guarantees of free speech, being unreasonable under the Fourth Amendment;\textsuperscript{334} constituting cruel and unusual punishment, and violating the guarantees of the Equal Protection Clause. Although semantic challenges are sometimes temporarily successful, substantive challenges are a superior legal strategy for advocates for the homeless because they eliminate from a legislature’s arsenal statutes intentionally crafted to push homeless people away from the community.

\textbf{A. Semantic Challenges}

Ordinances prohibiting homeless people from sleeping or camping in otherwise suitable locations are open to legal challenge on the grounds that they are void for vagueness. The void-for-vagueness test under the Due Process Clause requires that a law “give [a] person of ordinary intelligence the opportunity to know what is prohibited, so that he may act accordingly.”\textsuperscript{335} In addition, the statute must “provide explicit standards” to prevent “arbitrary and discriminatory enforcement.”\textsuperscript{336} In \textit{Kolender v. Larson},\textsuperscript{337} the U.S. Supreme Court invalidated a statute that required an individual to produce “credible and reliable” identification when stopped by police. The Court emphasized that a criminal statute must not grant policemen, prosecutors, and juries unfettered discretion to pursue their own personal biases.\textsuperscript{338}

Void-for-vagueness challenges to anti-camping and anti-begging statutes fare much better, however, when the challenged statutes enable “arbitrary and discriminatory enforcement,” rather than when the statutes merely fail to give proper notice of what is prohibited. Because anti-camping statutes can apply in numerous lawful situations, they are frequently subject to challenge on due process grounds because their overbreadth can subject law-abiding citizens to arbitrary enforcement. Challenges on this basis have been successfully used in the past to invalidate vagrancy statutes.\textsuperscript{339}

1. \textit{Void for Vagueness Challenges Based on the Ordinary Intelligent Person Standard}

Challenges to anti-camping ordinances, based solely on the due process requirement that the language of the statute allows an ordinarily intelligent person to know what conduct is prohibited, have thus far met with little success. For example, in \textit{Seeley v. State},\textsuperscript{340} the Arizona Court of Appeals upheld the conviction of two defendants for refusing to move from a public sidewalk where they were seated. The court found that Phoenix’s “vigorously enforced” ordinance, which prohibited “lying, sleeping or otherwise remaining in a sitting position” on public land, was not vague because “lying, sleeping or sitting is conduct capable of being understood by any individual of normal intelligence.”\textsuperscript{341} Similarly, Oregon’s appellate court, in \textit{City of Portland v.}
Johnson\textsuperscript{342} found that a Portland ordinance which broadly defined “campsite” was not vague or overbroad. The statute was enacted to prevent “unsafe and unsanitary living situations which pose a threat to peace, health and safety.”\textsuperscript{343} The court explained that “[r]eading the definition of campsite together with the quoted statement of purpose [made it] apparent that the ordinance is not intended to prohibit the type of activities that defendant contends are now prohibited by the ordinance, such as picnicking on a blanket in a park, waiting in line for tickets while wrapped in a blanket, or watching the Rose Festival parade from a cot or blanket.”\textsuperscript{344} Finally, in \textit{Hersey v. Clearwater},\textsuperscript{345} the Eleventh Circuit simply severed the words “or sleeping” from an ordinance prohibiting “lodging or sleeping” in a motor vehicle in order to avoid striking down the ordinance. The court found that their “reformulated ordinance” was not vague or overbroad, based on the city’s interest in “protecting the health, safety and welfare of the public.”\textsuperscript{346}

A rare successful challenge to an anti-camping statute based on the “ordinarily intelligent” person argument may be maintained in \textit{Tobe v. City of Santa Ana}.\textsuperscript{347} In \textit{Tobe}, the California Court of Appeal invalidated as vague and overbroad a Santa Ana anti-camping ordinance that contained definitions of “camping facilities” and “camping paraphernalia,” which were based solely on non-exclusive lists of items.\textsuperscript{348} The court pointed that mere dictionary definitions are very broad and do not adequately narrow the scope of the ordinance.\textsuperscript{349} The court also found the definition of the verb “store” as overbroad and meaning “to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.”\textsuperscript{350} Noting that the effect of the language was to prohibit any person from leaving “any personal property unattended in any public place for any purpose for any length of time,” the court pointed out that the city “may have been aiming at shopping carts and bedrolls; but it has hit bicycles, automobiles, delivery vehicles of every description, beach towels at public pools, and wet umbrellas in library foyers as well—to name just a few obvious examples.”\textsuperscript{351}

2. Void for Vagueness Challenges Based on Preventing Arbitrary and Discriminatory Enforcement

Semantic challenges alleging that a statute’s language is not sufficiently explicit to prevent arbitrary and discriminatory enforcement are more effective because the challenged ordinances can apply in numerous innocent situations. Legal challenges based on this premise have met with considerable success in Florida state courts. In \textit{State v. Penley},\textsuperscript{352} the Florida appellate court invalidated on vagueness grounds an ordinance that provided, “no person shall sleep upon or in any street, park, wharf or other public place.” The court compared anti-sleeping ordinances with unconstitutional vagrancy laws on the basis that both punish behavior that is not
The court noted that the regulation drew "no distinctions between conduct that is calculated to harm and that which is essentially innocent" and might "result in arbitrary and erratic arrests and convictions."\textsuperscript{357} Subsequently, in City of Pompano Beach v. Capalbo,\textsuperscript{358} the Florida appellate court invalidated on vagueness grounds "a sleep-in-the-vehicle statute" because it "was written so loosely it reasonably could be read, and was read, as applying to a man napping in his automobile."\textsuperscript{359}

Legal challenges on this basis may also meet with success in California. In Tobe, the California Court of Appeal found that the lack of definitions of "camping paraphernalia" in Santa Ana’s anti-camping ordinance invited arbitrary and selective enforcement because the statute provided no distinction between picnicking and camping, or students’ backpacks and camping paraphernalia. The court invalidated the statute, concluding that the statute was "vague and overbroad as applied to anyone, be they homeless, picnickers, or scouts engaged in field exercise," and left enforcement to the virtually unfettered discretion of the police.\textsuperscript{360}

**B. Substantive Challenges**

Although successful semantic challenges to anti-camping, anti-begging, or aggressive panhandling statutes may lead to the tightening of vaguely worded statutes, this strategy provides only temporary relief to homeless people. Moreover, the result of such challenges does not encourage one to address the problems that precipitate homelessness. Substantive challenges to catch-all codes are needed to effectuate direct protection of a homeless person’s status as a homeless person. Successful challenges to catch-all codes are possible based upon each of the following Constitutional weapons: the fundamental right to travel, the First Amendment right to free speech, the Fourth Amendment right to be free from unreasonable searches and seizures, the Eighth Amendment right to be free from cruel and unusual punishment, and the Fourteenth Amendment right to equal protection under the law. Successful challenges will force communities to find solutions to the underlying problems of homelessness and prevent them from forcing homeless people to relocate into someone else’s backyard. Ultimately, communities will be better off if they accept responsibility for their homeless citizens, rather than if they continue the present "contest of nonresponsibility."

1. **Fundamental Right to Travel Challenges**

“Catch-all” ordinances that criminalize homelessness, like those enacted in Miami and San Francisco, have two primary consequences. First, the ordinances hinder the ability of homeless individuals to move into communities with catch-all codes because they know that they will face arrest in those communities for engaging in the basic necessities of life, like sleeping. Second, the regulations force homeless individuals to move out of communities with catch-all codes to avoid harassment and incarceration. Because these regulations hinder the constitutionally protected right to travel, they are subject to constitutional challenge as modern-day versions of the "contest of nonresponsibility for the poor" that was denounced over twenty-five years ago in Shapiro v. Thompson.\textsuperscript{361}

Recounting the historical background of the contest of nonresponsibility, the Shapiro Court explained that even in colonial days, individuals "who might become public charges were ‘warned out’ or ‘passed on’ to the next locality."\textsuperscript{362} Later in our nation’s history, when funds for welfare payments were raised by local taxes, localities contested responsibility for particular indigents within the state. Later, when states, either alone or with federal grants, “assumed the major responsibility [for the poor], the contest of nonresponsibility became interstate.”\textsuperscript{363} The current "not in anyone’s backyard" version of the contest has again turned intrastate, as communities fight to send
Justice Jackson suggested that the Court make it clear "in no uncertain terms, that a man's mere property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States.

homeless people into neighboring communities.

Repressive legislation designed to deter the influx of the homeless and the poor into a state has long been held to violate the Constitution. Over fifty years ago, a California statute made it a misdemeanor for anyone to transport or assist in transporting into California a person known to be an indigent nonresident. The U.S. Supreme Court struck down the statute in Edwards v. California, holding that California's efforts to prohibit the importation of paupers into the state violated the Commerce Clause. In reaching this decision, the Court noted that the law would "permit those who are stigmatized by the state as indigents, paupers, or vagabonds to be relegated to an inferior class of citizenship." The Court said that whether California sought "to bar the passage of indigents directly or indirectly," the statute could not stand because in either circumstance the statute interfered with the federal government's control over interstate commerce. The Court chastized California's contention "that because a person is without employment and without funds, he constitutes a 'moral pestilence,'" and recognized that "[p]overty and immorality are not synonymous."

In his concurring opinion, Justice Robert H. Jackson indicated that the statute also violated the Privileges and Immunities Clause of the Fourteenth Amendment because it "would divide [the] citizenry on the basis of property into one class free to move from state to state and another class that is poverty-bound to the place where it has suffered misfortune...." Justice Jackson suggested that the Court make it clear "in no uncertain terms, that a man's mere property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States."

Justice William O. Douglas, concurring, believed that the statute impermissibly erected a barrier to interstate travel by indigents, finding that the law would "curtail the right of free movement of those who are poor or destitute" and would "introduce a caste system utterly incompatible with the spirit of our system of government."

Almost thirty years later, the Court reaffirmed the Edwards decision in Shapiro. In Shapiro, a Connecticut regulation cut off welfare benefits to otherwise eligible applicants who had recently moved into the state. Newcomers became eligible for benefits only after they lived in the state for one year. The state sought to justify the regulation as a means of preventing the immigration of the poor. The Court held that the "purpose of inhibiting migration by needy persons into the state is constitutionally impermissible" because it inhibits the ability of an indigent person to exercise his fundamental right to travel. If a law has "no other purpose... than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional."

The Shapiro Court held that the scope of the right to travel includes the right to "migrate, resettle, find a new job, and start a new life." Although the Court did not find the right to travel to be part of any particular constitutional provision, the Court noted that the "elementary" right to travel from one state to another "was... a necessary concomitant of the stronger Union the Constitution created." The Court concluded that the classification imposed by the statute violated the Equal Protection Clause of the Fourteenth Amendment and held that any classification that penalizes the exercise of the fundamental right to travel is unconstitutional unless it is "necessary to promote a compelling governmental interest."

Although the U.S. Supreme Court has not yet decided whether the right to travel applies to intrastate travel, the Court's broad language in describing the right indicates that it should encompass both the freedom to move among different states, as well as within a
particular state. For example, in Shapiro, the Court acknowledged,

[L]ong ago [the Court] recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.

Numerous lower courts have followed the broad language of Shapiro and have concluded that the right to travel encompasses both the right to interstate and intrastate travel. For example, in 1971, the First Circuit held in King v. New Rochelle Municipal Housing Authority that a New Rochelle statute that required indigents to reside in the city for five years before being allowed to apply for state-subsidized public housing violated the right to travel of both plaintiffs who moved into the city from another state and those who relocated there from within New York. The First Circuit reasoned that it would be “meaningless to describe the right to travel between states as a fundamental precept of personal liberty and not to acknowledge a correlative constitutional right to travel within a state.” More recently, homeless persons living in Miami brought a class action against the city alleging, among other things, that the city’s practice of arresting homeless persons for performing such activities as sleeping, standing, and congregating in public places violated their right to travel. In holding that the Miami ordinance violated an indigents’ fundamental right to travel, the district court in Pottinger concluded that “[t]he city’s arrests of the homeless may burden their fundamental right to travel even if the effect on their freedom of movement occurs only intrastate.

Like the statutes found to violate the right to travel in Edwards and Shapiro, catch-all codes criminalizing harmless conduct, such as sleeping or sitting on a sidewalk, act as deterrents to the movement of homeless individuals. Like the paupers who roamed from state to state during the Depression seeking a livelihood but facing legal barricades at the borders, homeless individuals today roam from city to city seeking to live without facing arrest. When no shelter space is available, homeless individuals face the Hobson’s choice of staying awake, “being arrested for violating the law[,] or leaving the jurisdiction altogether.” In fact, the Pottinger court concluded that “[g]iven the vast number of homeless individuals and the disproportionate lack of shelter space, the plaintiffs truly have no place to go.” Even when space is available in a shelter, it may not be a viable alternative “if, as is likely, the shelter is dangerous, drug infested, crime-ridden, or especially unsanitary . . . . Giving one the option of sleeping in a space where one’s health and possessions are seriously endangered provides no more choice than does the option of arrest and prosecution.”

Thus, the unavoidable threat of arrest under a catch-all ordinance has both the effect of preventing homeless people from coming into a city or state and the effect of expelling those already present. The expulsive effect of such a catch-all ordinance is exemplified by the anti-camping ordinance challenged in Tobe. The ordinance prohibited any person from camping in any street, any public parking lot or public area, or storing personal property in any park, street, public parking lot, or public area. In striking down the ordinance, the court characterized the statute as follows: “Simply put, as in some vintage oater, [homeless people] are to clear out of town by sunset; and that, of course, is what this ordinance is all about, a blatant and unconstitu-
The United States Supreme Court has also made it clear that denying the homeless and the poor the basic necessities of life constitutes a violation of the right to travel based on the Equal Protection Clause. The U.S. Supreme Court has also made it clear that denying the homeless and the poor the basic necessities of life constitutes a violation of the right to travel based on the Equal Protection Clause. In Goldberg v. Kelly, the Court recognized the critical nature of public assistance when it held that AFDC benefits could not be terminated without a prior hearing. In reaching this decision, the Court described welfare benefits as "the very means by which to live" and explained that public assistance was a means to "help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community." Lower federal courts have also recognized the critical need that poor people have for public assistance. For example, the Minnesota District Court in Starns v. Malkerson found that reducing or denying welfare benefits involves "the immediate and pressing need for preservation of life and health of persons unable to live without public assistance" and "could cause great suffering and even loss of life."

Subsequent Court decisions leave no doubt that the denial of welfare assistance, like the denial of medical care, results in the inability of those on the poverty continuum to obtain the basic necessities of life and, therefore, may violate the indigents' fundamental right to travel. In Shapiro, the Court acknowledged that indigent families "may depend" on welfare to obtain the "very means to subsist—food, shelter, and other necessities of life." The Court concluded that the state's denial of welfare benefits to those who had not met the government's one-year residence requirement to receive welfare was a penalty because it deprived people of the basic necessities of life for engaging in constitutionally protected behavior. The Court held that any statute that penalizes the exercise of a constitutional right is unconstitutional unless necessary to promote a compelling governmental interest. The government could not justify the statute based upon a desire to save welfare costs, prevent fraud, or any other reasons.

Like the statute invalidated in Shapiro, an Arizona statute that required persons to reside in a county for one year before they were eligible to receive county-funded nonemergency hospitalization or medical care, was struck down in Maricopa Memorial Hospital v. Maricopa County. The complainants challenged the statute, arguing, among other things, that the statute created an "invidious classification" that penalized indigent people for exercising their "constitutional right of interstate migration" and denied them a "basic necessity of life." In sustaining the challenge, the Court likened medical care to public assistance, noting that medical care is "as much a basic necessity of life' to an indigent as welfare." The Court noted that it "would be odd . . . to find that . . . Arizona was required to afford [an indigent person] welfare assistance to keep him from the discomfort of inadequate housing or the pangs of hunger [based upon Shapiro] but could deny him . . . medical care." In fact, the denial of medical care was found to be "all the more cruel" because it fell "on indigents who are often without the means to obtain alternative treatment." In explaining its holding, the Court made it clear that it was not required to find that anyone was actually deterred from traveling by the restriction to find a violation of the Equal Protection Clause. It explained that a person, like the chronically asthmatic indigent in Maricopa Memorial Hospital "may hesitate [to migrate] if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute." The Court also stressed that it is more likely to classify a statute as imposing a penalty if it denies an indigent person a "basic necessity of life" like medical care, noting that governmental privileges or benefits that are...
necessary to basic sustenance have greater constitutional significance than less essential forms of government entitlements.410

Like the denial of medical care or public benefits, ordinances criminalizing homelessness also preclude homeless people from engaging in the "necessities of life" and can cause great suffering and even loss of life. For example, many ordinances act to preclude indigent people from sleeping.411 As the Court noted in Maricopa Memorial Hospital, sleep involves "the immediate and pressing need for preservation of life and health."412 When ordinances like those imposed in Miami, San Francisco, or Santa Ana prohibit sleeping throughout the city, weary homeless individuals who must sleep to survive have no choice but to find space in a shelter, migrate to another locality, or face arrest if they succumb to their essential need for sleep.

Ordinances that force the Not in Anyone’s Backyard phenomenon also deprive homeless people of a number of other necessities of life, such as “minimal safety and . . . cover from the elements.”413 When public shelters are unsafe or unavailable, homeless people are forced to seek shelter under bridges or on streets, where they are afforded no protection from the elements or from crime. This is not really a choice,414 homeless people simply have nowhere else to go.415 “[E]nforcement of laws that prevent homeless individuals who have no place to go from sleeping, lying down, eating and performing other harmless life-sustaining activities burdens their right to travel.”416 Therefore, enforcement of these laws constitutes a violation of an indigent person’s right to travel under the Equal Protection Clause.

If catch-all codes criminalizing homelessness are found to violate the right to travel, the ordinances are only constitutional if they serve a compelling state interest.417 In Pottenger, Miami asserted that the ordinances were justified by the city’s interests in keeping its parks and streets free from litter, vandalism, and general deterioration and in promoting tourism, business, and development in the downtown area, which had been negatively affected by the presence of homeless people.418 Similar interests were advanced by Santa Ana in Tobe and San Francisco in Joyce v. City and County of San Francisco to support their ordinances.419

In Williams v. Rhodes,420 the U.S. Supreme Court recognized that a governmental interest in maintaining parks was “substantial and desirable” but did not satisfy the compelling interest standard.421 Similarly, economic interests such as promoting tourism and business development are at most substantial, rather than compelling.422 Although Miami’s interest in keeping its parks free from vandalism and San Francisco and Santa Ana’s concerns with preventing criminal activity are compelling,423 the cities are only justified in arresting those individuals engaging in criminal conduct. There is little doubt, however, that many of the arrests made in Santa Ana were for the purpose of harassing homeless people rather than curtailing crime. Homeless people were arrested for offenses that “rarely, if ever, even drew citations in Santa Ana”; indeed, police officers used “‘cheat sheets’ to recall little known offenses.”424 The treatment of homeless people after they were arrested left no doubt that the purpose of the arrests was to intimidate them: “The homeless were handcuffed, transported to an athletic field for booking, chained to benches, marked with numbers, and held for as long as six hours before being released at another location, some for crimes such as dropping a match, a leaf, or a piece of paper or jaywalking.”425

Similarly, the enforcement methods of the San Francisco police made it clear that the one purpose of the Matrix program was to harrass and intimidate homeless people, rather than to seek criminal convictions. Most of the homeless people who received tickets for violating the Matrix program were never prosecuted,
and when their cases did reach the courts, they often went no further. Of the eighty-six people cited for illegal lodging between August 1993 and January 1994, all but four of the cases were dismissed.\textsuperscript{426} Alan Schlosser, Managing Attorney of the Northern California office of the American Civil Liberties Union, explained that “the only functional impact of this kind of intimidation is to make people go away,”\textsuperscript{427} and asserted that the “purpose [of the Matrix program] is to deter homeless people from coming here and to drive homeless people out of San Francisco.”\textsuperscript{428}

Under ordinances criminalizing homelessness, homeless people are subject to arrest not only for committing crimes but also for simply engaging in non-criminal, life-sustaining activities, such as sleeping, sitting, or just existing in various public places. The evidence in the Pottinger case revealed that, rather than arresting homeless people because of citizens’ complaints or police observations of criminal activity, “numerous arrests were made . . . as a result of police sweeps targeting areas where the homeless were known to reside or congregate.”\textsuperscript{429} Miami arrest records revealed that many of the homeless individuals were arrested while they were doing nothing more than sleeping.\textsuperscript{430} Similarly, one-sixth of the arrests made during the first six months of the Matrix program’s operation were found to be for sleeping in public areas like city parks.\textsuperscript{431} Many of the arrests of homeless individuals in Miami and San Francisco, therefore, were for non-criminal acts. The government’s interest in stopping homeless people from engaging in harmless, life-sustaining behavior serves no compelling governmental interest in preventing crime.\textsuperscript{432}

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2. Freedom of Speech Challenges

Ordinances that prohibit begging or sleeping may violate the First Amendment rights of the homeless because begging and sleeping are activities that are protected as charitable solicitation, commercial speech, and expressive conduct. The U.S. Supreme Court has long recognized that charitable solicitation is a form of expression entitled to the highest level of protection based on "the nexus between solicitation by organized charities and 'a variety of speech interests,'" such as the communication of information and advocacy about political and social causes. The Court has also held that commercial speech, defined as either "expression related solely to the economic interest of the speaker and its audience," or more narrowly as "the proposal of a commercial transaction," is entitled to limited First Amendment protection. In addition, the Court has also accorded First Amendment protection to expressive conduct if "[a]n intent to convey a particularized message was present, and in the surrounding circumstances the likelihood was great that the message would be understood by those who viewed it." Finally, if an ordinance that affects charitable solicitation, commercial speech, or expressive conduct is content-based, it violates the First Amendment unless it is justified by a compelling state interest.

Begging demonstrates the requisite "nexus between solicitation and the communication of information and advocacy" that merits the highest level of protection the First Amendment provides to charitable solicitation. With their monetary solicitation, beggars communicate information, both about their personal plight and about that of other homeless individuals. Beggars also engage in advocacy—they advocate that society's more privileged members should assume some responsibility for those who are not as fortunate. Because begging combines communication of information with advocacy of political and social causes, it should be protected as charitable solicitation.

In a limited number of cases, anti-sleeping and anti-camping ordinances can be challenged on First Amendment grounds if homeless people are intentionally engaging in expressive conduct by using sleeping or camping as a means to convey their plight. If the sleepers or campers intend to convey a message, and this message is likely to be understood, these activities qualify for protection as expressive conduct.

In one case that involved sleeping as a means to convey the plight of the homeless, Clark v. Community for Creative Non-Violence, the Court assumed that demonstrators sleeping in Washington, D.C. parks were protesting homelessness and thus engaging in expressive conduct protected by the First Amendment. Justice Marshall, in his dissent in Clark, eloquently described why "ordinary citizens ... would likely understand the political message intended" by the demonstrators:

This likelihood stems from the remarkably apt fit between the activity in which respondents seek to engage and the social problem they seek to highlight. By using sleep as an integral part of their mode of protest, respondents 'can express with their bodies the poignancy of their plight. They can physically demonstrate the neglect from which they suffer with an articulateness even Dickens could not match.'

The Court upheld the statute that prohibited camping in the parks, however, by concluding that a substantial government interest was threatened and the means by which the protest was regulated was not broader than necessary to protect that interest. The Court noted that the anti-camping statute "narrowly focuse[d] on the Government's substantial interest in maintaining the parks in the heart of our Capitol in an attractive and intact condition, readily available to the millions of people who wish to see
and enjoy them by their presence." The Court stressed that the Park Service had established other areas of the parks for camping and did not attempt to ban camping entirely. In addition, the Court emphasized that the means employed "otherwise left the demonstration intact" and did not serve as a "barrier to delivering to the media, or to the public by other means, the intended message concerning the plight of the homeless."

A recent use of sleeping as a vehicle for conveying the plight of the homeless occurred in February 1994 in San Francisco. A coalition of Catholics, Protestants, and Buddhists, known as the Religious Witness with Homeless People, participated in an all-night "sleep-out" with the homeless to protest the city's Matrix program. The Reverend Lois Vitale, pastor of Saint Boniface Catholic Church in San Francisco's Tenderloin District, and one of the "sleep-out" organizers, explained: "We have to put our bodies where our conscience is." By using their sleeping bodies to convey the consequences of the Matrix program for homeless people, the Religious Witness with Homeless People engaged in expressive conduct similar to that described in Clark. When this activity is measured against San Francisco's anti-sleeping ordinances, it appears that the ordinances are unconstitutional unless the government has a substantial interest in the Tenderloin District unrelated to the suppression of free expression and it uses narrowly focused means that leave open alternative channels for expression.

Whether or not begging is accorded the high level of protection afforded charitable solicitation, it should be accorded at least the more limited First Amendment protection deemed appropriate for commercial speech. Because beggars, like advertisers, disseminate information on which passersby rely to determine whether to make a donation, solicitations fit within the broad category of commercial speech. The speech in which beggars engage relates solely to the economic interest of both the speakers and the donors. Because beggars in effect "sell" a part of themselves to donors who "purchase" the satisfaction and peace of mind that comes from helping other human beings, the pleas for donations propose a commercial transaction. Even silent beggars who hold out tin cups should be entitled to First Amendment protection because "the presence of an unkempt and disheveled person holding out his or her hand or a cup to receive a donation itself conveys a message of need for support and assistance." The expressive aspects of the beggars' conduct, therefore, should be protected as commercial speech.

While the U.S. Supreme Court considered the issue of whether sleeping is protected by the First Amendment in Clark, the Court has not yet considered the issue of whether begging is protected by the First Amendment as either charitable solicitation, commercial speech, or expressive conduct. The only two cases challenging anti-begging ordinances to reach the federal appellate court level have left the case law of the Second Circuit in a state of conflict and confusion.

Even if begging is not held to be expressive conduct, charitable solicitation, or commercial speech, an ordinance that bans begging by individuals for themselves, while permitting such solicitations by individuals for charitable groups, violates the First Amendment because it is content-based. This type of anti-begging ordinance is content-based because it cannot be "justified without reference to the content of the regulated speech.

As the New York District Court noted in invalidating such a regulation in Loper v. New York City Police Department, "by allowing the organized charity to solicit on the street while preventing the unorganized beggar from doing so," anti-begging ordinances are "directed at the content of . . . expression." The court found that by "treat[ing] solicitors standing side-by-side differently," the ordinance regulated according to the
content of the solicitors' expression. If an anti-begging ordinance is found to be content-based, it is afforded the highest level of constitutional protection and is unconstitutional unless the government can “show that the regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.” The Court has repeatedly failed to find a compelling governmental interest in preventing non-captive audiences, like passersby who are solicited by a beggar, from being subjected to what they might perceive as offensive speech or conduct, because they can simply avoid the speaker. In rejecting an argument that solicitation by a beggar violates a citizen's right to privacy, the district court in Loper described the many options available to a non-captive solicitee: “He can turn away, shake his head before the expression is uttered, avert his eyes and refuse to acknowledge the speaker, or he can listen to the message and then decide how to respond to the speaker’s personal appeal.” Unless the audience is captive, the state will likely not be able to show a compelling interest. Therefore, anti-begging ordinances currently in use should be held unconstitutional.

3. Fourth Amendment Challenges

When homeless campers are swept from a particular public area, their few meager belongings are often swept away with them. When the personal property of these homeless campers is confiscated and destroyed without adequate notice, both the Fourth Amendment protections against “unreasonable searches and seizures” and the Due Process rights of the homeless are often implicated. A seizure of property occurs when “there is some meaningful interference with an individual’s possessory interest in that property.” The destruction of homeless peoples property as part of the sweeps that occurred in San Francisco, Miami, Minneapolis, and New York City constitute seizures because the removal interferes with the possessory interests of homeless people in their belongings. Homeless individuals’ expectations of privacy in their personal property are legitimate if they have subjective expectations of privacy in their belongings and society recognizes their subjective expectations as reasonable.

Homeless people have subjective expectations of privacy in their meager belongings. While some people would not value the property of the homeless highly, they must remember that “one man’s junk is another man’s treasure.” Homeless individuals typically store their personal property in their bedrolls, blankets, or in some type of container, such as a plastic bag, cardboard box, or suitcase. Homeless people also tend to place their belongings against trees or cover them with blankets or pillows, thus “arrang[ing] their property in a manner that suggests ownership” and “mak[ing] the property . . . reasonably distinguishable from truly abandoned property.”

To determine when society recognizes their expectations as reasonable, courts consider whether homeless people have a “legitimate expectation of privacy in the invaded place” and whether they leave property in a manner readily accessible and exposed to the public. In State v. Mooney, the Connecticut Supreme Court held that a homeless man who was arrested for murder had a reasonable expectation of privacy in the contents of his duffel bag and a closed cardboard box, which he kept under the bridge abutment where he was living. In upholding his right to privacy, the court relied on “the general understanding that the contents of luggage and other closed containers are entitled to remain private.” The court also recognized that, in this case, the interior of the duffel bag and the cardboard box “represented, in effect, the defendant’s last shred of privacy from the prying eyes of outsiders, including the police.” With this in mind, the court concluded, “Our notions of custom and civility . . . and our code of values, would include some measure of
Catch-all codes that lead to the arrest of homeless persons for performing the basic necessities of life in public punish them for the status of being homeless. Thus, these codes are in violation of the Eighth Amendment prohibition against cruel and unusual punishment.

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In April 1990, Miami police officers awakened and handcuffed a group of homeless individuals, dumped their personal possessions into a pile, and set the pile ablaze. Included in the burned items were personal identification, clothing, a Bible, and medicine. In Pottinger, the court expressed concern that "the
untary status of being an addict from a statute that punished a person for his voluntary "use of narcotics, for their purchase, sale, or possession, or for anti-social or disorderly behavior resulting from their administration." The Court concluded that a "state law which imprisons a [narcotics addict] as a criminal, even though he has never touched any narcotic drug within the state or been guilty of any irregular behavior there, inflicts a cruel and unusual punishment."  

Six years after the Robinson decision, the Court, in Powell v. Texas, faced the issue of whether it was constitutional for a person to be punished for being drunk in public. In upholding his conviction, the Court found that Texas had not sought to punish the defendant for his status or for his behavior in the privacy of his own home, as California tried to do in Robinson. Rather, Texas simply imposed "a criminal sanction for public behavior which may create substantial health and safety hazards, both for appellant and for members of the general public, and which offends the moral and aesthetic sensibilities of a large segment of the community." The Court found that this sanction was "a far cry from convicting one for being an addict, being a chronic alcoholic, being 'mentally ill, or a leper.'"  

A homeless person's status is similar to the addict's in Robinson and dissimilar to the situation of the alcoholic in Powell. Like the narcotic addict in Robinson, the status of being homeless, in many cases, is both involuntary and beyond the immediate ability of the homeless person to alter. Expert testimony in the Pottinger case established that "people rarely choose to be homeless" and that "homelessness is due to various economic, physical, or psychological factors that are beyond the homeless individual's control." The expert's observations about the involuntariness of homelessness formed part of the basis for the district court's holding in Pottinger that Miami's catch-all codes were unconstitutional. Similarly, in Tobe, the California Court of Appeal held that Santa Ana's anti-camping ordinance violated the Eighth Amendment because "[h]omelessness, like illness and addiction, is a status not subject to the reach of the criminal law." Relying on the Robinson decision, numerous lower courts invalidated vagrancy ordinances that punished homeless people for their status or condition. Unlike the chronic alcoholic in Powell, who could have done his drinking in the privacy of his own home, homeless people, by definition, have no realistic choice but to live (and if they are addicted substance abusers, to drink or take drugs) in public places. This distinction was pointed out by Justice White in his concurrence in Powell:  

The fact remains that some chronic alcoholics must drink and hence must drink somewhere. Although many chronic alcoholics have homes, many others do not. For all practical purposes the public streets may be home for these unfortunates, not because their disease compels them to be there, but because, drunk or sober, they have no place to go and no place else to be when they are drinking. This is more a function of economic station than of disease, although the disease may lead to destitution and perpetuate that condition. For some of these alcoholics I would think a showing could be made that resisting drunkenness is impossible and that avoiding public places when intoxicated is also impossible. As applied to them this statute is in effect a law which bans a simple act for which they may not be convicted under the Eighth Amendment—the act of getting drunk.  

The evidence in Powell was not sufficient, however, to prove that the alcoholic defendant "could not have done his drinking in private" or that he could have "made arrangements to prevent his being in public when drunk." The Court upheld the defendant's conviction because the evidence suggested the oppo-
site, that he "could have drunk at home and made plans while sober to prevent ending up in a public place."\textsuperscript{503}

Unfortunately, homeless people do not have similar options, not only when they are drinking but also when they are simply trying to engage in the life-sustaining activities of sleeping, sitting, or eating. For example, the City of Santa Ana admitted it was "shy about 2668 shelter beds on any given night" during the period of time when the city was enforcing its restrictive anti-camping ordinance.\textsuperscript{504} Similarly, although San Francisco provides close to 4000 beds each night through various shelters and hotels, at least 6000 people live on the streets of the city.\textsuperscript{505} As of April 1994, service providers reported that San Francisco's shelters turned away at least 100 families every night.\textsuperscript{506} Because Santa Ana and San Francisco do not possess sufficient shelters to house their homeless populations, some of each city's homeless must make the streets and parks their "homes." Therefore, cities like Santa Ana and San Francisco (like the State of California in Robinson) are attempting to punish the indigent's behavior in the privacy of his or her own "home." The Court in Powell held that this could not legally be done.\textsuperscript{507} Eating and sleeping are "conduct of an involuntary or necessary nature."\textsuperscript{508} Because the homeless can neither resist the need to engage in these life-sustaining activities, like the addict in Robinson, nor avoid a public place when they are engaging in this behavior, unlike the alcoholic in Powell, the catch-all codes in effect punish them "for something for which they may not be [punished] under the eighth amendment [sic]—sleeping, eating and other innocent conduct."\textsuperscript{509}

5. Equal Protection Challenges

If a catch-all code singles out homeless people for arrest, the guarantees of the Equal Protection Clause may be violated.\textsuperscript{510} Equal protection has been described by the U.S. Supreme Court as "essentially a direction that all persons similarly situated should be treated alike."\textsuperscript{511} When governmental classifications discriminate among similarly situated persons, the Court uses differing levels of scrutiny to determine whether the purpose for the state action justifies the discriminatory classifications.\textsuperscript{512} Governmental actions that discriminate against individuals based on race and national origin are considered "suspect" and will not be upheld unless they are narrowly tailored to meet a compelling governmental interest.\textsuperscript{513} In determining whether a group is a "suspect class" for equal protection purposes, courts should consider whether the proposed class has been "subjected to discrimination," whether the class exhibits "obvious, immutable or distinguishing characteristics defining it as a discrete group," and whether the class is "a minority and politically powerless."\textsuperscript{514} The Court has established strict scrutiny as the standard for these classifications because they have "traditionally been the touchstone for pervasive and often subtle discrimination."\textsuperscript{515} Classifications based on gender and illegitimacy are subject to "intermediate scrutiny" and will fail unless they are substantially related to important governmental interests.\textsuperscript{516} All other governmental classifications are valid if they "bear 'some rational relationship to [a] legitimate state' purpose."\textsuperscript{517}

Although lower federal courts have invalidated anti-vagrancy laws on the basis that they draw unconstitutional classifications based on indigency and invite enforcement against "moneyless, rootless citizens,"\textsuperscript{518} the U.S. Supreme Court held in several cases that indigency in itself is not a suspect classification.\textsuperscript{519} In San Antonio School District v. Rodriguez,\textsuperscript{520} the Court explained its conclusion that poverty is not a suspect classification as follows: "The class [has] none of the traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordi-
nary protection from the majoritarian political process."\textsuperscript{521}

However, the Court has not hesitated to invalidate classifications in which public action is based on private antipathy, regardless of the level of scrutiny applied. For example, over twenty years ago, in \textit{Department of Agriculture v. Moreno},\textsuperscript{522} the Court overturned an amendment to the Food Stamp Act of 1971 that excluded welfare recipients living with unrelated individuals from receiving food stamps. The amendment was enacted in response to public hostility toward "hippies and hippie communes."\textsuperscript{523} In striking down the amendment, the Court noted that "if the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest."\textsuperscript{524} The Court held that excluding "unrelated persons" from receiving food stamps did not rationally further the governmental interest in "the prevention of fraud" and, instead, created an "irrational classification in violation of the equal protection component of the Due Process Clause of the Fifth Amendment."\textsuperscript{525} More recently, in overturning the denial of a special use permit to operate a home for the mentally retarded in \textit{City of Cleburne v. Cleburne Living Center, Inc.},\textsuperscript{526} the Court found that official action could not be justified solely on the basis of the communities assertedly negative attitudes and fears about mentally retarded people.\textsuperscript{527}

Lower courts have followed the reasoning of \textit{Moreno} and \textit{Cleburne} in holding statutes that motivated by fear or hostility towards unpopular or subordinated groups are unconstitutional. For example, in \textit{Parr v. Municipal Court},\textsuperscript{528} the California Supreme Court invalidated an ordinance that prohibited sitting and lying on public land, enacted, according to its preamble, to curtail "the influx of undesirables and unsanitary visitors . . . known as 'hippies'" into Carmel. The court found the ordinance unconstitu-
tional because it discriminated against "an ill-defined social caste whose members are deemed social pariahs by the city fathers."\textsuperscript{529} Reasoning that hippies are entitled to the same type of protection from discrimination as racial groups, the court opined that it could "be no less concerned because the human beings currently in disfavor are identified by dress and attitudes rather than by color."\textsuperscript{530} The \textit{Parr} decision also acknowledged the ability of a court to determine a hidden discriminatory purpose in a facially neutral statute:

When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men; and where an ordinance, though general in its terms, only operates upon a special race, sect or class, it being universally understood that it is to be enforced only against that race, sect or class, we may justly conclude that it was the intention of the body adopting it that it should only have such operation, and treat it accordingly.\textsuperscript{531}

Homeless people, who are widely regarded as "social pariahs" and are readily identified by their often disheveled appearance, have been discriminated against and harassed as a result of catch-all codes that criminalize the very activities they need to pursue in order to survive. For example, in an "astonishing" Municipal Memorandum which preceded the enactment of Santa Ana's anti-camping ordinance, the city characterized its "mission" as "mov[ing] all vagrants and their paraphernalia out of Santa Ana by continually removing them from the places that they are frequenting in the city."\textsuperscript{532} Although there were "no new smoking-gun memos" at the time the ordinance was adopted, the \textit{Tobe} court had no difficulty finding a hidden discriminatory purpose because, "under this ordinance, given the regular progression of unpaid misdemeanor fines turning to warrants, petitioners will ultimately be leaving Santa Ana or living in
The first step in this process involves providing the public and legislators with accurate demographics about the homeless that will underlie and drive their policy decisions.

A similar motive was ascribed to San Francisco’s Matrix program by Marcia Rosen, of the San Francisco Lawyers Committee For Urban Affairs: “In the guise of cleaning up crime, San Francisco has created ‘a new American crime of being poor and without a home,’ as well as a ‘quality of life’ policy . . . that says, ‘If your looks offend my quality of life, I can make you a criminal.’”

Discussing why the Matrix program is a discriminatory violation of Equal Protection because it is enforced only against the homeless, Bradley Phillips, an attorney for the plaintiffs challenging the program commented: “Who else but the homeless are sleeping in the parks in the middle of winter?”

The fact that homeless people are singled out for discriminatory treatment is readily apparent when one compares public and governmental intolerance of camping by homeless people with their tolerance of the tent cities erected for those made homeless by natural disasters, such as earthquakes. For example, after the 1906 earthquake in San Francisco, which was the worst in California’s history, about 20,000 people lived in tent cities for months, without fear of police eviction. After the San Francisco Bay Area earthquake in October 1989, hundreds of migrant workers from the town of Watsonville refused to live in substandard housing and remained in tents for weeks, without complaint from the public or the government. More recently, approximately 20,000 people slept in city parks the night after the Los Angeles earthquake in January 1994.

### III. A GAME PLAN FOR ENDING THE CONTEST OF NONRESPONSIBILITY: LONG TERM SOLUTIONS TO ALLEViate THE SOURCES OF HOMELESSNESS

Successful legal challenges to catch-all codes criminalizing homelessness will help bring an end to the current contest of nonresponsibility between communities that force homeless people to seek shelter and other basic essentials of living in someone else’s backyard. However, legal challenges by themselves will not solve the underlying problems associated with homelessness. Communities must devise solutions to the multi-faceted problems plaguing their homeless citizens. Developing compassionate plans that enable homeless people to solve their own problems involves a multi-faceted approach encompassing both legal and social action.

Maria Foscarinis, Director of the National Center on Homelessness and Poverty echoed this viewpoint when she stated: “Legal action is just one part of what you need to adequately fight for the rights of the homeless. You need congressional support and public education. You must work at all levels.”

The first step involves providing the public and legislators with accurate demographics about the homeless that will underlie and drive their policy decisions. Only when the complexity of the problem is fully understood can more informed and enlightened solutions be devised and the contest of nonresponsibility brought to an end. Rather than legislation that merely attacks the effects of homelessness and poverty and shifts responsibility to someone else, effective and humane programs must be developed to deal with the underlying causes of homelessness and indigency. The complex problems that both precipitate and perpetuate homelessness can only be alleviated by comprehensive programs that provide temporary and permanent affordable housing, treatment for mental or physical illnesses (including substance abuse), and employment for those able to work.

Fortunately, programs that are currently being implemented on a limited scale can be used as models for each of these solutions. For these models to succeed, however, communities must work together and accept responsibility for helping to solve the problems of their indigent citizens. The goal of each community should be to replace the continuum of poverty with a continuum of
This means that communities should offer a complete menu of services including outreach efforts, social services, and permanent housing. These services would take homeless people through short-term emergency shelters, give them transitional housing while they undergo treatment or job training, and then place them in affordable, permanent homes.541

A. Provide Temporary Emergency Shelter and Permanent Affordable Housing for All Those on the Poverty Continuum Who Need a Home

By definition, a homeless person is without a home. Robert Hayes, a Wall Street attorney who founded the National Coalition for the Homeless, once said that the answer to homelessness was housing, and advocates sought to establish a right to shelter.542 However, those who work with homeless people have gradually discovered that the present shelter system is neither a humane nor a financially effective solution to the problem of providing housing for those on the poverty continuum.

The current shelter system is not large enough to provide beds for all of the homeless men, women, and children needing a place to sleep. For example, during the summer of 1992, homeless families were resigned to sleeping on the floors of New York City’s welfare offices because the city was unable to deal with the increased number of families entering its shelter system.543 During the period from mid-March to mid-May 1994, 1200 families spent the night in New York City’s welfare offices.544

In addition to the acute lack of shelter space, a 1992 Mayoral Commission on the Homeless study of New York City’s shelters (New York Commission study) concluded that shelters are exorbitantly expensive.545 The study revealed that New York’s Human Resources Administration spent $18,000 per year for a single man to sleep on a cot in a room with 900 other men and $53,000 per year to keep a family in a barracks-style shelter where it has little or no privacy and access to few services.548 New York City also shelters families in hotels, which costs about $80 per day, or $30,000 per year, for each family member.549

It is difficult to understand why municipalities like New York City cannot provide cost effective shelters that are clean and safe. The astronomical cost of approximately $18,000 per year for “warehousing” a homeless individual in a New York City shelter is particularly hard to understand when a modern dormitory-style room (usually shared with a single roommate), and three nutritious meals per day, are provided each academic year to millions of college and university students for between $5000 and $7000.550 Even at the most expensive private schools, such as Stanford University, the $6796 cost for room and board for the 1994-95 academic year was only slightly more than one-third of the annual cost for a “cot and three hot meals” in New York City’s shelter system three years before.

The New York Commission study also revealed that drug abuse, violence, and drug dealing were rampant in the shelters.551 Because many of the disabled homeless people develop their problems with alcoholism, drug addiction, or mental illness only after losing their homes, their disabilities are likely symptoms, not causes, of homelessness.552 The New York Commission study of 15,500 men in the city’s shelters revealed that many had developed their drug habits only after spending time in the shelters.553 In addition, large and chaotic shelters like those in the New York City system increase the likelihood that the mentally ill will become psychotic and require hospitalization.554 These results were confirmed by a Stanford University survey of about 1400 homeless adults in Santa Clara County, California.555 The Stanford study revealed that, after five years of being homeless, more than one-third of those with no preexisting problems had become alcoholics, one-fourth had become addicted to drugs, and one-fifth had been hospitalized for mental illness.556

Dr. Paula F. Eagle, a psychiatrist at
Columbia Presbyterian Hospital in New York City, opines that large shelters reinforce homelessness, leading to a condition she calls “shelterization,” whereby people become even more dependent on help from others.\textsuperscript{559} Thomas J. Williams spent several nights in San Francisco shelters and explains the underlying reason for the “shelterization” phenomenon as follows:

Conditions in these shelters are so dehumanizing, uncomfortable and humiliating that only someone who is used to being institutionalized could stand being in one for more than a couple of days. . . . All the shelters I visited shared the same characteristics. They were poorly ventilated, extremely crowded, dirty and the attendants ranged from uncaring to rude.\textsuperscript{560}

Finally, an alarming number of homeless adults suffer from serious physical illnesses. Expert testimony in \textit{Pottinger} revealed that illness is quick to occur or worsen for homeless people because of their difficulty in obtaining health care, the lack of sanitary facilities, and their regular exposure to the elements and disease-carrying agents.\textsuperscript{561} Homeless people are especially likely to suffer from tuberculosis (TB) and Acquired Immune Deficiency Syndrome (AIDS) which are exacerbated by stays in homeless shelters.

Tuberculosis is endemic in the homeless population. In 1984, the United States had the lowest TB rate in modern history.\textsuperscript{562} Yet, at about the same time that the homeless population started to escalate, the incidence of TB began a parallel rise.\textsuperscript{563} By 1990, even the world’s poorest countries had lower TB rates than those seen in the poorest sectors of American society.\textsuperscript{564} Many of America’s major cities, with heavy concentrations of homeless and indigent individuals, exceed by five to seven times the national average of TB cases.

Over the past decade, homelessness led to the crowding of thousands of Americans into shelters which are ideal breeding grounds for the disease.\textsuperscript{565} In a poorly ventilated space, the infection is easily contracted from airborne droplets that are released when a TB sufferer coughs.\textsuperscript{566} The overcrowding, poor ventilation, and shared sleeping quarters characteristic of most large shelters increase the chances of transmission.\textsuperscript{567} Those who live or work in homeless shelters can become infected with the disease after very little exposure.\textsuperscript{568} According to Dr. Jeffrey Laurence of Cornell University Medical College: “If you work in a shelter, the chances are better than even that you’ll acquire the organism.”\textsuperscript{569}

Compounding the problem, health workers are unable to locate one-third of the homeless people who have been diagnosed with TB.\textsuperscript{570} Even if homeless individuals are informed that they suffer from active TB, they often fail to follow through with the necessary treatment, which can require months of meticulous pill-taking.\textsuperscript{571} Without treatment, one-half of all cases that would have responded to drug treatment are fatal.\textsuperscript{572} Moreover, experts believe that, without major control efforts, multidrug-resistant tuberculosis (MDR-TB) will become the norm in the United States.\textsuperscript{573} This trend is extremely alarming since MDR-TB is 50% to 80% fatal, even with intensive treatment.\textsuperscript{574}

In order to stem the spread of TB, efforts must be made to identify members of the homeless population who have the disease and to monitor their treatment. To provide follow-up care, New York City instituted a program known as Directly Observed Therapy (DOT) for 1200 TB patients who are at risk of not following through with their treatment.\textsuperscript{575} DOT workers locate the recalcitrant patients—“in crack dens, under bridges, on park benches”—and actually watch them take their medication.\textsuperscript{576} If patients refuse treatment, the law allows New York Health Department workers to detain them under provisions that require hospitalization until the patient is cured.\textsuperscript{577}

The public health consequences of the
failure to stem the spread of TB among homeless people are substantial, not only for the homeless themselves, but also for everyone who comes into contact with them. Perhaps less apparent are the economic costs of failing to curtail the spread of a simple case of TB. One dollar spent on TB prevention saves the government five to ten times that amount on treatment costs. The potential financial impact of failing to check the spread of MDR-TB is staggering. While the medicine to treat a simple case of TB costs $300, it costs more than $6000 to treat drug resistant strains. When the treatment cost covers an entire medical bill, which can include the price of drugs, therapy, and tests, the cost of treating MDR-TB exceeds that of simple TB by more than $240,000.

In addition to curtailing the spread of TB, special efforts must be made to protect those with AIDS or other immunity-suppressant illnesses from the risk of catching infectious diseases in shelters for the homeless. A 1988 survey of forty-five cities estimated that approximately 20,000 homeless people suffer from AIDS. The 1990 Status Report showed that 6% of homeless people have AIDS or HIV-related illness. As of March 1993, it was estimated that 15,000 of New York City's homeless were infected with HIV, and that each week about 150 of those people could be found in crowded family welfare offices. The cold, hunger, and stress of homelessness can cause the health of homeless people with AIDS to deteriorate rapidly, dropping the life expectancy of those affiliated to only six months.

The need for medically appropriate housing for HIV-infected persons led to the filing of a class action suit on behalf of HIV-infected homeless persons in New York City. The plaintiffs in Mixon v. Grinker asserted that HIV-infected individuals need separate housing because they are particularly vulnerable to TB and other diseases that are rampant in the shelters. On March 12, 1993, New York State Supreme Court Judge Edward H. Lehner ruled that New York City must offer safer living conditions for homeless people whose immune systems are weakened by the AIDS virus. Although agreeing that New York City could not provide apartments or hotel rooms, Judge Lehner issued an injunction prohibiting the city from putting HIV-infected single adult males in placements unless there were no more than four people in a room with beds at least eight feet apart, adequate ventilation, and separate bathroom and eating facilities.

In addition to causing or exacerbating mental and physical illness among adults, the shelter system has devastating effects on the health and education of children. A study by the Children's Defense Fund found high incidents of diarrhea, malnourishment, and asthma in shelter children, and elevated levels of lead in their blood. The study also revealed that acute and chronic medical problems are more likely in homeless children than they are in poor children with homes. Homeless children were also three times more likely than other poor children to miss childhood immunizations. Moreover, the Department of Education estimates that 30% of the 220,000 school-age homeless children do not regularly attend school. The National Coalition for the Homeless, however, estimated that there are two to three times more homeless school-age children than reflected in the Department of Education figures, at least 50% of whom do not attend school. Studies have also shown that 30%-50% of homeless children had repeated a grade. Shelter workers report that homeless children often suffer from low aspirations, an inability to make sound choices, and an "emotional deadening similar to post-traumatic stress syndrome." Shelter workers also describe homeless teenagers as being especially vulnerable to the "ills of poverty" such as drugs, alcoholism, violence, gangs, pregnancy, and crime.

The manifold physical and mental
provides them with paid work opportunities at the hotel, job training, and substance abuse and mental health counseling.\textsuperscript{603} Renovation of the Senator Hotel is planned to refurbish 69 single rooms and 17 one-bedroom apartments.\textsuperscript{604} Future residents, chosen from waiting lists for public housing projects, will contribute 30% of their income toward rent.\textsuperscript{605}

In another variation of this idea, the Seattle based project called Homeless Education and Apartment Resource Training (HEART) provides housing as compensation to homeless people in training to be apartment managers.\textsuperscript{606} Between February 1988 and July 1991, a Days Inn Reservation Center in Atlanta employed nearly fifty homeless persons at a starting wage of $5 per hour plus benefits.\textsuperscript{607} For a $5 daily charge, workers were provided with housing in hotel rooms equipped with small kitchens.\textsuperscript{608}

The 1987 Stewart B. McKinney Homeless Assistance Act (McKinney Act) requires that the government allow homeless people the opportunity to take over reclaimed houses before they are auctioned.\textsuperscript{609} The law also requires the government to make available to homeless-assistance programs unutilized, underutilized, surplus, or vacant property\textsuperscript{610} for use as emergency shelters, temporary housing, food banks, job training centers, and child care facilities.\textsuperscript{611}

Unfortunately, the government has been quite lax in meeting these mandates. For example, a year after the statute’s enactment, the District of Columbia District Court, in *National Coalition for the Homeless v. United States Veterans Administration*,\textsuperscript{612} found that “[p]itifully few of the numerous unused federal properties [were] being evaluated for their suitability to assist the homeless.”\textsuperscript{613} The Court then enjoined HUD from selling any property eligible for use by homeless people until the requirements of the McKinney Act were satisfied.\textsuperscript{614} In 1992, a Law Center survey of nonprofit applicants for federal properties found that many problems remained with regard to implementing the McKinney Act.\textsuperscript{615} These nonprofit groups reportedly had difficulty gaining access to view the sites and receiving application information, and frequently faced local opposition.\textsuperscript{616} Two years later, the Law Center determined that, since the law’s implementation, only 800 of the 13,000 properties available to the program were being used to assist the homeless.\textsuperscript{617}

If the McKinney Act could be more effectively enforced, nonprofit groups would be able to use some of the remaining 12,200 vacant federal properties, which include military bases, Veterans Administration (V.A.) hospitals, and post office buildings, for housing the home-
less. Military bases that have already been abandoned or scheduled for closure provide the most fertile source of additional housing for the homeless. The base buildings themselves could be converted into permanent housing.618 Existing housing, previously used by military personnel, may also become available. Recently, a non-profit group known as Turner's Technical Institute of Los Angeles succeeded in winning federal approval, pursuant to the McKinney Act, to house 140 homeless families (almost 600 people) in enlisted sailors' housing that was abandoned by the Navy when the Long Beach (California) Naval Station closed in September 1994.619

California Democratic State Senator Barbara Boxer proposed that empty beds in V.A. hospitals be turned over to homeless veterans.620 She asserts that there are more than 200 empty V.A. hospital beds in California, where there are more than 100,000 homeless veterans.621 Claiming that the Veteran's Administration spends three times as much money on military bands than on homeless programs, she wants the V.A.'s annual homeless program budget raised from $50 million to $350 million.622

Because of the recently depressed economy, providing homeless people with rent vouchers to pay for apartments is yet another way for cities to take advantage of surplus rental apartments still on the market.623 The New York Mayor's Commission study recommended a limited one-year rental subsidy for homeless families that would allow families to choose their own apartments and would cost the city less money than would comparable use of the shelter system.624 In May 1992, then-New York Mayor David N. Dinkins announced the beginning of a small pilot rental subsidy program for 200 families.625 In addition, the Homeless Families Program, a joint effort of the Robert Wood Johnson Foundation and HUD, made 1200 Section 8 certificates available to homeless families. These certificates, which tap into $35 million in public housing assistance funds, helped move over 100 families out of shelters and into permanent housing.626

In his proposed federal budget for 1995, President Clinton allocated $1.76 billion to HUD, in part to furnish five-year vouchers to help 15,000 homeless families pay for apartment rentals.627 Previously, in November 1994, the federal government announced that housing vouchers would be offered to the estimated 1500 homeless individuals who live in "rat-infested utility rooms and narrow passageways between tracks" in New York City's subway system.628

B. Provide Comprehensive Treatment for Homeless Individuals with Physical or Mental Disabilities

Unfortunately, simply providing housing will not solve many underlying problems of homelessness. The solution for homeless individuals is not as simple as Robert Haye's housing solution would imply.629 Public perception accurately reflects that a substantial number of homeless adults have significant physical and mental problems. As the New York Commission study cautioned, because of the "interwoven afflictions of drug and alcohol use, extreme poverty, mental illness, AIDS, domestic violence and lack of education and job skills, only a minority of the homeless needed just housing to get back on their feet."630 Putting drug-addicted or alcoholic homeless people in apartments or offering them jobs is unlikely to be a lasting solution to their homelessness if their substance abuse problems are not first addressed. Homelessness causes a panoply of mental and physical illnesses, including substance abuse, which require medical treatment before the afflicted individuals can be considered "able-bodied."631 Moreover, providing treatment for substance abuse is economically effective. According to a study released by California's Department of Alcohol and Drug Programs in August 1994, every dollar spent on treatment for the 150,000 participants in state treatment programs saves $7 in
Many of the homeless adults’ physical problems are compounded by significant mental problems. . . . Homeless shelters and city streets have become the ‘de facto mental institutions’ of the 1980s and 1990s.”

Regardless of the manner in which their disabilities were acquired, it is important for the public and legislators to get a realistic assessment of the number of homeless people who are substance abusers or mentally ill. This information can then be used to develop programs that will address their needs, instead of warehousing them in the very shelters that may have caused their problems. According to the 1990 Status Report, 38% of homeless people were substance abusers. In 1992, the New York Commission study provided an alarming indication that the number of homeless people who are substance abusers may be even more extensive. The New York Commission, for the first time, studied substance abuse by drug testing and interviewing about 1000 of the homeless men in New York’s shelters. The results described a far more pervasive and serious problem than previously had been thought to exist. The survey revealed that 83% of all single adults in both types of shelters tested positive for cocaine. Among the men, 80% of those housed in armory shelters and 30% of those in family shelters were drug or alcohol abusers. More recently, Alice S. Baum and Donald W. Byrnes, two researchers working for a church-based organization that helps poor and homeless people in Washington, D.C., estimated that, as of May 1993, at least 40% of the homeless were adult alcoholics and up to 20% of the homeless were addicted to drugs.

Many of the homeless adults’ physical problems are compounded by significant mental problems. The 1991 Status Report found that almost one-third of homeless people suffer from severe mental illnesses. The report also found that drug and alcohol abuse among the severely mentally ill had increased by 9% during that year. Concurrently, eleven cities reported that the mentally ill who were seeking shelter had increased by one-third. Raymond Flynn, Boston Mayor and President of the U.S. Conference of Mayors, commented that “[b]ecause of budget cuts at the state level, we are seeing that the mentally ill who were located in secure, medically supervised environments are being sentenced to the streets across the country. . . . Homeless shelters and city streets have become the ‘de facto mental institutions’ of the 1980s and 1990s.” Baum and Byrnes refer to “emerging research” which will document that “up to 85 percent of all homeless adults suffer from chronic alcoholism, drug addiction, mental illness, or some combination of the three, often complicated by serious medical problems.”

Problems with substance abuse or mental illness or both are especially prevalent in homeless veterans who number about 250,000 a night according to the Secretary of Veterans’ Affairs. Middle-aged Vietnam veterans make up almost one-half of this number, a number larger than soldier fatalities during the Vietnam War. Baum and Byrnes note that veterans “are more likely to be seriously troubled by substance abuse problems and psychiatric or trauma disorders than other homeless men.” Groups working...
with veterans say that 50% to 60% of the veterans are drug or alcohol abusers and about 10% to 20% of the veterans suffer from mental illness. Experts disagree about why this is the case. Some say that the rigors of military life, particularly in combat, induce mental and physical disorders; others argue that these effects result from the impoverished backgrounds from which the military disproportionately recruits.

Although there is little debate that homeless individuals who suffer from mental and physical illnesses need treatment for their disabilities, arranging for treatment is more problematic. The current number of treatment facilities is insufficient to meet the burgeoning number of disabled indigents. The National Drug and Alcohol Treatment Unit Survey found that in 1989, 67,000 drug and alcohol abusers nationwide were on waiting lists for various rehabilitation services. As of June 1994, only 1.4 million of the 4 to 6 million heavy drug users were in public and private treatment programs. The provision of many more treatment facilities is an essential first step in helping disabled homeless people to join the ranks of the able-bodied.

Ideally, treatment facilities for disabled homeless individuals should combine their treatment needs with their needs for housing, job training, and employment. Programs that combined treatment with housing have demonstrated the economic logic of such an approach. For example, New York’s Jericho Project provides recovering alcoholics and drug abusers with a hotel room and counseling. Residents must abide by strict requirements to stop using drugs and alcohol, work or go to school, become active community members, and be responsible for their rent. The annual cost for maintaining a resident is one-third of that incurred for fewer services in a New York City shelter.

Another highly successful program that combines housing, social services, and employment has been operating in New York City for the past four years. The program, known as Ready, Willing and Able, provides housing for 66 men, almost all of whom have abused drugs and have prior criminal records. The men are required to work for $5 per hour and save $30 of each week’s pay for when they leave the program. They must also agree to submit to random urine tests. The services of counselors, a job developer, and a part-time psychologist help participants reach the program’s goal of making participants marketable in the private workplace. While there is no set limit on how long a man can stay in the program, he is asked to leave if he cannot conform to the program’s rules. The program covers 70% of its own costs, including $158,000 in revenue generated from the $65 per week each program participant is required to pay for room and board. The remaining costs—less than one-half of that spent to “keep an idle man in an armory shelter, are assessed to taxpayers.”

Similar programs are available for the mentally ill. In Los Angeles’ skid row, the Golden West Hotel is home to 62 adults who suffer from chronic mental illness. The hotel is one of eleven buildings renovated and managed by the quasi-public SRO Housing Corporation. Housing and the services of caseworkers costs only $185 per month. Wes Wong, a case manager at Golden West Hotel, comments that the kind of care provided “saves money by preventing hospitalizations.”

In New York, 20,000 mentally ill homeless people presently receive psychiatric treatment through the Project for Psychiatric Outreach to the Homeless (the Project). Founded in 1986, the Project comprises approximately forty volunteer psychiatrists who have treated over 2000 homeless individuals. They provide treatment to mentally ill homeless people at small shelters and group homes whose facilities would otherwise necessitate sending the patients to public hospitals. The Project’s budget (which in-
Although efforts to provide comprehensive social programs and housing to homeless families are far more limited, a few programs have achieved marked success. A San Francisco program known as Project Homeless Bound has offered subsidized housing and wide-ranging assistance to more than 225 chronically homeless families since it began operating five years ago. Parents sign contracts with Project Homeless Bound, pledging to follow a personalized plan for self-sufficiency. Parents suffering from drug addiction or mental illness must receive diversion or counseling. Those with few vocational skills receive job training or education. After "substantial proof" that the parent has lived up to his or her contract and is able to maintain a home, permanent housing is provided.

Finally, the Homeless Families Program provides nine cities with projected grants of approximately $600,000 to provide services to homeless families. In each city, families are placed in clustered residences to provide support for one another. The families are followed by case managers who ensure that the parents receive treatment for any physical, psychological, or substance abuse difficulties. The program also provides employment training and child care.

In addition to insuring that adequate treatment facilities are available, effective monitoring must be implemented to ensure that indigent drug users or alcoholics get the necessary treatment and are not able to spend their financial assistance on drugs or alcohol. According to the General Accounting Office (GAO), the investigative arm of Congress, the number of low income substance abusers receiving federal Supplemental Security Income (SSI) disability benefits is "out of control," having doubled in the five years between 1989 and 1994 and having grown 1700% in the nine years from 1984 to 1993. Perhaps because of this rapid increase in beneficiaries, the Social Security Administration consistently failed to meet its legal responsibilities of monitoring those receiving disability payments to be sure they are receiving the treatment they need. According to a November 1994 federal study of federal disability recipients, only 1% of recipients who are low-income drug addicts and alcoholics recover from their addictions or get jobs.

A GAO investigation found that throughout its twenty year existence, the Social Security Administration has been extremely lax in creating state treatment agencies to monitor recipients. Even in the eighteen states with agency systems, less than one-half of the recipients under the agencies’ watch are actually being monitored. As of April 1994, 250,000 drug addicts and alcoholics were getting disability benefits at a cost of $1.4 billion per year, but few were being required to obtain treatment for their conditions. Fewer still are periodically re-evaluated for eligibility. According to a 1991 review by the Office of the Inspector General, only 193 drug addicted and alcoholic recipients throughout the United States had been removed from receiving benefits “in recent years” based on a re-evaluation determining that their disability had ceased. The review found drug addict and alcoholic records were so “haphazardly” maintained that diagnosis of cholera, “unknown,” or strep throat were attributed to over 7000 drug-addicted and alcoholic recipients.

According to GAO, administrative difficulties with the SSI program also leave “little assurance that benefit payments are not being used for the purchase of drugs and alcohol.” Drug addicts and alcoholics who receive SSI benefits must be paid through a third party, known as a “representative payee” to make sure the money goes toward food, housing, and other essentials. The requirement of a “representative payee” was necessary since eligibility is partly based on a recipient’s inability to manage his affairs. However, the “incapable” recipients are
allowed to choose their own payees, often selecting bartenders, liquor store owners, or other drug-addicted and alcoholic recipients. This selection system frequently results in bartenders and liquor store owners doling out the money in overpriced liquor and cigarettes. These prices are a rip-off of recipients who are sometimes too drunk or stoned to keep a tally of their accounts. Although Social Security can reject representative payees, the agency does not conduct a formal background check. Abuses of the system include a situation where a liquor store owner received $160,000 of SSI funds for forty alcoholic customers who named him as their payee.

C. Provide Employment Opportunities for All Able-Bodied Homeless Individuals

When homeless individuals apply for public assistance, they should be evaluated to determine whether they are, in fact, able-bodied or whether they are suffering from some mental or physical illness or disability that would preclude them from joining the work force. Disabled homeless individuals should be provided with treatment before being required to make any efforts to obtain employment. If they are potentially eligible, they should also be assisted in applying for federal Social Security Insurance Disability payments to defray the cost of General Assistance.

An effort should be made at the outset to help able-bodied homeless individuals find immediate employment with the goal of avoiding public assistance entirely. Some applicants may only lack the funding to obtain “tools of the trade” that would qualify them for jobs involving manual skills, such as carpentry. These applicants should be provided with one time grants for these purchases if the payments would eliminate obstacles to working. Other applicants should be required to seek employment during any waiting period while their eligibility is determined. The potential success of this approach was recently demonstrated in Albany, New York. Able-bodied applicants for Home Relief (New York’s General Assistance program) were required to prove that they contacted six employers each week. After adopting this “Jobs First” program, Albany managed to trim its Home Relief caseload by 23% in three months.

Once a homeless person begins to receive public assistance, welfare offices should continue to assist the recipient in locating employment and providing assistance with childcare and transportation expenses. Expert testimony in Pottinger revealed that joblessness becomes endemic due to the difficulties imposed by homelessness; a homeless person has no legal address or telephone and must spend increasing amounts of his or her time searching for basic necessities like food and shelter.

President Clinton reportedly plans to copy the methods of a nationwide coalition of twenty nonprofit community agencies that steered approximately 56,000 homeless people into jobs over the last seven years. Almost half of the coalition’s clients have been homeless longer than six months, but are able to find work as carpenters, security guards, electricians, truck drivers, secretaries, cooks, janitors, home health care aides, and graffiti removers. The agencies believe their programs work because they provide help with addiction recovery, housing, and job searching under one roof; are “not constrained by a raft of government regulations”; and can tailor their aid to suit individual needs. The largest community agency, Jobs Consortium for the Homeless in Berkeley, California, found jobs for 228 homeless individuals with an average wage of $8.05 per hour.

Unless homeless people can achieve economic independence, it will not be long before they will be back on the streets. However, a combination of affordable housing and decent paying jobs can
help homeless people to avoid living on the streets again.

CONCLUSION

The solutions to homelessness and indigency are not easy and will not come quickly, nor without cost. However, the costs associated with merely pushing homeless people out of our communities are even greater—and ultimately the problems are not solved by this approach. The recent history of homelessness shows that its grasp on Americans is getting stronger and that there are many more people who will be at risk of homelessness if we continue our current repressive policies. Unless cities, states, and the federal government take responsibility for homeless people, they will continue to be pushed from one community to another in a "contest of nonresponsibility." A direct, substantive attack on the criminalization of homelessness is necessary to stop this war on homeless people and induce all of us to take responsibility for their plight. As long as communities and states can force the problems associated with homelessness onto others, they will not have sufficient incentive to find solutions themselves or to support joint efforts to solve the problems. If all communities become more responsible, many creative and effective ways to deal with the problems of homeless people would be available. Ultimately, we will all be better off if we attack the underlying problems rather than pass the problems on to others.

It is good public policy to put the responsibility for the plight of homeless people on all communities. The American people who have homes must not ignore the plight of those who do not. The poor, the sick, and the homeless who roam city streets are not the exclusive products of New York City, Miami, Santa Ana, or San Francisco. They are America's poor, sick, and homeless. America seems to have forgotten its collective responsibility for its most impoverished citizens. As Maria Foscarinis, Director of the National Law Center on Homelessness and Poverty puts it:

Responding humanely to overwhelming human destitution is—or should be—a hallmark of civilized society. . . . There is nothing terribly profound about the solutions [for homelessness]: housing, jobs and social services. But these solutions require real resources—and real political will. Applying the pressure to generate such political will requires a vision of society that declares homelessness unacceptable.711

NOTES

*Professor Wright wishes to thank her research assistant, Robin Tanabe, for her help with this article. She also wishes to give very special thanks to her husband, Law Professor Eric Wright, for his constant inspiration, love, and support.


3 Robert Pear, The Nation: The Picture from the Census Bureau; Poverty 1993: Bigger, Deeper, Younger, Getting Worse, N.Y. TIMES, Oct. 10, 1993, at E5 (quoting advocate Robert J. Lapman as predicting that poverty could be eliminated before 1980 "at which time the next generation will have set new economic and social goals"). Lapman’s optimism was based on historical trends, namely that, from 1961 to 1971, the number of indigent Americans fell by more than one-third. Id.

4 In 1993, the federal poverty level was $14,763 for a family of four. Ramon G. McLeod, More Americans Living in Poverty Than at Any Time Since ‘62, S.F. CHRON., Oct. 3, 1994, at A4. The poverty level, first set in 1964, is determined by taking the amount of a low-cost food plan and multiplying that number by three. Pear, supra note 3, at E5. The federal government adjusts the level annually to reflect the change in the Consumer Price Index. Id.

5 R. A. Zaldivar, Poverty Rate Hits ’90s High, SAN JOSE MERCURY NEWS, Oct. 7, 1994, at F1. See also McLeod, supra note 4, at A4 (noting that in 1992,
36.3 million Americans, or 14.5%, lived in poverty, the highest number in 30 years.


7 For purposes of this article, “poverty” is defined as encompassing those Americans whose incomes fall below the federal poverty level. See Edelman, supra note 2, at 1697 n.1 (stating that the “number of poor Americans is calculated by determining the number of people whose income falls below a threshold amount known as the poverty line”).

8 Christopher Scanlan, Ranks of Poor, Uninsured Americans Swelled in ’92, Census Bureau Says, SAN JOSE MERCURY NEWS, Oct. 5, 1993, at A3.


10 Unless otherwise indicated, the term “welfare poor” refers to recipients of Aid to Families with Dependent Children (AFDC), the primary public assistance program for families.

11 Jason DeParle, Gauging Workfare’s Employability, N.Y. TIMES, Mar. 6, 1994, at D3. See also infra notes 113-147 and accompanying text.

12 See infra notes 113-147 and accompanying text.


14 See infra notes 113-147 and accompanying text.

15 Since 1989, the number of American households receiving AFDC (the largest component of welfare) has increased by 33%, and the number is now 5 million. Richard Lacayo, Unraveling the Safety Net, TIME, Jan. 10, 1994, at 25. See also infra notes 86-105 and accompanying text.

16 Three out of every four workers laid off during the recent recession suffered permanent job losses rather than just temporary layoffs. Carl T. Hall, Clinton’s Rx for the Jobless, S.F. CHRON., Oct. 11, 1993, at D1. This was the highest percentage on record. Id. See also infra notes 40-65 and accompanying text.

17 In many communities, middle managers and corporate executives, some of whom earned more than $100,000 per year, have found themselves unemployed in increasing numbers. State Jobless Rate Jumps to 7.1%; Surges a Point Ahead of National Percentage, SAN JOSE MERCURY NEWS, Jan. 5, 1991, at A1. See also infra notes 43-67 and accompanying text.

18 See infra notes 89-100 and accompanying text.

19 See infra notes 632-644 and accompanying text.


22 Tom Callahan, Bring a Van with Doctors in It, SAN JOSE MERCURY NEWS, Apr. 19, 1992, (Parade), at 12.

23 See infra notes 143-188 and accompanying text.

24 “Compassion fatigue” is a term used to describe an individual’s increased emotional tolerance of or indifference to the plight of others, such as the poor or homeless. This emotional conditioning is caused by overexposure to members of these groups and their problems. The individual becomes emotionally tired of seeing these problems and the corresponding inability to change their plight. Therefore, the individual learns to tolerate them in order to prevent an emotional overload of guilt and depression.

25 See Robert Collier, How Cities Around the Country Are Dealing with the Homeless, S.F. CHRON., July 5, 1992, at 10 (noting that from 1990 to 1992, “the homeless were allowed to virtually take over some cities’ downtown streets, civic centers, and parks, turning them into hostile territory for other citizens”). In San Diego, St. Louis, New York, and elsewhere, urban life consists of stepping over drunks, dodging aggressive panhandlers, and learning to ignore the “passive silent bundles in the doorways.” Id. Through a combination of tougher policing policies and public neglect, an attempt to push the great majority of the homeless out of sight has resulted. Id.

26 In November 1993, soup kitchens and food banks across the country reported a drop in donations by as much as 40%. Jill Smolowe, Giving the Cold Shoulder, TIME, Dec. 6, 1993, at 28. The donations to New York Times 81st Annual Neediest Cases Fund in December 1992 were 12% less than in the previous year, a decrease of about $615,000. Randy Kennedy, When Security Becomes a Struggle, N.Y. TIMES, Nov. 25, 1993, at B1. Arthur Gellb, President of the New York Times Foundation, commented that the “impact of this decline is severely affecting those battling the hardships of life in our city: homeless ... hungry, abused and abandoned children, the destitute elderly ... and a fast growing category of families being evicted for nonpayment of rent because of job loss.” Id.

27 See infra notes 172-174 and accompanying text. See also Anna Quindlen, The Unworthy, N.Y. TIMES, Dec. 16, 1993, at A23 (quoting Mary Brosnahan, the Executive Director of New York’s Coalition for the Homeless who defines this phenomenon as “separating the worthy from the unworthy”).
Features

28 Americans who have traditionally been considered "better off" have wrestled with their own economic demons, such as stagnant or falling wages coupled with the growing threat of unemployment, the soaring costs of raising children, or the high costs of caring for their aging parents. Henry Cisneros, Death of a Homeless Woman, SAN JOSE MERCURY NEWS, Dec. 8, 1993, at B11. In addition, Americans have grown "fearful they are themselves only one or two paychecks removed from the streets." Id.

29 See, e.g., Gwen Ifill, Sympathy Waves for Homeless: Funding Drop, Arrests Herald New Attitude, WASH. POST, May 21, 1990, at A1 (noting that only 63% of Washington, D.C. residents surveyed believed that people were homeless due to circumstances beyond their control). Dr. T. Berry Brazelton, a pediatrician at Harvard Medical School and a member of the National Commission on Children, explains that many members of the American public believe that "[f]amilies should be self-sufficient, and if they're not, they deserve to suffer. That outlook appears to dominate political and private decisions." T. Berry Brazelton, M.D., Why Is America Failing It's Children, N.Y. TIMES, Sept. 9, 1990, at F1. Dr. Brazelton believes that we could use available remedies to alleviate the problems of poverty, but he fears that the desire to even think about the harm no longer exists. Id.

30 According to Mary Brosnahan, Executive Director of New York's Coalition for the Homeless: "People are a bit weary. They have heard all the solutions for the last ten years but it doesn't seem to make a dent in the problem." Opinions, Attitudes Hardening Toward the Homeless, SAN JOSE MERCURY NEWS, Sept. 2, 1991, at A8.

31 See infra notes 204-216 and accompanying text.

32 See infra notes 226-239 and accompanying text.

33 See infra notes 240-261 and accompanying text.

34 See infra notes 262-289 and accompanying text.

35 See infra notes 290-331 and accompanying text.

36 This type of response can be described as the "Not in My Backyard" (NIMBY) phenomenon. In the past, NIMBY has traditionally focused on various perceived undesirable uses of property, such as shelters, low income housing, or treatment facilities.

37 See infra notes 295-323 and accompanying text.

38 Cisneros, supra note 28, at B11.

39 See infra notes 542-552 and accompanying text.

40 See infra notes 700-710 and accompanying text.

41 See id.

42 See infra notes 629-699 and accompanying text.

43 Pear, supra note 3, at E5 (noting that those on the poverty continuum accounted for 14.5% of the total population in 1992 as compared with 1971, when only 12.5% of the population were categorized as poor). See also Robert Pear, Poverty in U.S. Grew Faster Than Population Last Year, N.Y. TIMES, Oct. 5, 1993, at A20 (noting that the number of poor Americans rose by 3.3% in 1992, while the population rose just 1.1%).


The numbers also showed the persistence, and perhaps even the acceleration of one of the most worrisome trends in the American economy—the long-term growth in inequality between the richest and poorest members of American society. DeParle, supra note 6, at A1. Although average per capita income was up by 1.8% in 1993, most of the benefits flowed to the wealthiest Americans. Id., at A9. The Census report showed that the top one-fifth of American households earned 48.2% of the nation’s income, while the bottom one-fifth earned just 3.6%. Zaldivar, supra note 5, at F1 (noting an “increasing gap between the haves and haves-nots”).

45 Zaldivar, supra note 5, at F1 (noting that there were 5.8 million poor people residing in California). See supra note 3 and accompanying text.

46 Pear, supra note 3, at E5.

47 Id. (citing Ronald B. Mincy, a Senior Research Associate at the Urban Institute).

48 Id.

49 More Children, Fewer Elderly Live in Poverty, SAN JOSE MERCURY NEWS, Oct. 11, 1994, at A6 (noting that in the United States 1.6 million children, or 25.7%, live in poverty). See also Pear, supra note 43, at A20 (noting that in 1992, 25% of children under six and 21.9% of those under 18 were impoverished); Child Poverty Soars in Suburbs, S.F. CHRON., Sept. 28, 1994, at A7 (noting that the proportion of children living below the poverty line rose 49% from 1973 to 1992, according to researchers at the Tufts University Center on Hunger, Poverty and Nutrition Policy, who examined Census Data). See also supra note 7 and accompanying text.

50 Id. The poverty level has been criticized as being both too low, resulting in too few people being classified as indigent, and too high, causing too many Americans to be categorized as impoverished. Barbara Sard, Housing the Homeless Through Expanding Access to Existing Subsidized Housing Programs, 36 VILLANOVA L. REV. 1113 (1991) (citing M. Harrington, The New American Poverty (1984)). Those who believe the level is too low point out that, although the average family may
have spent one-third of their income on food thirty years ago, only about one-fourth of family income is now available for food consumption, primarily because of the enormous increase in housing costs. Id. Those who believe the level is too high point out that in setting the poverty level, the government counts as income cash payments such as salaries, Social Security, and welfare but does not count the value of non-cash benefits such as food stamps, housing assistance, Medicare, Medicaid, or health insurance provided by employers. Pearson, supra note 43, at A10. Moreover, the value of assets, such as a home, are not included. Scanlan, supra note 8, at A3. In addition, the poverty level has been subject to criticism because it is set at the same level nationwide although living costs vary widely across the country. Pearson, supra note 43, at A10.

51 Susan Chira, Study Confirms Worst Fears on U.S. Children, N.Y. Times, Apr. 12, 1994, at A1, A12 (the report was based on a review of scientific data and scholarly studies as well as an examination of statistical indicators of children's status, such as the number living in single-parent homes). Similar results were reached in an April 1994 Congressional study, conducted by the General Accounting Office (GAO). The study revealed that the number of children under three years of age, and in poverty, increased from 1.8 million to 2.3 million (26.7%) during the 1980s. Study Finds Big Increase in Child Poverty, San Jose Mercury News, Apr. 12, 1994, at A8. The study also found that by 1990, 20% of all infants and toddlers were living in poverty, whereas only 13% of the elderly, and 9% of adults between the ages of twenty-five and sixty-four, were living in poverty. Id. In seven cities, including Hartford, Connecticut; Miami, Florida; Atlanta, Georgia; Gary, Indiana; New Orleans, Louisiana; and Detroit and Flint, Michigan, at least 45% of the poor were infants and toddlers. Id.

52 Jennifer Dixon, Thousands of Babies Abandoned in Hospitals: Parents Unsuspecting or Unable to Take Them Home, Report Says, San Jose Mercury News, Nov. 9, 1993, at A10 (noting that abandonment is one of the reasons that the number of children in foster care is approaching one-half million). As of 1991, researchers counted 22,000 “boarder babies” and abandoned infants in the nation’s hospitals. Id. (defining “boarder babies” as infants under age one who remained in the hospital after they were medically ready to be discharged, and defining abandoned infants as those under the age one, who were unlikely to leave the hospital in the custody of their biological parents).

53 Rosenblatt, supra note 9, at A2.

54 Id. See also Sam Howe Verhovek, U.S. Plans Major Boost in Aid to Working Poor, Int’l Herald Tribune, July 27, 1993, at 3 (noting that, according to the United States Census Bureau, approximately 5 million Americans worked forty hours per week but remained below the poverty line; that is, they maintained an annual income of less than $11,500 for a family of three and less than $14,750 for a family of four).

Moreover, based on census data analyzed by an advocacy group called “Women Work!,” the poverty rate among single mothers and “displaced homemakers” (separated, divorced, or widowed women whose primary prior occupation had been homemaking) entering the workforce is four times the national average. Single Mothers, Divorces Show Sharp Rise in Poverty, San Jose Mercury News, Feb. 18, 1994, at A11 (noting that economic shifts in the service economy have thrown more women into minimum-wage jobs). See also Single Women and Poverty Strongly Linked, N.Y. Times, Feb. 20, 1994, at A35 (noting that 42% of displaced homemakers and 44% of single mothers were impoverished in 1990). In 1990, there were 17.8 million “displaced homemakers” in the United States; this was a 4 million increase since 1980. Id. The number of single mothers also rose during the same period from 5.8 million in 1980, to 7.7 million a decade later. Id. The median annual income for displaced homemakers in 1990 was only $6766, for single mothers the amount was merely $9353. Single Mothers, Divorces Show Sharp Rise in Poverty, supra, at A11.


56 Hard-Working Poor, N.Y. Times, Mar. 31, 1994, at A1 (showing that this increase held true irrespective of sex and race but was more pronounced among the young and uneducated).


58 Id. The number of people without health insurance coverage increased to 39.7 million in 1993, meaning that about 15.3% of Americans were without health insurance in 1993, compared with 14.7% in 1992 and 14.1% in 1991. Robert Pear, Health Insurance Percentage Is Lowest in 4 Sun Belt States, N.Y. Times, Oct. 7, 1994, at A36; McLeod, supra note 4, at A4. See also Scanlan, supra note 8, at A3 (noting that almost 20% of Californians reported that they had no health coverage). The Census Bureau also reported a large increase in the number of children without health insurance. Pear, supra, at A9. As of 1993, 9.6 million children under the age of eighteen were uninsured, an increase of 900,000 from 1992. Id. Chester Hartman, Executive Director of the Poverty and Race Research Action Council, a Washington, D.C. think tank, blamed the increase in Americans without insurance coverage on the “failure of the safety net combined with unemployment benefits not lasting long enough.” McLeod, supra note 4, at A4.

Relatively low wages make survival difficult for those even slightly above the poverty line, and basic services like housing, child care, education, and medical care are often elusive for this group. Middle Class Trickling Down into Poverty, Report Says, SAN JOSE MERCURY NEWS, Mar. 31, 1994, at A7 (quoting a Census Bureau report). See also Mark Simon, Hunger Poll Contradicts Stereotypes, S.F. CHRON., Mar. 9, 1994, at A13 (noting that 90% of the food stamp recipients said that food stamps do not last the entire month).

Simon, supra note 60, at A13.

Rosenblatt, supra note 9, at A2. According to Martin Regalia, Chief Economist for the U.S. Chamber of Commerce, the extraordinary growth in the number of the poorest paid employees as a proportion of the labor force is disconcerting and "highlights the need for improved education and training skills." Id.


See also Nancy Gibbs, Shameful Requests to the Next Generation, TIME, Oct. 8, 1990, at 43.

Sard, supra note 50, at 1118 n.11. The most recent increase in the minimum wage, from $3.80 to $4.25 per hour in 1991, "benefited middle-class families much more than poor families," according to the Employment Policies Institute. Minimum-Wage Hike Helped Middle Class Most, Study Says, SAN JOSE MERCURY NEWS, Mar. 10, 1994, at 1E. This is due to the fact that households earning at least three times the poverty level received three times as much additional income from the wage increase as did households below the poverty line. Hard Working Poor, supra note 56, at A1.

The Fair Market Rent, set by the United States Department of Housing and Urban Development (HUD) for each area in the United States, is determined by using the cost at the 45th percentile of standard quality rental housing units leased to persons who have moved within the previous two years, excluding public housing and units constructed within two years of the survey date. Fair Market Rent Schedules, 56 Fed. Reg. 14733 (1991).

Sard, supra note 50, at 1118 n.11.

Jonathan Marshall, How Clinton Would Mend Safety Net, S.F. CHRON., Jan. 27, 1994, at D1, D2. This was up from an annual average of 1.8 million during the late 1980s. Hall, supra note 15, at D1.

California, perhaps the hardest hit state, lost nearly 800,000 jobs between May 1990 and October 1992, and economists opined that the state's economy was in "its worst slump since the Depression." Steve Kaufman, Economy's Down; Spirits Are Even Lower, SAN JOSE MERCURY NEWS, Oct. 1, 1992, at A1. See also George J. Church, Who Needs a Boom?, TIME, Dec. 13, 1993, at 35 (reporting that despite an economic surge nationwide, California is still in recession, and the Northeast was "no better than bumping along the bottom").

Gary Blonston, Glimpse of Recession's End Only a Mirage to the Poor, SAN JOSE MERCURY NEWS, July 15, 1991, at A1, A6 (citing Isaac Shapiro of the Center on Budget and Policy Priorities, who said this was the worst month since 1983).

Id. at A9.

Id.

Church, supra note 69, at 33. The Labor Department reported that for the week ending on January 15, 1994, initial jobless claims increased to 380,000, which was their highest rate in six months. Improving Economy, TIME, Jan. 31, 1994, at 23.

Marshall, supra note 68, at D2. According to the Federal Bureau of Labor Statistics, there were 2.5 million jobs created from December 1992 to December 1993, of which 1.2 million were in management and the professions. More than twice as many jobs involved 'service' or 'technical' sales and administrative support. Gary Blonston, White-Collar Jobs Make a Comeback, SAN JOSE MERCURY NEWS, Feb. 12, 1994, at A1, A17 (observing that in "this slow-growth economy, low skill jobs are growing very slowly if at all").

Marshall, supra note 68, at D2.

Id.

See also Hall, supra note 15, at D7 (noting that in 1992, "a near-record 20.6% of officially jobless Americans were out of work for at least six months, up from an average of 15% in the 1980s and just 11% in the 1970s").

Robert Pear, 2 Welfare Rolls Finally Level Off After 6-Year Rise, N.Y. TIMES, Mar. 14, 1995, at A1, A10 (noting that the spiraling rates finally showed a decline at the end of 1994, with 13.9 million people receiving AFDC in November of 1994 as contrasted with 14.2 million in November of 1993). See also Thomas Sancton, How to Get America Off the Dole, TIME, May 25, 1992, at 44 (noting that between 1990 and 1992, the number of households receiving AFDC increased 24%; as of May of 1992, there were 4.7 million families, or 13.6 million individuals, receiving aid). By the end of 1992, over 14 million individuals were receiving aid. Pear, supra, at A20.

Pear, supra note 78, at A1 (noting that in October, November, and December of 1994, the number of recipients dropped by approximately 300,000 when compared with the same months in 1993). See also Pear, supra note 43, at A10 (noting that the number of food stamp recipients shot up from 24.9 million in December of 1991 to 26.6 million one year later).

Kennedy, supra note 26, at A17. Two hundred and twenty-four tenants were saved from eviction in 1991 by the Community Service Society of New York.
York. Two hundred additional tenants were turned away when its money ran out. The next year, 143 evictions were stopped while 415 cases “went begging.” In 1993, there was only enough money to save 115 tenants from eviction, and 919 cases were turned away. In addition, the agency reported that it is now seeing people who are five and six months behind in their rent, in contrast to a few years ago when most tenants were only a month or two in arrears. Id.

81 Id.


83 DeParle, supra note 11, at E3.

84 Id.

85 Sanction, supra note 78, at 45.


87 Id.

88 Dan Bernstein, “C” or Better Worth $100 to Welfare Teens, SAN JOSE MERCURY NEWS, Mar. 2, 1994, at B3. In the past five years, half of all the new AFDC cases were “child-only” cases, which involve children receiving welfare regardless of the ineligibility of their parents or other adult guardians. McLeod, supra note 86, at A15 (noting that parental ineligibility can be based on their illegal presence in the United States). Larry Leamon, Orange County Welfare Director, indicated that about 45% of the caseload is “directly related to immigration now, including about 9000 kids whose parents are undocumented.” Id.

89 The War Against the Poor, N.Y. TIMES, May 6, 1992, at A28.


93 Id.

94 Id.


96 Sanction, supra note 78, at 45.


100 Blonston, supra note 74, at 6A (citing Children’s Defense Fund).

101 Bassuk, supra note 97, at 68.

102 Deborah Berger, Helping the Homeless . . . One by One, SAN JOSE MERCURY NEWS, July 21, 1991, (Parade) at 8.

103 Roisman, supra note 95, at 214.

104 Id.


107 Id.

108 Housing a Family on $286 a Month, N.Y. TIMES, Jan. 1, 1994, at A24.

109 Id.


111 Id.

112 Housing a Family on $286 a Month, supra note 108, at A24.

113 U.S. DEP’T OF HOUS. & URBAN DEV., A REPORT TO THE SECRETARY ON THE HOMELESS AND EMERGENCY SHELTERS 4, 18 (1984). The HUD Report was based on interviews with service providers in sixty cities who were asked to estimate the number of homeless individuals in their areas. Id. This methodology was criticized by advocates for the homeless who asserted that the actual number of homeless people exceeded the HUD estimates. See, e.g., Community for Creative Non-Violence v. Pierce, 814 F.2d 663, 666 (D.C. Cir. 1987) (holding that the advocacy organization lacked standing to challenge the HUD report as “improperly researched, unsubstantiated and inaccurate”); Clark v. Community for Creative Non-Violence, 468 U.S. 288, 304 n.4 (1984) (Marshall, J., dissenting) (citing Brief for National Coalition for the Homeless and noting that “[e]stimates on the number of homeless persons in the United States range from two to three million” and that “homelessness is a widespread problem, often ignored, that confronts its victims with life threatening deprivations”); HUD Report on Homelessness, Joint Hearing Before the Subcomm. on Housing and Community Development of the House Comm. on Banking, Finance, and Urban Affairs and the Subcomm. on Manpower and Housing of the House Comm. on Government Operations, 98th Cong., 2d Sess. (1984) (opponents of HUD
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figures estimating that in 1984, approximately 2 million Americans were homeless).

Wohl, supra note 12, at 58. See also Lee v. Pierce, 698 F. Supp. 332, 335 (D.D.C. 1988) (noting that there were "approximately 3 million homeless persons nationwide, including many families and children"). Because of the transient nature of the homeless population, any numerical tally is necessarily imprecise. Moreover, any count is usually made at a single point in time and does not account for the increased number of people who experience homelessness during the course of a given week or month or year. For example, a 1993 survey concluded that about 2 million Americans were homeless during the course of the year. Mark Clements, What Americans Say About the Homeless, Wash. Post, Jan. 9, 1994, (Parade) at 5.


Clinton Plan Commits $1.7 Billion to Homeless, San Jose Mercury News, May 18, 1994, at D1 (estimating that as many as 600,000 people are homeless at any given time). See also DeParle, supra note 115, at A1.

See also Cisneros, supra note 28, at B11. The "simple fact that we now call these men, women and children 'the homeless,' labels them as a new, permanent, statistical category." Id. Cisneros also notes that Americans "are resigned to the homeless as fixtures of the urban landscape, and we wish we did not have to see them among us." Id.

Stewart B. McKinney Homeless Assistance Act § 102, 42 U.S.C. § 11302 (1994). The Act defines a "homeless individual" to include:

(1) an individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) an individual who has a primary nighttime residence that is:

(A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) an institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.


See, e.g., Alice Baum & Douglas Byrnes, A Nation in Denial: The Truth About Homelessness 3 (1993) (referring to "emerging research" which will document that as many as 85% of all homeless adults are drug addicts, alcoholics, mentally ill, or manifest some combination of these afflictions).


Id.

Id.

Id.


1993 Status Report, supra note 20 (noting that the remainder of the homeless population consisted of 11% single women and 3% unaccompanied children). In previous years, members of families accounted for about one-third of the homeless people seeking help. Id. The proportion of the homeless population who are families with children varied around the country, with families accounting for 77% of the homeless population in Trenton, New Jersey, and 75% in New York City, but only 16% in Nashville and 14% in New Orleans. Id.


Callahan, supra note 21, at 12.

Bassuk, supra note 97, at 66.

Callahan, supra note 21, at 12, 13.


Id. Describing families with children as "the invisible homeless," HomeBase/Regional Support Center for Homelessness Policy and Programs estimates that the number of homeless parents and children known to authorities is only about one-third of the total number of homeless families. Gina Boubion, Aid Requests for Homeless up 39% in Year, San Jose Mercury News, Nov. 14, 1990, at A1, A26. Among the uncounted are homeless families who are unaware that help is available or who are afraid to seek it due to the incorrect, but prevalent myth that parents will automatically lose their children if the Department of Social Services learns the family is homeless. Id.


U.S. Conf. of Mayors, A Status Report on Hunger and Homelessness in America's
supra

1993 STATUS REPORT, supra note 20.

138 1993 STATUS REPORT, supra note 20.

139 Hunger, Homelessness Increasing, Mayor Says, supra note 136, at A4.

140 1991 STATUS REPORT, supra note 137. Mayor Scheibel noted that 1991 was the ninth consecutive year in which the survey found an increase in requests for emergency shelter. Steven A. Holmes, Homelessness Rises, but Not as Issue, N.Y. TIMES, Dec. 25, 1991, at A9. Similar results were obtained in a survey of the nine San Francisco Bay Area Counties, conducted by Home Base, a San Francisco-based homeless policy center, which revealed a “staggering increase” of 39% in the 11,400 family members applying for AFDC’s Homeless Assistance Program (a one-time emergency housing grant of about $600).


141 1993 STATUS REPORT, supra note 20. In 1993, Portland, Oregon showed the biggest increase in requests for food and shelter from homeless families of 88%, with Los Angeles, California showing a 50% increase. Id.

142 1993 STATUS REPORT, supra note 20.

143 For example, the 1991 STATUS REPORT revealed that, on the average, 17% of food needs and 15% of shelter needs were not being met.

Hunger, Homelessness Increasing, Mayor Says, supra note 136, at A4.

144 1993 STATUS REPORT, supra note 20. In 1993, for example, families made up 75% of all homeless people in New York City, and 38,000 people per month were turned away from emergency food providers due to a lack of food.

Id.

145 Id. Eighty-five percent of the cities surveyed reported having to turn away homeless families because of a lack of resources.

Id. In Santa Clara County, California, officials estimate that on any given night there are about 4000 homeless people in the county, about 60% of whom are families. Families a Growing Portion of the Homeless, Study Says, SAN JOSE MERCURY NEWS, Dec. 22, 1993, at A9. Yet, the beds available in all of the county’s shelters total only one-half that number. Robert A. Rankin, Homelessness Rises as Tolerance Declines, SAN JOSE MERCURY NEWS, Dec. 20, 1990, at A1, A16.

146 1993 STATUS REPORT, supra note 20. See also Families a Growing Portion of the Homeless, Study Says, supra note 145, at A9 (indicating that the percentage of families being denied shelter jumped from 15% in 1991, to 20% in 1992, then to 29% in 1993).

147 1993 STATUS REPORT, supra note 20.


149 McDowell, supra note 148, at A2.

150 Id.

151 Id. (conceding, however, that the number was a guess).

152 Simons, supra note 148, at A4. According to police, of the 2.2 million people who live in Paris, 9000 are homeless and 15,000 live in “great difficulty.” Id. See also Elaine Ganley, “Ragpickers’ Saint” Fights for the Homeless, SAN JOSE MERCURY NEWS, Mar. 1, 1994, at A11.


154 World’s Street Children Turning to Drugs, SAN JOSE MERCURY NEWS, Apr. 26, 1993, at A2. The study was based on research and 550 interviews in ten cities including the following: Rio de Janeiro, Brazil; Alexandria and Cairo, Egypt; Tegucigalpa, Honduras; Montreal and Toronto, Canada; Manila, The Philippines; Bombay, India; Mexico City, Mexico; and Lusaka, Zambia.

Id. See also Suffer the Little Children, TIME, Oct. 8, 1990, at 40 (describing the 1990 World Summit of Children, where former leaders from more than 70 nations discussed ways to improve the plight of the 30 million homeless children who spend their days and nights living and working on the streets of the world’s poorest cities).

155 World’s Street Children Turning to Drugs, supra note 154, at A2 (noting that many of the street children were also addicted to drugs). According to Bruce Harris, Director of Casa Alianza’s Homes for Street Children in Mexico and Central America, there were an estimated 50,000 street children in Mexico City in November 1993. John Ross, Street Children Sniff Solvents to Forget How Hungry They Are, S.F. CHRON., Nov. 24, 1993, at A8, A10. Forty percent of the children were addicted to inhaling solvents that can cause brain damage and liver and kidney failure.

Id. In November 1992, the Guatemalan City Police raided a house where children were reportedly being taught how to commit home robberies, and discovered two 54-gallon industrial drums of the solvent Resistol, apparently being dispensed to the children as a reward for their thievery.

Id.

156 Suffer the Little Children, supra note 154, at 41.

157 Id. It costs only ten cents for one packet of salt, sugar, and potassium, the ingredients that can prevent a child from dying of diarrhea.

Id. Over the next ten years, an extra $2.5 million per year could save the lives of 50 million children. Id. This amount is roughly equal to the

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total amount spent every day by the world’s military establishments. Id.

158 Lori Heise, Suffer the Little Children, SAN JOSE MERCURY NEWS, Apr. 27, 1991, at C10, C12. By day, these children shine shoes, “guard” cars, or beg, and by night, they huddle together to keep warm. Id. When all else fails, they steal from market stalls, snatch mirrors from cars, or sell their bodies for money or a meal. Id.

159 Id. at C12.

160 Jack Kelley, Parents Abandon Kids in Moscow Train Stations, SAN JOSE MERCURY NEWS, May 9, 1993, at A22 (noting that dozens of other children, many only weeks old, are being abandoned by their parents each month in Moscow train stations).

161 Heise, supra note 158, at C12.

162 Suffer the Little Children, supra note 154, at 41.

163 Id.

164 3 Boys Charged in French Killing, SAN JOSE MERCURY NEWS, Nov. 28, 1993, at A27 (noting that the boys were released to the custody of their parents because, in France, children under thirteen cannot be imprisoned, although they can be placed in special schools).


166 Id.

167 Id. According to Carlos Rojas, an analyst on urban violence for a Jesuit think tank, Columbians are “completely desensitized to social cleansing; the level of tolerance for these murders is shocking.” The Andean Commission of Jurists reported 505 social cleansing killings in Colombia in 1992 alone, noting that dozens of additional victims are never registered because their unidentified corpses “disappear” into common graves. Id. Sonia Zambrano, of the Bogota office of the Andean Commission commented, “[m]any people think people like prostitutes, drug users, homosexuals, and street dwellers are dangerous and must be annihilated. The upper classes act violently against these people, and the police participate in these campaigns.” Id. In one notable exception, fifteen officers were dismissed from the police force in the Colombian city of Pereira in 1991 for killing sixty homeless people; however, they were not prosecuted. Id.

168 Id. The death squads are bent on clearing the “streets of pests.” Id.


170 Wirpsa, supra note 165, at A13 (noting that police target youths because they suspect them of participating in gangs or using drugs). See also Vigilantes in Colombia Kill Hundreds of “Disposables,” supra note 169, at A7 (citing a study by Rojas which reveals that almost 2000 people were killed between 1988 and 1993 as a result of social cleansing, including 215 deaths in the first half of 1994). According to the Brazilian Institute of Social and Economic Analysis, more than 450 children were slain in Brazil in 1990. Wirpsa, supra note 165, at A13. In Guatemala City, approximately forty street kids were killed in 1990, as a result of a purge believed to be perpetrated by agents of the National Police. Id.

171 John Leo, Middle Class Loses Patience With the Homeless, S.F. CHRON., Nov. 14, 1993, (This World Magazine), at 3. (quoting Baum & Brynes, A NATION IN DENIAL: THE TRUTH ABOUT HOMELESSNESS (1993)).

172 Hunger, Homelessness Increasing, Mayor Says, supra note 136, at A4.

173 1991 STATUS REPORT, supra note 137. See also James Bock, The Homeless Aren’t Who We Thought, S.F. CHRON., May 13, 1993, at B3 (quoting Baum & Brynes, supra note 171) (stating that Americans have grown “weary, angry and, in some cases, bored with the problem”). See also Anthony DePalma, Ray of Hope for Homeless Penetrates Meager Walls of Miami Shantytown, N.Y. TIMES, July 6, 1991, at Y7 (“Around the country there is a growing impatience with the homeless.”). HUD Secretary Henry Cisneros, the man charged by the Clinton Administration with devising a solution to the homeless problem, concurs: “A backlash is growing. What I believed was an almost universal compassion has today given way to an impatience, a frustration, an anger toward the homeless.” Smolowe, supra note 26, at 28. New York Judge William Erbbaum, who teaches a course about homeless people at York College, comments, “People, in this case, turned their anger on the victim.” Rick Bragg, Homeless Seeing Less Apathy, More Anger, N.Y. TIMES, Feb. 25, 1994, at A1, B2 (describing how frustration with the homeless has turned to apathy and then to anger).


177 Smolowe, supra note 26, at 30.

178 Bragg, supra note 173, at A15.

179 Id.


181 Dave Von Drehle, Urban Panhandling, MIAMI HERALD, June 11, 1990, at A12. In October
1991, New York City Transit Police Chief William Bratton reaffirmed his resolve to aggressively evict anyone found violating subway rules of conduct, such as begging or fare evasion or sleeping, even in subfreezing weather. Seth Faison, Jr., N.Y. Police Ordered to Tighten Policy on Homeless in Subway, S.F. CHRON., Oct. 19, 1991, at A1. Advocates for the homeless opposed forced eviction from the subways, especially in the winter months, arguing that it is an inhumane and insufficient response to a deeper problem. Id.

182 Von Drehle, supra note 181, at A12. Other commentators have noted that the change from "public apathy" to "public anger" is "making the problem harder to solve." Horror of Homelessness, S.F. CHRON., Mar. 1, 1992, at A1. They agree that "the problem is so overwhelming that even good people are starting to feel bad things." Von Drehle, supra note 181, at A12.


184 Id.

185 Id.

186 Making Criminals of the Homeless: Overwhelmed Cities Turn Against Beggars, SAN JOSE MERCURY NEWS, Dec. 14, 1992, at B3. See also Citizens v. Whitley Heights Civic Ass'n, 28 Cal. Rptr. 2d 451, 457 (Cal. Ct. App. 1994) (overturning a city's attempt to erect gates to keep undesirable nonresidents from using city streets and refusing to permit "a return to feudal times with each suburb being a fiefdom to which other citizens of the State are denied their fundamental right of access").


189 Id. (noting that homeless people also report burning incidents in skid rows and "hobo jungles").


191 Id.

192 Berkeley Mayor Loni Hancock explains the response of local governments as follows: "The cities that try to help get overrun and then comes the backlash. There comes a time when people want to step back and insulate themselves." Opinions, Attitudes Hardening Toward the Homeless, supra note 30, at A8.


194 S.F. Panhandlers Head East, SAN JOSE MERCURY NEWS, Dec. 19, 1993, at B3 (noting that homeless advocates claim such laws amount to making homelessness a crime).

195 Sandalow, supra note 194.

196 See infra notes 292 and 301 and accompanying text.

197 See supra notes 101-112 and accompanying text.

198 See infra notes 544-552 and accompanying text.

199 See infra notes 553-598 and accompanying text.

200 See infra notes 204-210 and accompanying text.

201 See supra notes 68-77 and accompanying text.

202 See supra note 194.

203 Some municipalities refer to their programs for providing aid to single adults by a different name, such as New York's Home Relief. The only federal government benefit that is widely available to the homeless is Food Stamps. Pottinger v. City of Miami, 810 F. Supp. 1151, 1564 (S.D. Fla. 1992). Supplemental Security Income (SSI) is available only to individuals sixty-five years of age or older, those blind or disabled, and those without other resources. Id. Social Security Disability Insurance is available only to workers who have paid into the Social Security Fund for five of the ten years prior to the onset of their disability. Id. AFDC is available only to low-income families with physical custody of children under the age of eighteen. Id.

204 DeParle, supra note 115, at A7.

205 Roisman, supra note 95, at 9, 10 (citing Lewin/ICF & James Bell Assocs., State and Local General Assistance Programs: Issues and Changes (November 1990) (Prepared for the Office of the Assistant Secretary for Planning and Evaluation, U.S. Dept. of Health & Human Services, Contract No. HHS-100-86-0051)).

206 DeParle, supra note 115, at A7.

207 Id.

208 Id.

209 Tobe v. City of Santa Ana, 27 Cal. Rptr. 2d 386, 390 (Cal. Ct. App. 1994). Editor's Note: As this Issue went to press, the California Supreme Court reversed the decision of the appellate court in Tobe. 829 P.2d 1145 (Cal. 1995).

210 Michael Dorgan, Jordan Pushes to Head Off Welfare Cheats, SAN JOSE MERCURY NEWS, Oct. 23, 1993, at A1, A22. As of January 1994, individuals on General Assistance (GA) in San Francisco were eligible for larger monthly grants than were available almost anywhere else in California. Joyce v. City & County of San Francisco, 846 F. Supp. 843, 848 (N.D. Cal. 1994) (noting that, with food stamps, the grants totalled $454 per month and that approxi-
nately 15,000 San Franciscans were receiving GA, of whom 3000 claimed to be homeless.


212 Williams, supra note 211, at A2.

213 DeParle, supra note 212, at A16 (noting that the Salvation Army puts the figure at about 30%).

214 Williams, supra note 211, at A2.

215 Id.

216 DeParle, supra note 212, at A16.

217 Opinions, Attitudes Hardening Toward the Homeless, supra note 30, at A8.

218 Id.

219 Thomas Morgan, Bulldozing Their Shanties, N.Y. EVICTS SQUATTERS, N.Y. TIMES, Oct. 16, 1991, at B12. At the same time, food and social service programs that served homeless people were ordered to move, and in November of 1990, a group giving breakfast to the homeless on city streets was told that it would need a special permit to continue to operate the program. Id.

219 Id.

220 Id.

221 Celia W. Dugger, Cities Differ Sharply on How to Help the Homeless, N.Y. TIMES, Mar. 1, 1992, at Y18. Philadelphia now requires homeless people to save 60% of their income, whether from work or public assistance, and pay another 15% of it for shelter. Id.

223 Celia W. Dugger, Dinkins Panel Urges Rent Subsidy in Overhaul of Care for Homeless, N.Y. TIMES, Jan. 31, 1992, at B16. A variety of government policies are more subtle but just as effective in opposing Mayor David Dinkins' efforts. For example, zoning rules allow only low-density housing, land-use restrictions permit only a handful of upscale estate homes to be built on hillsides, city-wide building regulations disallow apartment buildings, and coastal laws permit only a lucky affluent few to build oceanfront houses. Bradley Inman, Free Speech Debate Districts from NIMBY Antihousing Rhetoric, S.F. EXAMINER, Sept. 18, 1994, at E1, E8.

224 Bassuk, supra note 97, at 72.

225 Celia W. Dugger, Cities Differ Sharply on How to Help the Homeless, N.Y. TIMES, Mar. 1, 1992, at Y18. Philadelphia now requires homeless people to save 60% of their income, whether from work or public assistance, and pay another 15% of it for shelter. Id.

226 Id. at 68 (citing Michael A. Stegman of the University of North Carolina at Chapel Hill).

227 Berger, supra note 102, at 8.


229 For example, New York City, which had over 150,000 cheap single rooms in the mid-1970s, had only 50,000 such rooms in June 1991. Rougher & Tougher, ECONOMIST, June 29, 1991, at 21, 22. See also Robert M. Hayes, Homelessness and the Legal Profession, 35 LOYOLA L. REV. 1, 3 (1989) ("[T]here comes a point when neighborhoods ... become undermined and the people ... ultimately wind up having just nowhere to go.").

230 Id.


232 1991 STATUS REPORT, supra note 137, at 2. Other causes for the growth of homelessness include substance abuse and mental illness, inadequate welfare benefits and social services, and increased unemployment or lack of income. Id. at 33.

233 The two groups are the Center of Budget and Policy Priorities, and the Low-Income Information Service.

234 Schneider, supra note 228, at A3.

235 Id.

236 Id.

237 Id.

238 Housing Costs Are Staggering for Poor in U.S., Report Says, supra note 19, at A8 (reporting Census Bureau figures from 1986 to 1989 for forty-four of the nation's fifty largest metropolitan areas). This shortage was also recognized in 1988 in Lee, when the District Court noted that there were "many more homeless persons in the United States than units of available housing" and commented that the "absence of affordable housing is reflected by the long waiting lists for subsidized housing programs: 800,000 households nationwide." Lee, 698 F. Supp. at 335 (denying an injunction to homeless plaintiffs seeking to enjoin HUD from selling single family homes other than for the benefit of the homeless). See also 42 U.S.C. § 11301 (1994) (stating that the purpose of the Act is "to meet the critically urgent needs of the homeless" and noting that "the Nation faces an immediate and unprecedented crisis due to lack of shelter for a growing number of individuals and families").

239 Tobe, 27 Cal. Rptr. 2d 386, 390 (Cal. Ct. App. 1994), rev'd, 892 P.2d 1145 (Cal. 1995) (quoting Dr. Paul Koegel, co-director of the Rand Study); see Editor's Note, supra note 209. In addition, the Rand Study revealed that, once someone loses her home, "situational barriers" make it "more difficult to get housing." Id. The Study found that, without shelter or a place to store belongings, a homeless person has a "complex existence which prevents him from securing housing, retaining that housing, and taking advantage of what services might be available in the community." Id.

240 San Francisco City Hall experienced a flood of calls from residents who complained about the encampment of homeless people in the City's Civic Center Park. Rankin, supra note 145, at A16. Deputy Mayor Myra Snyder described the resident's reactions by stating,
“These are such visible problems, and when people experience it daily, their compassion seems to get a bit exhausted.”

231 See supra note 210 and accompanying text.

232 SANTA BARBARA, CAL., MUN. CODE § 15.16.085. See also People v. Mann, 265 Cal. Rptr. 616 (Cal. Ct. App. 1989); N.Y. PENAL CODE § 240.35 (West 1994) (prohibiting, as part of an anti-loitering regulation, anyone from “sleeping” in “any transportation facility” who is “unable to give a satisfactory explanation of his presence”); SAN FRANCISCO, CAL., PARK CODE § 3.13 (providing that “no person shall remain in any park for the purpose of sleeping between the hours of 10:00 p.m. and 6:00 a.m.”).


234 A similar decision was reached on October 14, 1993, when the California Court of Appeal upheld a West Hollywood ordinance banning homeless people from living in city parks. People v. Scott, 26 Cal. Rptr. 2d 179 (Cal. Ct. App. 1993).

235 Davenport, 222 Cal. Rptr. at 739.

236 Opinions, Attitudes Hardening Towards the Homeless, supra note 30, at 8A.


238 Id. at A1 (noting that Santa Monica has a reputation for being the Berkeley of Southern California because of its liberal policies, including the spending of about $1.1 million each year to help finance numerous social service agencies that operate ten feeding centers, seven overnight centers, three day shelters, five mental health centers, and two missions).

239 Rick Clogher & John Roszkak, Why They’re Still Homeless, S.F. FOCUS, Nov. 1991, at 72, 75 (citing CAL. PEN. CODE § 647(i)).

240 960 F.2d 893 (9th Cir. 1992).

241 Id.


243 Id.


245 Sandalow, supra note 194, at D3. Similar sweeps have also been conducted in downtown areas in Atlanta, Georgia, at O’Hare Airport and Giant Park in Chicago, Illinois, and prior to the Orange Bowl Game in Miami, Florida. NATIONAL LAW CTR. ON HOMELESSNESS & POVERTY, supra note 63, at ii, vi (Table 1).


249 Morgan, supra note 219, at B12.


251 Id. at A1 (noting that several corporations donated party-size tents for use by homeless earthquake victims).

252 Compare Randy Diamond, Cities Turning Heartless on the Homeless, S.F. CHRON., Dec. 10, 1990, at A10 (estimating that nationwide only 1% of the homeless “panhandle” with PETER H. ROSSI, DOWN AND OUT IN AMERICA: THE ORIGINS OF HOMELESSNESS 108-09 (1989) (citing the Chicago Homeless Study, indicating that 20.6% of Chicago’s homeless reported receiving cash, mainly in the form of handouts from “public begging,” while an additional 9% reported receiving “gifts,” which included handouts from begging). The discrepancies in statistics regarding the number of homeless people who beg reflect the difficult task faced by researchers who find that the transient nature of the homeless population makes accurate information virtually impossible to acquire. Obviously, inaccurate statistical information also makes it very difficult for governmental policymakers to establish effective programs for the homeless.

There are also significant differences in estimates of the amount of money beggars collect as well as whether or not panhandling is their only means of support. According to a 1992 survey in Berkeley, California, 32% of those questioned reported that begging was their sole source of income. Philip Hager, Weighing the Costs of Accosting, CAL. LAW., Feb. 1994, at 35, 36 (reporting that Berkeley beggars received from $2 to $60, with a median of $16, for an eight-hour day of panhandling). See generally Janet Wells, Nobody Wants to Be Stepped On, S.F. CHRON., Mar. 10, 1994, at A1, A14 (reporting that some panhandlers in Berkeley claim they earn up to $100 per day). In Denver, Colorado, a homeless veteran improved his daily income from begging from $20 to $30 when he changed his sign from “Will work for food” to “Why lie. I want a beer.” Ann Carnahan, Homeless Vet Advertises He’ll Work for Beer, SAN JOSE MERCURY NEWS, Jan. 1, 1994, at A9 (noting that the veteran does not want a real job because he might take employment away “from a guy who needs it to pay for food for his kids”).
(West 1994) (prohibiting begging “unless specifically authorized by law”); La. Rev. Stat. Ann. § 14:107 (West 1994) (providing that the prohibition against begging or soliciting alms “shall not apply to persons soliciting alms for bona fide religious, charitable, or eleemosynary organizations with the authorization thereof”); N.Y. Penal Law § 240.35(6) (West 1994) (prohibiting loitering or remaining in any transportation facility for the purpose of soliciting unless “specifically authorized to do so”); N.Y. Comp. Codes R. & Regs. tit. 21, § 1050.6(c) (1983) (permitting solicitation in areas of the transit system “generally open to the public” for charitable, religious, or political causes and such expressive activities as “public speaking; distribution of written noncommercial materials; [and] artistic performances, including the acceptance of donations”). See also Nancy Millich [now Nancy Wright], Compassion, Fatigue, and the First Amendment: Are the Homeless Constitutional Castaways, 27 U.C. Davis L. Rev. 255, 273 (1994) (asserting, inter alia, that anti-begging ordinances that permit solicitation by individuals for charitable groups violate the First Amendment because these regulations prohibit speech on the basis of both the speech’s content and the speaker’s viewpoint).

264 Hager, supra note 262, at 35. Ironically, a homeless person who chooses to beg or panhandle, if arrested and incarcerated for the theft, would at least be guaranteed shelter and three meals a day. Indeed, Nancy Nagler, who aids homeless people in Minneapolis commented: “Jailing the homeless is easier than solving the problems that have made people homeless. It’s easier than building affordable housing or creating jobs that pay decent wages.” Diamond, supra note 262, at A10.

265 Hager, supra note 262, at 35-36 (quoting Kent S. Scheidegger, Legal Director of the Criminal Legal Foundation, who asserts that “many panhandling incidents have escalated to the level of borderline robbery”).


In January 1994, the New York City Transit Authority announced a crackdown on subway panhandling by arresting panhandlers and pushing for them to receive the maximum penalty of ten days in jail. Nicholas Dawidoff, To Give or Not to Give, N.Y. Times, Apr. 24, 1994, Magazine Section at 35, 36. In the first four months of the campaign, 126 panhandlers were arrested, compared with no arrests in all of 1993.

268 See Mass. Gen. L. ch. 272 § 63 (1992) (“Whoever . . . rovers about from place to place begging . . . shall be deemed a tramp. An act of begging or soliciting alms, whether of money, food, lodging or clothing . . . shall be prima facie evidence that such person is a tramp.”); Miss. Code Ann. § 97-35-29 (1991) (“[A]ny male persons over 16 years of age, and not blind, who shall go about from place to place begging and asking subsistence by charity . . . shall be held to be tramps.”). Mississippi’s statute may violate the Equal Protection Clause because it applies only to males. Id. Apparently, the Mississippi legislature never heard Frank Sinatra sing “The Lady Is A Tramp.”

269 See Haw. Rev. Stat. § 711-1101(e) (1985) (“A person commits the offense of disorderly conduct if, with intent to cause physical inconvenience or alarm by a member . . . of the public, or recklessly creating a risk thereof, he . . . impedes or obstructs, for the purpose of begging or soliciting alms, any person in any public place . . . .”); Mich. Comp. Laws Ann. § 750.167(h) (West 1992) (defining as “disorderly” a “person found begging in a public place.”); N.C. Gen. Stat. § 14-444(a)(5) (1991) (finding a person to be “disruptive in public” who is “begging for money or other property”).

other place for the purpose of begging or receiving alms, or who shall have no permanent place of abode ... shall be considered a dependent minor"); NEV. REV. STAT. § 201.090(1) (1986) (defining "neglected child," "delinquent child," or "child in need of supervision" as "any person less than 18 years of age ... [w]ho is found begging, receiving or gathering alms, or who is found in any street, road or public place for the purpose of so doing").

27 See CAL. LAB. CODE § 1308 (West 1992) (finding "any person" guilty of a misdemeanor who "having the care, custody, or control of any minor under the age of 16 years ... causes, procures, or encourages the minor to engage in ... begging"); MISS. CODE ANN. § 294.043 (1992) ("No child under sixteen years of age shall be employed or permitted to work in any street occupation connected with ... begging."); NEV. REV. STAT. § 609.210(1) (Michie 1986-91) (finding guilty of a misdemeanor "[e]very person who employs ... exhibits ... any minor in begging, receiving alms, or in any mendicant occupation"); N.Y. ARTS & CULT. AFF. LAW § 35.07(l)(c) (McKinney 1992) (finding it "unlawful for any person to employ, use, or exhibit any child under sixteen years of age in begging or receiving or soliciting alms in any manner or under any pretense, or in any mendicant occupation").

27 See, e.g., N.H. REV. STAT. ANN. § 47-17 (Supp. 1990) (noting that the city council has the power to enact laws to retain and punish street beggars); N.C. GEN. STAT. § 160A-179 (1991) (stating that the "city may by ordinance prohibit or regulate begging").


27 W. VA. CODE § 8-21-10 (West 1990) (proscribing begging in public parks).

27 See also Hershkoff & Cohen, supra note 175, at 896 n.5 (citing Young v. New York City Transit Auth., 729 F. Supp. 341, 352, 354 n.23 (S.D.N.Y. 1990), rev'd & vacated, 903 F.2d 146 (2d Cir. 1990), cert. denied, 498 U.S. 984 (1990)).

28 See Diamond, supra note 262, at A1 (indicating that twelve major cities passed measures to curb begging during the period from 1988 to 1990); Charles F. Knapp, Statutory Restriction of Panhandling in Light of Young v. New York City Transit: Are States Begging Out of First Amendment Prescriptions?, 76 IOWA L. REV. 405, 408 n.39 (specifying that as of 1991, the following major cities had passed such regulations: Atlanta, Georgia; Chicago, Illinois; Miami, Florida; and Phoenix, Arizona).


278 Opinions, Attitudes Hardening Toward the Homeless, supra note 30, at A8.

279 DePalma, supra note 170, at Y7 (quoting Christine M. Hildner, Executive Director of Miami's Coalition of the Homeless, who described Miami's attitude toward the homeless as having "jumped right from apathy to anger").

280 Smolowe, supra note 26, at 29.

281 Ann Bancroft, South Lake Tahoe Bans Begging From Motorists Law Passes After Complaints by Motorists, S.F. CHRON., Feb. 3, 1994, at A1, A13 (noting that if a sign-holder persists she can be charged with an infraction, with a fine of $50, or with a misdemeanor, and faces a fine up to $1000 and a jail term of up to six months).

282 See also DALLAS, TEX., CITY CODE § 31-35(b-c) (1991) (prohibiting "solicitation by coercion" including "persist[ing] in a solicitation after the person has given a negative response" and "engag[ing] in conduct that would reasonably be construed as intended to compel or force a solicited person to accede to demands"); SAN FRANCISCO, CAL., MUN. CODE § 120-1 (1992) (making it unlawful for any person on the streets, sidewalks, or other places open to the public to harass or hound another person for the purpose of inducing that person to give money or other thing of value ... an individual ... harasses or hounds another ... when the solicitor closely follows the solicitee and requests money or other thing of value, after the solicitee has expressly or implicitly made it known to the solicitor that the solicitee does not want to give money or other thing of value to the solicitor);

SEATTLE, WASH., MUN. CODE § 12A-12-015 (1992) (prohibiting pedestrian interference by aggressively begging "with intent to intimidate another person into giving money or goods"). See also Knapp, supra note 276, at 408 n.15 (noting that Minneapolis, Minnesota and Tulsa, Oklahoma have similar statutes regulating begging); Smolowe, supra note 26, at 29 (noting that legislators in Madison, Wisconsin outlawed "aggressive panhandling").


284 DePalma, supra note 173, at Y7.

285 Rougher & Tougher, supra note 229, at 21.

The concern of liberal communities that they might become a magnet for the homeless and the indigent is not new. In Shapiro v. Thompson, the Court pointed out that the preamble of the English Law of Settlement and Removal of 1662, adopted by the American colonies, "expressly recited the concern . . . that a large number of the poor were moving to parishes where more liberal relief policies were in effect." 394 U.S. 618, 628 (1974).

The theory that compassion fatigue may be effecting the judiciary also seems to be validated by the chronology of a federal court challenge of the New York City Transit Authority's anti-begging ordinance brought by the Legal Action Center for the Homeless. At the United States District Court level, Judge Leonard B. Sand found that begging was protected by the First Amendment. Young v. New York City Transit Authority, 729 F. Supp. 341 (S.D.N.Y. 1990), rev'd & vacated, 903 F.2d 146 (2d Cir. 1990), cert. denied, 498 U.S. 984 (1990). Shortly after Judge Sand issued his opinion, the public and the press joined in condemning the decision: "Columnists and editorial[ists] jumped on the bandwagon, almost holding the judge responsible for the mass transit hell under the city streets." Court As Scapegoat, NAT'L L. J. 14 (Feb. 1990). The New York Times Daily News printed a cartoon of a subway platform overrun by beggars with the caption: "It's really amazing how many federal judges you see down here." Priscilla Painton, Shrugging Off the Homeless, TIME, Apr. 16, 1990, at 14, 16.

SANTA CRUZ, CAL., MUN. ORDINANCE No. 94-10 (1994).

317 Paul Rogers, Limits on Panhandling Proposed, SAN JOSE MERCURY NEWS, Feb. 10, 1994, at B1 [hereinafter Rogers, Limits on Panhandling Proposal] (noting that the Mayor of Santa Cruz is a peace activist, one city councilman is a socialist and millions of public funds have gone toward homeless causes since 1981). See also Paul Rogers, Santa Cruz Approves California’s Strictest Rules on Panhandling, SAN JOSE MERCURY NEWS, Mar. 24, 1994, at B1, B4 [hereinafter Rogers, Santa Cruz Approves] (noting that Santa Cruz has 71 programs for homeless people, among the most provided by any city its size in the United States); Paul Rogers, Santa Cruz Anti-Panhandling Law in Effect, SAN JOSE MERCURY NEWS, Apr. 22, 1994, at B1 [hereinafter Rogers, Santa Cruz Anti-Panhandling Law in Effect] (describing downtown Santa Cruz as being “renowned for its Guatemalan clothing boutiques, exotic coffeehouses, and even stores that sell vegetarian dog food”).

318 Gaura, supra note 277, at A21 (explaining that applicants would be fingerprinted, photographed, and required to carry their permits while begging).


320 Rogers, Limits on Panhandling Proposed, supra note 317, at B5.

321 Id.

322 Rogers, Santa Cruz Anti-Panhandling Law in Effect, supra note 317, at B1.

323 Rogers, Limits on Panhandling Proposed, supra note 317, at B5.

324 Rogers, Santa Cruz Anti-Panhandling Law in Effect, supra note 317, at B1.


328 Id. (noting that the arrests were made pursuant to various City of Miami ordinances and Florida statutes).

329 Id.

330 Pottinger, 810 F. Supp. at 1584.


332 See Pottinger, 810 F. Supp. at 1551.

333 The Due Process Clause of the Fifth Amendment to the United States Constitution provides, in pertinent part, as follows: “No person shall be . . . deprived of life, liberty, or property, without due process of law . . . .” U.S. CONST. amend. V.

334 The Fourth Amendment provides as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

335 Grayned v. City of Rockford, 408 U.S. 104, 108 (1972) (invalidating the portion of an ordinance that prohibited picketing but upholding the portion that prohibited disruptive noise near a school, noting that “vague laws may trap the innocent by not providing fair warning”). See also Coates v. City of Cincinnati, 402 U.S. 611, 614 (1971). In striking down a criminal statute prohibiting conduct which was “annoying” to passerbys, the Court concluded that “conduct that annoys some people does not annoy others,” thus the defendant would have to “guess at what standard of conduct is prohibited.” Id. Ricks v. District of Columbia, 414 F.2d 1097, 1100 (D.C. Cir. 1968) (holding vagrancy law unconstitutional where it did not provide a “reasonable degree of guidance to citizens, the police and the courts as to just what constitutes the offenses with which appellant is charged”).

336 Grayned, 408 U.S. at 108. See also Papachristou v. City of Jacksonville, 405 U.S. 156, 170 (1972) (holding unconstitutional an imprecise antivagrancy law and noting that laws which lack standards to control the exercise of discretion are dangerous since they “furnish a convenient tool for ‘harsh and discriminatory enforcement by local
prosecuting officials, against particular groups deemed to merit their displeasure “).  


338 Id.  

339 See, e.g., Sawyer v. Sandstrom, 615 F.2d 311, 318 (5th Cir. 1980) (striking down a Florida loitering statute as unconstitutionally overbroad because it punished essentially innocent association in violation of first amendment associational rights); Ricks, 414 F.2d at 1108 (stating that prosecutions for vagrancy involve “criminality with no misbehavior at all”); Fenster v. Leary, 229 N.E.2d 426, 428, (N.Y. 1967) (finding vagrancy law violated due process and constituted overreaching of police power because it criminalized conduct that did not impinge on the rights of others and had only a tenuous connection with preventing crime and preserving public order); City of Seattle v. Drew, 425 P.2d 522, 525 (Wash. 1967) (holding that ordinance forbidding wandering at night violated due process since it made no distinction “between conduct calculated to harm and that which is essentially innocent”).  

Anti-vagrancy and anti-loitering statutes restricting and punishing homeless and indigent people have been in existence since at least the 1600s. See Harry Simon, Towns Without Pity, 66 Tul. L. Rev. 631, 634 (1992) (stating that between the seventh century and the beginning of the twentieth century, more than 200 statutes punishing vagrancy existed in England and that, as of 1960, vagrancy was a crime in every state, with the result that 88,000 vagrancy arrests were made nationally in 1958). As recently as 40 years ago, the New York Supreme Court in People v. Bell, 125 N.Y.S.2d 117, 119 (Sup. Ct.), aff’d, 115 N.Y.2d 821 (1953), reversed defendants convictions under the state’s anti-loitering statute. The court held that the defendants were not among “those sordid individuals who infest [public places] such as the dirty, dishevelled, besotted character[s] whose state is but a step short from intoxication or vagrancy, the secretive homosexual or degenerate” from whom the legislature sought to protect the decent citizens of the community.  

It was not until the Papachristou decision in 1972 that the U. S. Supreme Court struck down the “archaic classifications” of anti-vagrancy laws as impermissibly vague, 405 U.S. 156, 161-62, 170 (1972). However, anti-loitering laws remained as vehicles for harassing and punishing indigents for over twenty years until the Court, in Kolender, found that those statutes also violated due process since they vested too much discretion in police to determine when a suspect is free to leave. 461 U.S. at 358.  


341 Id. at 806. Similarly, the California Superior Court in People v. Mannon, upheld the convictions of defendants for sleeping without tents in violation of a Santa Barbara ordinance prohibiting camping in non-designated public areas, finding that there was “nothing ambiguous about the meaning of the word ‘camp’ ” in the regulation, 265 Cal. Rptr. 616, 618 (Cal. Ct. App. 1989). However, in Tobe, a different district of the California Court of Appeal, observed that the definition of camping in Mannon, as meaning “to live temporarily . . . outdoors,” was unconstitutionally vague because “[m]ost of us do that every day because all our activities are part of living,” 27 Cal. Rptr. 2d 386, 394-95 (Cal. Ct. App. 1994), rev’d, 892 P.2d 1145 (Cal. 1995) (disapproving of Mannon to the extent it was inconsistent with the court’s decision in Tobe); see Editor’s Note, supra note 209.  


343 Id.  

344 City of Portland, 651 P.2d at 1386. Although the court’s decision was based on the Oregon State Constitution, the court specifically noted that it would have reached the same result under the Federal Constitution. Id. at 1385 n.2.  

345 834 F.2d 937, 940 (11th Cir. 1987).  

346 Id. at 938-40. See also Whitting v. Town of Westerly, 942 F.2d 18, 22 (1st Cir. 1991) (finding ordinances prohibiting sleeping out of doors, either in the open air or in one’s motor vehicle were “sufficiently clear to give notice to the violator and to protect against arbitrary enforcement . . . particularly . . . in light of the limiting construction offered by the Town—that the word ‘sleep’ is construed narrowly to mean ‘lodge’ “).  

347 27 Cal. Rptr. 2d 386, 393 (Cal. Ct. App. 1994), rev’d, 892 P.2d 1145 (Cal. 1995); see Editor’s Note, supra note 209.  

348 The ordinance defined “camp facilities” as “including but are not limited to, tents, huts, or portable shelters” and “camp paraphernalia” as “including, but are not limited to, tarpaulins, cots, beds, sleeping bags, hammocks or non-city designated cooking facilities and similar equipment.” Id. at 399 (citing SANTA ANA, CAL., MUN. CODE, ch. 10, art. VIII, § 10-401(b), (c)).  

349 Tobe, 27 Cal. Rptr. 2d at 393, rev’d, 892 P.2d 1145 (Cal. 1995). See Editor’s Note, supra note 209.  

350 Id. at 394 (citing SANTA ANA CAL., MUN. CODE, ch. 10, art. VIII, § 10-401(e)).  

351 Tobe, 27 Cal. Rptr. 2d at 394, rev’d, 892 P.2d 1145 (Cal. 1995). See Editor’s Note, supra note 209.  

352 See Pollard v. State, 687 S.W.2d 373, 374 (Tex. Ct. App. 1985) (dismissing a complaint against a homeless man who was sleeping in a public area, holding that a Dallas City ordinance prohibiting sleeping and dozing in public was “fundamentally defective” since it did not mandate a “culpable
mental state" as required by the Texas Constitution. See also City of Pompano Beach v. Capalbo, 455 So. 2d 468, 470 (Fla. Dist. Ct. App. 1984), review denied, 461 So. 2d 113 (Fla. 1984), cert. denied, 474 U.S. 824 (1985) (noting that a "penal statute that brings within its sweep conduct that cannot conceivably be criminal in purpose or effect cannot stand").

353 City of Pompano Beach, 455 So. 2d at 469 (noting that the "wide range of persons" who might violate Florida's sleep-in-the-vehicle statute included "the tired child asleep in his car-seat while a parent drives or while the car is parked, to the alternate long-distance driver asleep in the bunk of a moving or parked tractor-trailer, ... to the latterday Okie who has made his jalopy his home").

354 Id. at 470.


356 Id.

357 Id.

358 455 So. 2d at 470.

359 Id. However, in Whiting v. Town of Westerly, 942 F.2d 18, 22 (1st Cir. 1991), the First Circuit, upheld a similarly worded Rhode Island statute that banned sleeping in a motor vehicle, noting that there was no evidence that the ordinance had ever been enforced against a person found napping in his or her car. Id. See also People v. Scott, 26 Cal. Rptr. 2d 179, 182 (Cal. App. Dep't Super. Ct. 1993) (upholding a Beverly Hills, California anti-camping ordinance, finding that although defendants could "enumerate some instances in which innocent conduct may seem criminal, the ordinance is sufficiently specific to prohibit the police from criminalizing what the average person would consider 'ordinary recreational uses' of the park").


361 394 U.S. at 628 n.7. The U.S. Supreme Court first recognized a right to travel throughout the United States almost 130 years ago in Crandall v. Nevada, 73 U.S. (6 Wall.) 35, 48-49 (1867), when the Court invalidated a one dollar tax imposed on every person leaving Nevada. Finding that the tax would "produce nothing but discord and mutual irritation," the Court pointed out that "[w]e are all citizens of the United States, and as members of the same community must have the right to pass and repass through every part of it without interruption, as freely as in our own States." Id.

362 Shapiro, 394 U.S. at 628 n.7.

363 Id.


366 Id. at 174.

367 Id. at 181.

368 Id. at 160.

369 Id. at 177 (citing City of New York v. Miln, 11 Pet. 102, 142 (1837)).

370 Edwards, 314 U.S. at 185 (Jackson, J., concurring). The Privileges and Immunities Clause of the Fourteenth Amendment provides as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ... ." U.S. CONST. amend. XIV.


372 Edwards, 314 U.S. at 181 (Douglas, J., concurring) (noting that the legislation permits those "stigmatized" as indigents "to be relegated to an inferior class of citizenship").

373 Shapiro, 394 U.S. at 629, 632.

374 Id. at 631 (brackets in original) (citing United States v. Jackson, 390 U.S. 570, 581 (1968)).

375 Id. at 629. See also Dunn v. Blumstein, 405 U.S. 330 (1972) (finding that a durational residency requirement for voter registration burdened the right to travel which includes the right to live or stay where one desires); Shapiro, 394 U.S. at 642 (Stewart, J., concurring) (quoting Truax v. Raich, 239 U.S. 33, 39 (1915)) (noting that the "constitutional right" to travel, "of course, includes the right of 'entering and abiding in any State in the Union'").

376 See Aptheker v. Secretary of State, 378 U.S. 500, 517, 520 (1964) (Douglas, J., concurring) (noting that "[f]reedom of movement is kin to the right of assembly and to the right of association").

377 Shapiro, 394 U.S. at 630-31 (quoting United States v. Guest, 383 U.S. 745, 757-58 (1966)) ("The constitutional right to travel from one State to another... occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized."). See also Maricopa Memorial Hosp. v. Maricopa County, 415 U.S. 250, 254 (1974) ("The right of interstate travel has repeatedly been recognized as a basic constitutional freedom."); Kent v. Dulles, 357 U.S. 116, 126 (1958) (stating that the right to travel is "as close to the heart of the individual as the choice of what he eats, or wears, or reads"); United States v. Wheeler, 254
U.S. 281, 293 (1920) (citations omitted) (describing the right to travel as a "fundamental right, inherent in citizens of all free governments," possessed in "all states, from the beginning down to the Articles of Confederation"); Williams v. Fears, 179 U.S. 270, 274 (1900) (stating that the "right to remove from one place to another according to inclination, is an attribute of personal liberty, and is a right secured by the Fourteenth Amendment and by other provisions of the Constitution").

Moreover, in Kolender v. Larson, 461 U.S. 352, 358 (1983), the Court held that a California loitering statute that allowed the arrest of anyone who did not have identification "implicated consideration of the constitutional right to freedom of movement." See also Papachristou, 405 U.S. at 164 (invalidating a vagrancy ordinance and noting that "wandering and strolling" are "historically part of the amenities of life as we have known them"). Numerous lower courts have also invalidated vagrancy and loitering statutes because they infringe on the right to travel or the right to freedom of movement. See, e.g., Decker v. Fillis, 306 F. Supp. 613, 617 (D. Utah 1969) (finding that enforcement of a vagrancy ordinance would "certainly chill the liberty of lawful movement"); Baker v. Bindner, 274 F. Supp. 658, 662 (W.D. Ky. 1967) (invalidating vagrancy statute on grounds of vagueness and overbreadth, noting that "movement is essential to freedom" and that livelihood cannot be the measure of the rights of citizenship); Hayes v. Municipal Ct. of Oklahoma City, 487 P.2d 974, 979 (Okla. Crim. App. 1971) (finding statute prohibiting nighttime wandering over-breadth because it infringed on constitutional right to freedom of movement); City of Portland v. James, 444 P.2d 554, 557-58 (Or. 1968) (invalidating on vagueness grounds an ordinance forbidding wandering at night). See also Waters v. Barry, 711 F. Supp. 1125, 1134 (D.D.C. 1989) (invalidating a juvenile curfew law as a violation of the right to travel); Johnson v. Opelousas, 638 F.2d 1063, 1072 (5th Cir. 1981) (finding that a juvenile curfew law violates the right to travel); Kirkwood v. Loeb, 323 F. Supp. 611, 615 (W.D. Tenn. 1971) (noting that the right to wander the streets is "broader than the right to be upon the streets to disseminate information and peaceably assemble to redress grievances").

378 U.S. CONST. amend. XIV.

379 Shapiro, 394 U.S. at 634. See also Attorney General v. Soto-Lopez, 476 U.S. 898, 902, 911 (1986) (plurality) (holding New York's restriction of its civil service preference to veterans who entered into the armed forces while residing in New York violated the constitutionally protected right to travel); Zobel v. Williams, 457 U.S. 55, 67 (noting that the right to travel receives "its most forceful expression in the context of equal protection analysis"); Dunn v. Blumstein, 405 U.S. 330, 352 (1972) (striking down durational residence requirement for voting, and holding that "[d]urational residence laws penalize those persons who have traveled from one place to another. . . . Such laws divide residents into two classes of people," which is impermissible under the Equal Protection Clause).

In Dandridge v. Williams, 397 U.S. 471 (1970), the Court applied a "rational basis" test in upholding a state regulation placing an absolute limit on the amount of welfare assistance to be paid to a dependent family regardless of size or actual need. Because a compelling state interest test is required when a fundamental right is involved, the Dandridge case is inapplicable if the regulation at issue impinges on the right to travel. This distinction was noted by the Court in Graham v. Richardson, 403 U.S. 365, 376 (1970), when the Court observed that the appellants' reliance on Dandridge was "misplaced, since the classification involved in that case [did not impinge] upon a fundamental constitutional right."

380 See Maricopa Memorial Hosp., 415 U.S. at 255 (stating that any "constitutional distinction between interstate and intrastate travel" is "a question we do not now consider").

381 See, e.g., Williams v. Fears, 179 U.S. at 274 (describing the "right to remove from one place to another" as including the right "of free transit from or through the territory of any State"); Edwards, 314 U.S. at 160 (holding that there can be no limits on a person's freedom to move interstate, even if he is indigent or undesirable); Wheeler 254 U.S. at 293 (describing the scope of privileges and immunities guaranteed to all citizens of each state, including the right "peacefully to dwell within the limits of their respective States . . . and to have free ingress thereto and egress therefrom").

382 Shapiro, 394 U.S. at 629. The Court noted that this proposition was stated "early" by Chief Justice Tandy in the Passenger Cases: "We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States." Shapiro, 394 U.S. at 629 (quoting Passenger Cases, 7 How. 283, 492 (1849)).

...city and the state" and that a homeless person who is forced to sleep in public must keep moving within the city or leave it altogether to avoid being arrested.


384 Id. at 390 n.3 (quoting Art. VII, §§ 10-402, 403). See Editor's Note supra note 209.

385 Id. at 392. See Editor's Note, supra note 209.

Legislation such as Santa Ana's anti-camping ordinance and San Francisco's Matrix, which prohibit sleeping on public land throughout the respective cities, effectively banishes homeless people to adjacent communities. See Simon, supra note 325, at 649 (arguing that the enforcement of laws that prohibit sleeping on public and private land "may constitute effective banishment, abridging the rights of the homeless to freedom of movement" and "punishing the homeless for their very existence"). The U. S. Supreme Court condemned banishment as "a fate universally decried by civilized people." Trop v. Dulles, 356 U.S. 86, 102 (1958). Lower courts have found that banishment violates the right to travel. See, e.g., Pennsylvania v. Porter, 480 F. Supp. 686, 698 (W.D. Pa. 1979), aff'd in part and rev'd in part, 659 F.2d 306 (3d Cir. 1981), cert. denied, 456 U.S. 1121 (1982); In re Marriage of Fingert, 271 Cal. Rptr. 389, 392 (Cal. Ct. App. 1990) (overturning a court order compelling a parent to relocate or lose custody of child because it violated the right to travel); People v Beach, 271 Cal. Rptr. 381, 186-87 (Cal. Ct. App. 1983) (holding that a probation condition mandating that a defendant leave her home violates the right to travel). In addition, banishment has also been held by lower courts to constitute cruel and unusual punishment. See, e.g., Dear Wing Jung v. United States, 312 F.2d 73, 76 (9th Cir. 1962); State v. Sanchez, 462 So. 2d 1304, 1310 (La. Ct. App. 1985), writ denied, 465 So. 2d 733 (La. 1985). In addition, lower courts have recognized that official actions that result in the banishment of individuals and their difficulties to other communities violate public policy. See, e.g., Rutherford v. Blankenship, 468 F. Supp. 1357, 1360 (W. Va. 1979); Ex parte Scarborough, 173 P.2d 825, 827 (Cal. Ct. App. 1946); People v. Baum, 231 N.W. 95, 96 (Mich. 1930).


386 Id. at 264-65.

387 326 F. Supp. 234, (Minn. 1970), aff'd, 410 U.S. 985 (1971) (contrasting reduced tuition for state residents with other necessities of life and finding that the attainment of higher education cannot be equated "with food, clothing and shelter").

388 Id. at 238.
voter registration did not actually deter travel was
47Id.

federal program for providing medical care to
condition of eligibility for Medicaid, the primary
imposing a durational residence requirement as a
U.S.C. § 1396a(b)(3) (prohibiting states from
ing to the length of residency."

legislation "could open the door to state apportion-
newer state citizens, the Court noted that the
the statute violated the Equal Protection rights of
their length of residence in the state. Finding that
the verb "to sleep", when unqualified by modifiers or context, refers to being
in the condition of physiological dormancy animals periodically experience"

810 F. Supp. at 1580.

415 U.S. at 250.

Shapiro v. Maricopa County, 415 U.S. 250, 287

Id.

features

See also Maricopa Memorial Hosp. v. Maricopa County, 415 U.S. 250, 287

Id.

403 Id. at 633-638.

404 415 U.S. at 250.

Id. at 258-59. Similarly, in Zobel v. Williams, 457 U.S. 55, 64-65 (1982), the Court overturned an Alaska statute, enacted partly to reduce "population turnover," which distributed income from the state’s natural resources to adult citizens based on their length of residence in the state. Finding that the statute violated the Equal Protection rights of newer state citizens, the Court noted that the legislation “could open the door to state apportionment of other rights, benefits and services according to the length of residency.” Id. See also 42 U.S.C. § 1396a(b)(3) (prohibiting states from imposing a durational residence requirement as a condition of eligibility for Medicaid, the primary federal program for providing medical care to indigent people at public expense).

406 415 U.S. at 250.

407 Id. at 257-59 (noting that there was no evidence in the record that anyone was actually deterred from traveling by the challenged restriction). See also Dunn v. Blumstein, 405 U.S. 330, 340 (1972) (noting that any attempt to distinguish Shapiro by urging that imposing a residency requirement for voter registration did not actually deter travel was a “fundamental misunderstanding of the law”); Cole v. Housing Auth., 435 F.2d 807, 810 (1st Cir. 1970) (stating that “the impairment on the right to travel does not have to rise to a fixed level of deterrence”); Construction Industry Assoc. v. City of Petaluma, 375 F. Supp. 574, 581 (N.D. Cal. 1974), rev’d on other grounds, 522 F.2d 897 (9th Cir. 1975) (striking down as a violation of the right to travel a zoning ordinance limiting new home construction because it had the “express purpose and the intended and actual effects of . . . excluding substantial numbers of people who would otherwise have elected to immigrate into the city,” but noting that the “holding is intended to encompass not only the outright numerical limitations,” because “a zoning ordinance whose primary purpose is to prevent the entrance of newcomers in order to avoid future burdens, economic or otherwise . . . cannot be valid”).

810 F. Supp. at 1580.

410 415 U.S. at 259.

See Pottinger, 810 F. Supp. at 1580 (finding that the Miami ordinance deprived homeless people of a number of “necessities of life” such as “a place to sleep”).

411 415 U.S. at 260 n.15 (quoting Starns, 326 F. Supp. at 238). See also City of Pompano Beach v. Capalbo, 455 So. 2d 468, 473 (Fla. Dist. Ct. App. 1984) (stating that the verb “to sleep”, when unqualified by modifiers or context, refers to being in the condition of physiological dormancy animals periodically experience”).

412 415 U.S. at 259.

414 810 F. Supp. at 1580.

415 See, e.g., Tobe, 27 Cal. Rptr. 2d at 392, rev’d, 829 P.2d 1145 (Cal. 1995); see Editor’s Note, supra note 209. Although recognizing that some homeless people prefer the outdoors to “an overcrowded armory,” the court commented that “none expressed a preference to living as a way of life in a Civic Center parking structure or doorway during the cold, rainy January evening when they were cited.” Id. Rather, the court concluded that they “had no better place to go than some public location.” Id.

416 810 F. Supp. at 1580.

418 810 F. Supp. at 1580.

419 San Francisco described the Matrix program as “initiated to address citizen complaints about a broad range of offenses occurring on the streets and in parks and neighborhoods. . . . [The Matrix Program is] a directed effort to end street crimes of all kinds.” Joyce v. City & County of San Francisco, 846 F. Supp. 843, 846 (N.D. Cal. 1994) (quoting City’s Op. at 6). In Santa Ana, concerns were expressed about crimes committed by vagrants, ranging from “rape to blocking ‘various passageways’ ” as well as “health concerns.” Tobe, 27 Cal. Rptr. 2d at 388, rev’d, 829 P.2d 1145 (Cal. 1995); see Editor’s Note, supra note 209.


421 See also Clark v. Community for Creative Non-Violence, 468 U.S. 288, 296 (1984) (upholding prohibition against camping and recognizing government interest in maintaining parks as “substantial”); Pottinger, 810 F. Supp. at 1551 (holding Miami’s interest in having “aesthetically pleasing parks and streets and in maintaining facilities in public areas . . . not compelling, especially in light of the necessity of homeless persons to be in some public place when no shelter is available”).
428 See Pottinger, 810 F. Supp. at 1581 (holding that Miami's interests in promoting tourism and business and in developing the downtown area are "at most substantial, rather than compelling, interests").

429 See id., 810 F. Supp. at 1581 (recognizing as compelling the "tremendous responsibility" that Miami has in "ensuring that its parks are free of crime").

430 Tohe, 27 Cal. Rptr. at 389, rev'd, 829 P.2d 1145 (Cal. 1995); see Editor's Note, supra note 209.

431 Id. at 389, rev'd, 829 P.2d 1145 (Cal. 1995) (concluding that the police "deliberately and intentionally implemented a program which targeted ... the homeless"); see Editor's Note, supra note 209.


433 Homeless Ask Court to Halt City Crackdown, N.Y. TIMES, Nov. 26, 1993, at A14.

434 Bill Kisluk, Homeless Suit Looks to Miami, THE RECORDER, Nov. 24, 1993, at p. 1, 11. City officials, on the other hand, asserted that Matrix is a well-rounded program, involving social, medical, and welfare services, rather than a crackdown on homeless people. Doyle & King, supra note 309, at A11 (noting that San Francisco Mayor Frank Jordan insists that the Matrix program was created in response to complaints from merchants and "a torrent of citizens' complaints about street crime" in public parks and neighborhoods). San Francisco officials assert that adequate services already assure that homeless people do not really lack food or shelter. Egan, supra note 286, at Y16. They point out that the city spends $46 million per year on housing, food, and social services for the homeless, which is more than $7,600 for each of San Francisco's estimated 6,000 street people. Id. However, San Francisco Supervisor Angela Alioto, as part of a resolution to end the Matrix program, asserts that housing has been found for less than 5% of those contacted under the program. Johnson, supra note 458, at C3.

435 Pottinger, 810 F. Supp. at 1582. In fact, in Pottinger there was no evidence offered by Miami that any of the crimes that were reported in citizens' complaints were committed by homeless people. Id.

436 Pottinger, 810 F. Supp. at 1581 (citing Pl.'s Exs. 1A-1AAA).

437 Lattin, supra note 300, at A20.

438 Pottinger, 810 F. Supp. at 1580-83 (finding that "arresting homeless individuals for such harmless acts as sleeping, eating, or lying down in public generally serves no compelling governmental interest").

439 Tohe, 27 Cal. Rptr. 2d at 395, rev'd, 829 P.2d 1145 (Cal. 1995); see Editor's Note, supra note 209.

440 See Pottinger, 810 F. Supp. at 1581 (noting that Miami's aesthetic goals could be accomplished by less intrusive means than the wholesale arrest of homeless people and the confiscation of their belongings).

441 Id., 810 F. Supp. at 1581-83. See also Loper v. New York City Police Dep't, 802 F. Supp. 1029, 1029 (S.D.N.Y. 1992) (finding that arresting homeless individuals for begging was not a sufficiently narrow means of serving New York's interest in preserving public order and preventing crime).

442 Pottinger, 810 F. Supp. at 1584.

443 Id. Mayor Richard Riordan recently proposed turning a vacant block in the eastern part of downtown Los Angeles into an urban campground where up to 800 homeless people could shower and sleep on a lawn. L.A. Mayor Wants Camp for Homeless, S.F. CHRON., Oct. 14, 1994, at A3. However, advocates for the homeless assert that the proposal is a "misguided attempt to keep the tattered hordes out of sight of tourists and shoppers." Id.

444 Village of Schaumburg v. Citizens for a Better Envt', 444 U.S. 620, 632 (1970) (striking down as unconstitutional a local ordinance prohibiting door-to-door solicitation by charities that did not use at least 75% of their donations for charitable purposes, because charitable appeals include information and advocacy and thus further interests protected by the First Amendment). See also Riley v. National Fed. of the Blind, 487 U.S. 781, 799 (1988) (invalidating a statute regulating fees charged by professional fund-raisers because charities are dependent on solicitation for their continued existence); Cornelius v. NAACP Legal Defense & Educ. Fund, 472 U.S. 788, 799 (1985) (finding that literature sent to federal employees from advocacy groups is protected as charitable solicitation because it "facilitates the dissemination of views and ideas," and solicitation of funds allows organizations to communicate ideas and goals); Secretary of State v. Joseph H. Munson Co., 467 U.S. 788, 799 (1985) (finding unconstitutional a regulation preventing charitable organizations from paying more than 25% of their gross income for fundraising expenses because the statute would restrict First Amendment solicitation activity that furthers the charity's goals).

445 City of Cincinnati v. Discovery Network, 113 S. Ct. 1505, 1513 (1993) (quoting Central Hudson Gas & Elec. v. Public Serv. Comm'n, 447 U.S. 557, 561 (1980)). In Central Hudson, Justice Stevens found this definition "unquestionably too broad" because "whether this definition uses the subject matter of the speech or the motivation of the speaker as the limiting factor . . . it encompasses speech that is entitled to the maximum protection
afforded by the First Amendment." *Central Hudson*, 447 U.S. at 579-80 (Stevens, J., concurring).

440 *Discovery Network*, 113 S. Ct. at 1513 (quoting Board of Trustees v. Fox, 492 U.S. 469, 473-74 (1989)).


442 *Cornelius*, 473 U.S. at 299. See Blair v. Shanahan, 755 F. Supp. 1315, 1322 (N.D. Cal. 1993) (stating that "begging can promote the very speech values that entitle charitable speech to constitutional protection").

443 See, e.g., Young v. New York City Transit Auth., 729 F. Supp. 341, 352 (2d Cir. 1990) (noting that "[w]hile often disturbing, and sometimes alarmingly graphic, begging is unmistakably informative and persuasive speech").


445 Id. at 293.

446 Id. at 305 (Marshall, J., dissenting).

447 Id. at 305-06 (Marshall, J., dissenting) (quoting Community for Creative Non-Violence v. Watt, 705 F.2d 586, 601 (D.C. Cir. 1983) (Edwards, J., concurring)).

448 Id.

449 Id. at 296.

450 Id.

451 Id.

452 Id.

453 Lattin, supra note 300, at A20.

454 Id.

455 Loper v. New York City Police Dept., 999 F.2d 699, 704 (2d Cir. 1993).

456 In the first of these two cases, Young v. New York City Transit Auth., the Second Circuit indicated that begging in New York City's public subway system was not speech protected by the First Amendment as charitable solicitation, 903 F.2d 146, 154 (2d Cir. 1990), cert. denied, 498 U.S. 984 (1990). The Circuit Court also expressed "grave doubt" about whether begging was protected as expressive conduct. Id. at 156. However, in *Loper*, the second decision from the same circuit, the appellant successfully challenged a New York anti-loitering statute that banned begging in all public locations, not just transportation facilities. 999 F.2d at 704. In contrast with its Young decision, the *Loper* court affirmed the district court's finding that "begging constitutes communicative activity of some sort." Id. The court reasoned that begging usually, although not always, "involve[s] the transmission of a particularized social or political message." Id. (citing Young, 903 F.2d at 153). The court concluded that the *Loper* statute was unconstitutional because the prohibition of begging throughout all of New York City, rather than just in the discrete confines of the subway system, did not serve any compelling state interest and left beggars without "alternative channels of communication to convey their messages of indigency." *Loper*, 999 F.2d at 705.

Other courts across the country have also reached divergent results regarding the constitutionality of anti-begging ordinances. See Blair v. Shanahan, 775 F. Supp. 1315, 1324-25 (holding California's ban on panhandling unconstitutional because the statute was content-based and begging was protected as a charitable solicitation); Ulmer v. Municipal Court, 127 Cal. Rptr. 445, 447 (Cal. Ct. App. 1976) (upholding a conviction for accosting others to solicit money because "approaching individuals for that purpose [was] not protected by the First Amendment"); People v. Fogelson, 577 P.2d 677, 680-81 (Cal. 1978) (stating that begging or soliciting reach "substantial areas of protected speech"); C.C.B. v. State, 458 So. 2d 47, 48-50 (Fla. Dist. Ct. App. 1984) (holding that Florida ordinance prohibiting solicitation and begging was "unconstitutionally overbroad by its abridgement, in a more intrusive manner than necessary, of the First Amendment right of individuals to beg or solicit alms for themselves").


460 Id. at 1040.

461 *Boos v. Barry*, 483 U.S. 312, 321 (1988) (holding unconstitutional a statute barring displays critical of foreign governments from being placed within 500 feet of a foreign embassy because the content-based regulation was not justified by the state's interests in avoiding "visual clutter" and "protecting the security of embassies").

The Court found in other cases that a variety of other asserted governmental interests did not satisfy the stringent test of strict scrutiny when First Amendment concerns were involved. See, e.g., Eichman v. United States, 496 U.S. 310, 319 (1990); *Texas v. Johnson*, 491 U.S. 397, 417 (1989) (promoting respect for the flag); *Sable Communications of Cal. v. Federal Communications Comm'n*, 492 U.S. 115, 126 (1989) (protecting minors from non-obscene, indecent dial-a-porn messages); *Federal Election Comm'n v. National Conservative Pol. Action Comm'n*, 470 U.S. 480, 489 (1985) (preventing corruption); *Buckley v. Valeo*, 424 U.S. 1, 58-59 (1976) (safeguarding the integrity of the electoral process); *NAACP v. Button* (ensuring high professional standards of attorneys). But see, e.g., *Austin v. Michigan Chamber of Com.*, 494 U.S. 652, 666 (1990) (preventing corrosion of the political process sufficiently compelling); *Board of Directors v. Rotary Club,
See Cohen v. California, 403 U.S. 15, 21 (1971) (holding that the government's interest in protecting the audience from exposure to the profanity emblazoned on plaintiff's jacket was not sufficiently compelling because offended onlookers could simply avert their eyes); Erznoznik v. City of Jacksonville, 422 U.S. 205, 215 (1975) (striking down a ban on showing films containing nudity at a drive-in theater visible from a public street because neither the government's asserted interest in protecting traffic safety nor the privacy rights of the viewers were sufficient to satisfy strict scrutiny).

U.S. CONST. amend. IV. See Simon, supra note 325, at 634 (indicating that such confiscations may also violate the Fifth Amendment's prohibition against public takings of property without just compensation).

United States v. Jacobsen, 466 U.S. 103, 125 (1984) (holding that a field test to determine the nature of powdery substance in defendant's luggage was justified because "the suspicious nature of the material made it virtually certain that the substance tested was in fact contraband.... and since the seizure could, at most, have only a de minimus impact on any protected property interest"). See Katz v. United States, 389 U.S. 347, 360 (1967) (Harlan, J., concurring) (opining that the protection afforded by the Fourth Amendment requires "first, that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as reasonable"). See also Smith v. Maryland, 442 U.S. 735 (1979); Rakas v. Illinois, 439 U.S. 128, 143 (1978) (noting that application of the Fourth Amendment depends "upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy"); Wells v. State, 402 So. 2d 402, 404 (Fla. 1981) (holding that to establish a Fourth Amendment violation defendant must show that her "individual subjective expectation is one that society is prepared to recognize as reasonable under the circumstances").

Pottinger v. City of Miami, 810 F. Supp. 1551, 1572 (S.D. Fla. 1992). In Pottinger, the court held that the homeless plaintiffs "exhibited a subjective expectation of privacy in their belongings and personal effects." Id.

See id. at 1570. See also United States v. Ross, 655 F.2d 1159, 1161 (D.C. Cir. 1981) (holding that the Fourth Amendment "protects all persons, not just those with the resources or fastidiousness to place their effects in containers that decisionmakers would rank in the luggage line"). The Fourth Amendment therefore prohibits "warrantless opening of a closed, opaque paper bag to the same extent that it forbids the warrantless opening of a small unlocked suitcase or a zippered leather pouch." Id.

Pottinger, 810 F. Supp. at 1570.

Rakas, 429 U.S. at 143 (holding that defendants who were passengers in a car had no legitimate expectation of privacy in the glove compartment or area under the seat of a vehicle because defendants asserted neither a property nor a possessory interest in the car). See also Oliver v. United States, 466 U.S. 170, 176 (1984) (finding that some places, such as an open field, afford no legitimate expectation of privacy); Katz, 389 U.S. at 351 (recognizing that what a person "seeks to preserve as private even in an area accessible to the public, may be constitutionally protected"); United States v. Ruckman, 806 F.2d 1471, 1473-74 (10th Cir. 1986) (holding that although a person with no legal right to occupy a cave on public land had a subjective expectation of privacy, this expectation was not reasonable and, thus, did not fall within the protections of the Fourth Amendment); Wells, 402 So. 2d at 404 (stating that "reference to the place where the right is being asserted is essential to the appreciation of the objective standard of reasonableness").

Compare Minnesota v. Olson, 495 U.S. 91, 99-100 (1990) (holding that an overnight guest has a reasonable expectation of privacy in the host's home) with Oliver, 446 U.S. 176 (finding that open fields afford no legitimate expectation of privacy). See also California v. Greenwood, 486 U.S. at 176 (holding that an expectation of privacy in garbage left for collection outside the curtilage of a home is not objectively reasonable because it is common knowledge that plastic garbage bags left on a public street are readily available to members of the public and because the garbage is placed at the curb for the express purpose of conveying it to a third party).


Id. at 154. See also Robbins v. California, 453 U.S. 420, 426-27 (1981) (opining that "[o]nce placed within a [closed, opaque] container, a diary and a dishpan are equally protected by the Fourth Amendment").

Mooney, 588 A.2d at 154. See also Robbins, 453 U.S. at 426-27 (opining that "no court, no constable, no citizen can sensibly be asked to distinguish the relative 'privacy interests' in a closed suitcase, briefcase, portfolio, duffel bag, or box" because "[w]hat one person may put into a suitcase, another may put into a paper bag"). The Mooney court did not reach the issues of whether a homeless person living outside has a legitimate
expected privacy "with respect to his goods and effects that he has with him or under his immediate control" or whether the effects of homeless people are protected "regardless of their personal circumstances." *Mooney*, 433 U.S. 1, 11 (1977) (noting that personal effects placed inside a piece of luggage are no less protected than those behind a locked door in a home).

475 *Mooney*, 588 A.2d at 161.


478 468 U.S. 288, 296 (1984). See also *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974) (upholding a zoning regulation limiting housing occupancy to family members and noting that it was within the police power to "lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people"); *Berman v. Parker*, 348 U.S. 26, 33 (1954) (opining that "it is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled").

479 See infra Part III.B (regarding the horrendous mental and physical problems faced by many homeless people).


481 *Pottinger v. City of Miami*, 810 F. Supp. at 1573.

482 Id. at 1551.

483 Id. at 1573.

484 But see *Stone v. Agnos*, 960 F.2d 893, 895 (9th Cir. 1992) (holding there was no violation of the Fourteenth Amendment in the assumed destruction of a homeless man's property, which was seized after he refused to leave a public plaza, because there was "no evidence" that the police behaved unreasonably; and the "mere negligence [on behalf] of the police would not violate the Due Process Clause").

485 *Ingraham v. Wright*, 430 U.S. 651, 660 (1977) (recognizing that the limitation should be "applied sparingly").

Justice White would actually have cast his vote differently had the defendant been homeless. Id.

The analysis "does not reflect the holding of the court" and is sheer speculation." 846 F. Supp. at 857. Although the district court rejected an argument of the plaintiffs that "idleness and poverty should not be treated as a criminal offense" it granted the defendant a better shelter program. Id.


In Joyce, the district court rejected an argument of the plaintiffs that "Powell would have been decided differently if the defendant had been homeless, commenting that the analysis "does not reflect the holding of the case and is sheer speculation." 846 F. Supp. at 857. Although the Joyce court acknowledged that language in Justice White's concurrence could, arguably, support that contention, the language was mere dicta, thus one could "only hypothesize that Justice White would actually have cast his vote differently had the defendant been homeless." Id.

See Simon, supra note 325, at 634 (pointing out that "singling out the homeless for punishment" may violate Equal Protection).


Governmental intent to discriminate against a particular class may be shown by express statutory language or by a showing of invidious discrimination that results in adverse impact. See Personnel Adm'r of Mass. v. Feeney, 442 U.S. 256, 266 (1979); Craig v. Boren, 429 U.S. 190 (1976); Yick Wo v. Hopkins, 118 U.S. 356 (1886).

Cleburne, 473 U.S. at 440.


Feeney, 442 U.S. at 273. See also Gerald Gunther, The Supreme Court, 1971 Term-Foreward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 18 HARV. L. REV. 1, 8 (1972) (describing the strict scrutiny standard as "'strict' in theory and fatal in fact").


Goldman v. Knecht, 295 F. Supp. at 906-07 (overturning Colorado's vagrancy statute and finding "patently unfounded" the government's assumption "that idleness and poverty are invariably associated with criminality"). See also Decker v. Fillis, 306 F. Supp. 613, 617 (D. Utah 1969) (finding Utah's vagrancy ordinance violated due process because it punished "economic condition or status"); Smith v. Hill, 285 F. Supp. 556, 558 (E.D.N.C. 1968) (describing North Carolina's vagrancy ordinance as being directed at the "flotsam and jetsam of society, which bolstered the indigent plaintiffs' "cause, for the mighty and the powerful seldom find need for the protections of the Constitution"); Fenster v. Leary, 229 N.E.2d 426, 430 (N.Y. 1967) (stating that the only persons who were arrested and prosecuted as common law vagrants were those people "whose main offense usually consists in their leaving the environs of skid row and disturbing by their presence the sensibilities of residents of the nicer parts of the community").

See, e.g., Kadmas v. Dickinson Pub. Sch.,
487 U.S. 450, 458 (1988) (holding that classifications based on wealth are not suspect and noting that the Court has "previously rejected the suggestion that statutes having different effects on the wealthy and the poor would on that account alone be subjected to strict equal protection scrutiny."); Harris v. McRae, 448 U.S. 297, 323 (1980) (noting that poverty, standing alone, is not a suspect classification); Maher v. Roe, 432 U.S. 464, 471 (1977) ("This Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); Ortwein v. Schwab, 410 U.S. 656, 660 (1973) (rejecting the argument that a filing fee discriminates against the poor where there was no suspect classification such as race, nationality, or alienage); United States v. Kras, 499 U.S. 434 (1973). See also Kreimer v. Bureau of Police, 958 F.2d 1242, 1269 n.36 (3d Cir. 1992) (summarily concluding that homeless people do not constitute a suspect class), and People v. Scott, 26 Cal. Rptr. 2d at 183 (finding that homeless people are not a "suspect class"). But see Harper v. Virginia Bd. of Elections, 383 U.S. 663, 668 (1966) (establishing the right of an indigent citizen to vote and noting that "[w]ealth, like race, creed, or color is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored").

Several state courts have found that classifications based on wealth are suspect based on state constitutions. For example, in Serrano v. Priest, the California Supreme Court found the State's public school financing system was an unconstitutional violation of equal protection because it conditioned the availability of school revenues upon district wealth. 557 P.2d 929, 951 (Cal. 1976). In reaching this conclusion, the court applied strict scrutiny since "the case involved both a 'suspect classification,' (because the discrimination in question was made on the basis of wealth) and affected a 'fundamental interest' (education)." Id. See also Committee to Defend Reprod. Rights v. Myers, 625 P.2d 779, 796 (Cal. 1981) (recognizing that "the indigent poor share many characteristics of other 'insular minorities' whose rights are not adequately protected by the general safeguards of the political process"); Washakie County Sch. Dist. No. One v. Herschler, 606 P.2d 310, 334 (Wyo. 1980), cert. denied, 449 U.S. 824 (1980) (finding that a "classification on the basis of wealth is considered suspect, especially when applied to fundamental interests").

In Pottinger v. City of Miami, the homeless plaintiffs claimed that they were a suspect class based on their involuntary status of being homeless, and argued that because they have no access to private property, "they are an insular minority which has no place to retreat from the public domain." 810 F. Supp. 1551, 1578 (S.D. Fla. 1992). Because the district court found that Miami infringed on the plaintiffs' fundamental right to travel, they did not decide this issue. However, the court noted that it was "not entirely convinced" that homelessness as a class has none of the "traditional indicia of suspectness" since it could "be argued that the homeless are saddled with such disabilities, or have been subjected to a history of unequal treatment or are so politically powerless that extraordinary protection of the homeless as a class is warranted." Id.


Id. at 28 (upholding a Texas school-financing system based on local property taxation and noting that "at least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages").

413 U.S. 528 (1973).

Id. at 334.

Id. (finding that the 1971 amendment of section 3(e) of the Act excludes "not those persons who are likely to abuse the program, but rather, only those persons who are so desperately in need of aid that they cannot even afford to alter their living arrangements so as to retain their eligibility"). See also New Jersey Welfare Rights. Org. v. Cahill, 411 U.S. 619, 621 (1973) (striking down, as a violation of Equal Protection, a federal statute denying AFDC benefits to households containing illegitimate children because "the benefits extended under the challenged program are as indispensable to the health and well-being of illegitimate children as to those who are legitimate").

413 U.S. 532-33.


448-50. The Cleburne Court found that those suffering from mental retardation did not constitute a suspect class. Id. at 442-46. The Court noted that the mentally retarded were not politically powerless because they had influenced lawmakers to pass favorable legislation. Id.


Id. at 870. In Seeley v. State, the Arizona appellate court found an ordinance prohibiting sleeping or sitting on public right-of-ways constitutionally neutral because, unlike the regulation in Farr, inebriates and transients were not singled out for prosecution, 655 P.2d 803, 807 (Ariz. Ct. App. 1982) The court noted that the fact "that transients, because they may not have anywhere else to live . . . are subjected to enforcement of the ordinance with greater frequency than residents of the community does not result in unconstitutional discrimination." Id.

479 P.2d at 360.

Id. at 356.
The Clinton Administration has begun funding programs that provide a "continuum of care," with the goal of reducing the number of homeless Americans by one-third before the end of his first term. Elizabeth Shogren, *White House Plans to Cut Homelessness by a Third*, S.F. CHRON., May 18, 1994, at A1. The Administration plans to give local governments more responsibility for creating comprehensive programs to provide emergency shelter, and transitional and rehabilitative services, including treatment of mental illness and substance abuse and permanent affordable housing. *Id.* The Administration believes that the problem of homelessness is too intractable to be alleviated in a "piecemeal fashion" by private nonprofit organizations, but rather it must be addressed through coordinated, comprehensive public policy spearheaded by local governments with guidance by federal officials. *Id.*

Celia W. Dugger, *Mayor Urged to Redefine Shelter Pact*, N.Y. TIMES, Jan. 13, 1994, at B1. In an effort to meet the housing needs of the homeless, Mr. Hayes filed a class action lawsuit, Callahan v. Carey, No. 425821/79 (N.Y.L.J. Dec. 11, 1979) to establish a right to shelter for homeless men in New York City. The filing of the case resulted in the immediate opening of additional shelter space. Two years later, a consent decree specified minimum standards that shelter facilities would have to meet. In 1982, in Eldredge v. Koch, the consent decree obtained in Callahan was also found to be applicable to shelters for single adult women. 459 N.Y.S.2d 960 (Sup. Ct. 1982), rev'd in part, 469 N.Y.S.2d 741 (App. Div. 1983).

See, e.g., Williams v. Barry, 708 F.2d 789 (D.C. Cir. 1983) (holding that giving homeless advocates only forty-eight hours notice that the city government was planning to close its two shelters for men violated the due process rights of the homeless men; a court order kept the shelters open for two more years while the case was being litigated); Rodgers v. Gibson, 528 A.2d 43 (N.J. Super. Ct. 1988) (finding that fault and time limitations of New Jersey's emergency assistance regulations were invalid because there was no rational basis for the rules); Jiggetts v. Grinker, 75 N.Y.2d 411, 417 (1990) (holding that Social Services law imposes a duty on New York State's Commissioner of Social Services to establish shelter allowances, for the purpose of keeping family units together in home-type settings, that bear a rational relationship to the cost of housing in New York City); Massachusetts Coalition for the Homeless v. Secretary of Human Servs., 511 N.E.2d 603, 614 (Mass. 1987) (finding Department of Public Welfare has obligation to provide sufficient aid to permit AFDC parents to live in a home; accommodations in hotels, motels, and emergency shelters do not satisfy the duty); Lamboy v. Gross, 513 N.Y.S.2d 393 (App. Div. 1985), aff'd, 490 N.Y.S.2d 670 (1987) (finding that requiring a homeless family to spend the night in an emergency assistance unit is not a satisfactory placement).

Celia W. Dugger, *Twice as Many Families Seek Space in City Shelters*, N.Y. TIMES, Sept. 17, 1992, at B3 [hereinafter Dugger, *Twice as Many Families*]. According to a survey by New York's 1992 Mayoral Commission, these families were typically made up of a young Black or Hispanic mother and her young children. Most of these mothers came from families who had been on welfare and many had been abused as children. About one-third of the families surveyed never had an apartment, had little education, and had been unemployed for over a year. Almost one-half of the families were made up of members suffering from mental illness...


548 Id. See also Celia W. Dugger, *Homeless Plan Would Require that Families Accept Services*, N.Y. TIMES, May 7, 1994, at A1 (noting that about 5600 families and 6600 single adults exist in New York City’s shelter system at any given time).


550 Barbara Koh, *Stanford’s Tuition Will Go up 5%*, SAN JOSE MERCURY NEWS, Feb. 9, 1994, at B1 (noting that the cost for room and board at Stanford University for the 1993-94 academic year was $6,535). See also Timothy Ziegler, *Relief for Santa Clara County Homeless*, S.F. CHRON., Mar. 16, 1994, at C4 (noting that only $10 per night per person will house someone in the “armory-type shelters” in Santa Clara County, California).


556 Celia W. Dugger, *Big Shelters Hold Terrors for the Mentally Ill*, N.Y. TIMES, Jan. 12, 1992, at A1. The cost of hospitalizing the mentally ill is estimated to be over $100,000 per person a year.


558 Id.

559 Clogher & Roszk, supra note 249, at 72.

560 Thomas J. Williams, *A Shelter Is Not a Home*, S.F. EXAMINER, Sept. 29, 1991, (Image), at 32, 34. See also Robbins v. Reagan, 780 F.2d 37, 49 (D.C. Cir. 1985) (finding government’s decision to close homeless shelter in federally owned building was not “arbitrary or capricious” due to the “well documented evidence of deplorable conditions at the shelter” that did not meet the Department of Health and Human Services “statutory objective of providing ‘adequate housing and a suitable living environment’ to the homeless”).


562 A Deadly Return, NEWSWEEK, Mar. 16, 1992, at 53.

563 Id.

564 Id. For example, among African-American migrant farm workers in North Carolina, frequently recruited from shelters and soup kitchens, the rate is 3600 cases per 100,000 people. Id. at 53-54. This compares to a case rate ten times lower in sub-Saharan Africa. Id. at 53. See also Earl Ubell, *Can We Stop Tuberculosis*, SAN JOSE MERCURY NEWS, Oct. 9, 1994, at 12, 13 (noting that on a worldwide basis, TB kills 2.9 million persons each year).

565 A Deadly Return, supra note 562, at 53.

566 Id.


568 A Deadly Return, supra note 562, at 53 (differentiating the disease from flu or measles, which can be contracted by walking through a room that contains an infected person).

569 Id. Since 1984, six outbreaks of TB have been reported in homeless shelters. Torres, supra note 567, at 2034.

570 A Deadly Return, supra note 562, at 54 (citing Dr. Barry Bloom of New York’s Einstein College of Medicine). See also Amy Goldstein, *Data, Doubts Emerge from D.C. TB Tests*, WASH. POST, Jan. 26, 1993, at D3 (noting that of 248 homeless people who tested positive for the disease, only one-half returned for the tests that determine whether they have active cases).

571 A Deadly Return, supra note 562, at 53. For example, one study in New York correlated homelessness and noncompliance with TB therapy. Torres, supra note 567, at 2035 (noting that non-compliance can also be due to drug use, alcoholism, and unemployment).

572 A Deadly Return, supra note 562, at 54.

573 Id. Since 1989, multidrug-resistant tuberculosis (MDR-TB) has appeared in seventeen states.

574 Id. See also Lawrence O. Gostin, *Controlling the Resurgent Epidemic*, 269 JAMA 255 (1993) (noting that the course of treatment for MDR-TB is three to four times longer than for non-drug resistant TB and has a 40% less chance of success).


Bassuk, supra note 97, at 70.

Id.

Id. In New York City, the Children's Health Project provides medical care for New York City's 12,500 homeless children. Callahan, supra note 21, at 12. Physicians employed by the Project have treated over 40,000 homeless children in the past five years. Id. Funding for the 17 physicians and for their seven mobile medical vans is provided by the Children's Health Fund, the nation's largest private health organization for children who have been denied access to proper medical care. Id.

Bassuk, supra note 97, at 71.

Id.

Id.

Carole Rafferty, The Increasing Number of Children Growing Up Homeless May Face Long-Term Emotional Dangers, DALLAS MORNING NEWS, Feb. 8, 1994, at 5C.

Rafferty, supra note 105, at H5.

Because the Court has not yet found a "constitutional guarantee of access to dwellings of a particular quality," the provision of housing to homeless people is within the discretion of each city or state. Lindsey v. Normet, 405 U.S. 56, 68 (1972).

Berger, supra note 102, at 8.

Id. On June 4, 1991, HUD agreed to give Dignity Housing $5 million over a five year period to subsidize 123 three-bedroom homes in Philadelphia. Id.


Id.

Unfortunately, apartment renovations can also be a very expensive alternative. New York City, which has relied primarily on the rehabilitation of apartment buildings to provide the homeless with permanent housing, has spent $600 million since 1984 to rehabilitate 27,000 apartments. Dugger, supra note 223.

Chen, supra note 602, at A24. A series of lawsuits attempted to remedy due process violations that are the result of procedural barriers to subsidized housing. See Bessler v. Pierce, 692 F.2d 1212 (9th Cir. 1982) (finding that applicants for Section 8 subsidized housing are covered by the procedural protection of the Due Process Clause). Legal challenges brought on due process grounds...
have established that housing authorities must use objective procedures for allocating their housing. Holmes v. New York City Hous. Auth., 398 F.2d 262, 265 (2d Cir. 1968) (finding that "due process requires that selections among applicants [for public housing] be made in accordance with 'ascertainable standards' . . . such as 'by lot or on the chronological order of application'"). Due process challenges have also established the right to an evidentiary hearing for applicants who have been declared ineligible for public housing. See Davis v. Toledo Metro Hous. Auth., 311 F. Supp. 795, 797 (N.D. Ohio 1970) (holding that "those seeking to be declared eligible for public benefits may not be declared ineligible without the opportunity to have an evidentiary hearing"). More recent cases have challenged "tenant suitability" standards, which have a discriminatory impact on the mentally handicapped and disabled. For example, in Cason v. Rochester Hous. Auth., 748 F. Supp. 1002, 1007 (W.D.N.Y. 1990), the requirement established by the Rochester Housing Authority that tenants be able to "live independently" was found to have a "discriminatory effect" and an "adverse impact" on the mentally ill and disabled plaintiffs, in violation of the Fair Housing Act and the Rehabilitation Act.

606 Berger, supra note 102, at 8.

607 Id.

608 Id.

609 42 U.S.C. § 11301-11304 (1987). When enacted, the McKinney Act designated $490.2 million in aid to the homeless. Bassuk, supra note 97, at 72. Over the following three years, an additional $1.2 billion was allocated. Id. As of January 1994, the McKinney Act provided about $1 billion per year for programs for the homeless. Jason DeParle, The Eye of a Sheltering Storm, N.Y. TIMES, Jan. 13, 1994, at B1, B4. The money was spent on supportive housing, residential programs, health and mental health care, education for children, and job training for all homeless people. Id. However, according to Better Homes Foundation co-founder Ellen Bassuk, the "McKinney Act was a promising first step [but] the funds were spread too thin and were not directed to supplying permanent housing or long-term services." Id.

610 Louis Freedberg, Closed Bases May House Homeless, S.F. CHRON., Mar. 5, 1994, at A2. For example, the Oakland Union of the Homeless, made up of members who are themselves homeless, is trying to use the McKinney Act to force the City of Oakland to house the homeless in vacant mortgage-default homes. John Stanley, East Bay Homeless Fight to Open Doors, S.F. CHRON., Feb. 16, 1992, (Datebook), at 38. In San Francisco, another advocacy group, Homes Not Jails, has proposed an anti-abandonment law that would preclude landlords from leaving buildings vacant and would facilitate the application of the city's receivership program to acquire the vacant property for use by homeless people. Homeless Take Over Abandoned Building, S.F. CHRON., Dec. 26, 1994, at B5 (describing a group of homeless squatters who took over an abandoned San Francisco building on Christmas Day, vowing to stay until the city legally acquired the building for the homeless or evicted them).


612 Id. at 1233 (finding that "underutilized" property and "not utilized" property are both unneeded property).

613 Advocacy Group Says U.S. Plan to House Homeless Lags Badly, supra note 611, at A34.

614 Id.

615 Id. (noting also that the application process was so complicated that seven out of ten initial applications were found to be incomplete).

616 Id. (noting that the program had been "hindered by bureaucracy and a failure by the Federal agencies responsible for the program to adequately implement [it]").

617 In March 1994, Secretary of Housing and Urban Development Henry Cisneros outlined a plan to use portions of surplus military bases to house homeless people. Freedberg, supra note 610, at A2 (indicating that bases in Denver, Colorado, and Long Beach and Los Angeles, California have been discussed as possible locations).


619 Dorgan, supra note 210, at A18.

620 Id. (noting that under Senator Boxer's proposal, V.A. medical centers in Los Angeles and San Francisco would become Comprehensive Centers for Homeless Veterans).

621 Id.

622 Id.

623 Dugger, supra note 223, at B16.

624 Id.


626 Bassuk, supra note 97, at 72.

627 Programs for Jobs, Children Among the Winners in Budget, SAN JOSE MERCURY NEWS, Feb. 8, 1994, at A11 (noting that the President proposed spending a total of $2.1 billion, up 60% from pre-budget levels, on homeless individuals and families). The rest of the money allocated to HUD is earmarked to support community assistance plans, improve
access to mainstream programs, and provide emergency food and shelter. Id.


629 Mr. Hayes stated that he always understood that many homeless people needed more than just a roof over their heads, but was unable to win anything except housing from the Koch administration in 1981. Celia W. Dugger, Mayor Urged to Redefine Shelter Pact, N.Y. TIMES, Jan. 13, 1994, at B1. In January 1994, Mr. Hayes sent New York Mayor Rudolph Giuliani a proposal asking the city to renegotiate the 1981 consent decree to link the right to shelter to job training and drug treatment services. Id. (noting that, during his mayoral campaign, Giuliani indicated that he believed the elimination of the right to shelter would allow the city to be able to condition shelter for addicts on participation in treatment programs).

630 Dugger, New York Report, supra note 544, at A1. As of February 1992, 26% of the men in New York's family shelters and 65% of the homeless people in single's shelters, tested positive for drugs and alcohol. Id. One-fifth of the shelter residents had serious health problems, one-tenth had been treated for mental illness, nearly one-half were high school dropouts, and more than one-half had been in jail. Id.

631 In Clark, the U.S. Supreme Court described some other "manifest effects of homelessness" including "psychic trauma, circulatory difficulties, infections that refuse to heal, lice infestations and hypothermia." 468 U.S. at 311 (citing Brief for National Coalition for the Homeless Amicus Curiae 3). Furthermore, the Court noted that, "in the extreme, exposure to the elements can lead to death . . . ." Id.


634 Id.


637 At least some information is available that the success rates of drug users who are coerced into treatment and volunteer patients are nearly the same. For example, officials of an Oakland, California drug diversion program that requires addiction treatment found little difference in the success rates of addicts sentenced to the program or those who volunteered. Fred Setterberg, Drug Court, CAL. LAW. 58, 61 (May 1994).

638 Dugger, New York Report supra note 544, at A1. In May 1994, New York City Mayor Rudolph W. Giuliani proposed implementing the Commission's recommendations to deny shelter to the parents of homeless families who refuse to participate in treatment and training programs. Celia W. Dugger, Judge Cites New York City on Homeless Families, N.Y. TIMES, Sept. 28, 1994, at A21 (noting that only New York City still guarantees an unconditional right to shelter with no time limits). Children of homeless families are also not denied shelter, but can be placed in foster care in extreme cases of neglect. Id. The Mayor's proposal seeks to provide a "continuum of care" that offers programming and services from initial contact through placement in permanent housing. Id. While the plan would not deny shelter, it would require homeless single adults to pay rent if they will not participate in the programming. Id. This rental proposal would cost the 1000 homeless recipients of federal disability and veterans benefits, who currently live and eat for free in city shelters, as much as $1000 per month. Id.

639 Hunger, Homelessness Increasing, Mayor Says, supra note 136, at A4. In addition, approximately 10% of homeless people are former prison inmates. Rougher & Tougher, supra note 229, at 21.


641 Id.

642 John Leo, Middle Class Loses Patience, S.F. CHRON., Nov. 14, 1993, (This World Magazine), at 3. A prior survey that interviewed some of New York City's homeless people suggested that drugs were a far smaller problem because only 18% of those interviewed said that they were currently using drugs. Dugger, New York Report, supra note 544, at A1.


645 Mayors Slam Cuts in Aid to Mentally Ill, SAN JOSE MERCURY NEWS, Nov. 9, 1991, at F5.

646 Mentally Ill Homeless Are on Rise, N.Y. TIMES, Nov. 9, 1991, at A8.

647 Mayors Slam Cuts in Aid to Mentally Ill, supra note 645, at F5.

648 Id.

649 Baum & Brynes, supra note 644, at 3. Eric Landes-Brennan, Berkeley, California's Homeless Services Coordinator, opines that many of the most aggressive panhandlers are substance abusers or are mentally ill. Wells, supra note 262, at A14.

650 The 1990 Survey of U.S. Conference of Mayors revealed that slightly over one-quarter of the homeless are veterans. Hunger, Homelessness Increas-
Features

ing, supra note 136, at A4. Baum and Byrnes estimated that, as of May 1993, approximately one-third of homeless men are veterans. Baum & Byrnes, supra note 644, at 14. The Federal Government estimates that between 150,000 and 250,000 veterans are homeless each night with twice that number homeless over a year. Jason DeParle, Aid for Homeless Focuses on Veterans, N.Y. TIMES, Nov. 11, 1991, at A8.


652 Id.

653 Baum & Brynes, supra note 644, at 14.

654 DeParle, supra note 650, at A8.

655 Id.

656 Setterberg, supra note 637, at 93.


658 It is worth noting that drug treatment is a far more economically effective solution than drug interdiction. See, e.g., Joseph B. Treaster, Cocaine: Treatment Cheaper Than Jail, S.F. EXAMINER, June 19, 1994, at B8 (citing a Rand Corporation study equating $1 of drug treatment to $7 of domestic law-enforcement efforts to curb cocaine use); Costs of Cocaine, SAN JOSE MERCURY NEWS, June 14, 1994, at B6 (citing the Rand study’s finding that treatment for heavy cocaine users is more cost effective than efforts to control the Colombian coca crop or stop the import of cocaine). As of June 1994, President Clinton was proposing to spend 41% of the anti-drug budget for treatment and prevention. Treaster, supra, at B8. This proposal would provide a 5% increase to rehabilitate 74,000 more drug abusers. Treaster, supra note 657, at A19.

659 Recognizing the need for housing and treatment, some cities have been drawn towards the idea of one-stop-shopping public facilities that provide both shelter and help. San Francisco, California, recently received a $9.9 million grant from HUD to provide homeless people with 240 housing units equipped with mental health and drug-counseling services. Ben Wildavsky, Alioto’s New Plan to Help Homeless, S.F. CHRON., Feb. 14, 1994, at A14.

660 Berger, supra note 102, at 10.

661 Id.

662 Id. Minneapolis and St. Paul’s St. Anthony’s, run by Catholic Charities, provides 74 chronic alcoholics with housing, meals, and activities for under $800 per year. Id. at 11. According to the Catholic Charities assistant administrator who oversees St. Anthony’s, the program saves thousands of dollars over the cost of repeatedly sending a chronic alcoholic to detoxification during the course of a year. Id.

663 Celia W. Dugger, A Homeless Program Where Jobs Are Key, N.Y. TIMES, Dec. 26, 1993, at A31. New York City successfully operates the S.R.O. Loan Program that creates permanent housing for people with too many special needs to find and keep a place to live on their own. Since 1988, the program has helped construct 3800 single-room apartments that also provide treatment for medical, mental, or substance abuse problems. Esther B. Fein, Loans to Build S.R.O. Units May Be Ended, N.Y. TIMES, Mar. 14, 1994, at B1. Once the S.R.O.s are built, it costs only $6300 per year to maintain a homeless person in a unit. Id. (noting that, despite the program’s success, New York Mayor Giuliani is proposing to cut funding for the S.R.O.s due to budgetary concerns).

664 Dugger, supra note 663, at A31.

665 Id. If a homeless man saves $1000, the program matches that amount when the man finds outside employment.

666 Id.

667 Id.

668 Id. The average stay of those who graduate is approximately a year and a half. Id. Forty percent of the 72 men who left the program between January 1992 and June 1993 found private sector jobs. Id. (noting that of 72 men, 37% were discharged from the program for rule violations, 15% left on their own, and 8% were referred to drug rehabilitation centers). Id. The homeless men in the program say that it has “given them a way out of lives of addiction and crime, unlike the large barracks-style city shelters that only mired them more deeply in dependency on welfare and drugs.” Id.

669 Id.

670 Id. Most of the program’s $1.6 million budget comes from a $1.1 million contract with New York City’s Department of Housing Preservation and Development to pay the men to clean rubbish and repair city-owned buildings. Id. Despite its success, bureaucratic red tape resulted in the program not being duplicated elsewhere in New York because the program’s combination of “work, shelter and social services in a package . . . does not fit neatly into any one bureaucracy’s mission.” Id. (commenting that duplication of the program would “likely require the city’s new Department of Homeless Services, which provides shelter, to coordinate with other agencies that could provide work”).

671 Berger, supra note 102, at 8-9. SRO is funded by both private and public funding.

672 Id.

673 Id.

fewer than half of the recipients in the California region were being monitored. Dorgan, supra note 687, at A1.

695 Dorgan, supra note 687, at A28.

696 Id.

697 Id.

698 Id.


700 See Kevin Sack, New York Shifting Focus of Welfare to Job Placement, N.Y. TIMES, May 21, 1994, at A1 (describing former New York Governor Mario Cuomo's proposal to offer such grants and noting that the money could also be spent to fix a car or to hire a child care worker).

701 For example, Albany County, New York has a 45-day waiting period for eligibility determination. Id.

702 Id.

703 Id. (noting that applicants can be rejected for benefits if they fail to provide proof).

704 Id. Home Relief Welfare Grants, totalling about $700 million per year, are given to approximately 221,000 poor people in New York City. Jonathan P. Hicks, Giuliani Wants Welfare Recipients to Work, N.Y. TIMES, Mar. 15, 1994, at B1.


706 Success Is Killing Program That Gets Jobs for Homeless, SAN JOSE MERCURY NEWS, Apr. 11, 1994, at A4 (noting that most of the $40 million for the program has been provided by the Labor Department, with businesses and state and local governments providing the rest). Ironically, funding for the program was scheduled to terminate in August 1994. Id.

707 Elaine Herscher, Jobs Program for Homeless Works—and Will Close, S.F. CHRON., Apr. 5, 1994, at A20 (noting that one-third are either disabled or are drug addicts).


709 Id. (giving an example of a former cocaine addict who received numerous services such as counseling, meal vouchers, training, job interviews, and bus tickets).

710 The Berkeley Jobs Consortium for the Homeless also found homes for 550 individuals. Id. See also Herscher, supra note 707, at A20 (describing another agency, the Jobs for Homeless Consortium in Oakland, California, which served 5000 homeless people since its inception in 1988, and placed 1400 people in jobs).