

COMBINING CLASS ACTION LITIGATION AND SOCIAL SCIENCE RESEARCH: A CASE STUDY IN HELPING HOMELESS WOMEN WITH CHILDREN

LYNNE SOINE* AND MARY ANN BURG**

INTRODUCTION

Historically, this society's homeless were men.¹ The stereotypical "Bowery Bum"² was a reasonably accurate reflection of those who were chronically homeless.³ As recently as forty years ago, an

* Associate Professor, Center for Human Resources, State University of New York at Plattsburgh. D.S.W., Hunter College, City University of New York; M.S.W., School of Social Welfare, State University of New York at Stony Brook.

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** Assistant Professor and Director of Research, Department of Community Health and Family Medicine, University of Florida. Ph.D., University of Florida; M.S.W., Farleigh Dickinson University.

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1. See NELS ANDERSON, *THE AMERICAN HOBO: AN AUTOBIOGRAPHY* xii (K. Ishwaran ed., 1975) (stating that "[m]ost hobos . . . were ordinary men"); Carol L.M. Caton, *The Epidemiology of Homelessness*, in *HOMELESSNESS IN AMERICA* 30 (Carol L.M. Caton ed., 1990) (stating that "the typical . . . homeless person in the 1950s . . . was white, American-born male in his early fifties . . .").

Today, two out of three homeless are single white men. *Id.* at 30 (citing U.S. Housing and Urban Development Report (1984)); see also JOEL BLAU, *THE VISIBLE POOR* 11 (1992) (stating that "[f]amilies have not yet displaced the single adult male as the most common demographic type [of homeless]").

2. See generally BENEDICT GIAMO, *ON THE BOWERY: CONFRONTING HOMELESSNESS IN AMERICAN SOCIETY* 16-30 (1989) (reviewing the development of tenement quarters and slums in an area of New York City, and stating that "[a]s a skid row the Bowery was virtually an all-male community"); cf. Caton, *supra* note 1, at 9 (identifying the Bowery as New York's "infamous skid row"); GREGG BAKAK, *GIMME SHELTER: A SOCIAL HISTORY OF HOMELESSNESS IN CONTEMPORARY AMERICA* 50 (citing J. Blau's statement that "[h]omelessness is no longer restricted to stereotypical 'Bowery Bums,' but instead encompasses women, children, and families").

3. Robin Wright, *Gimme Shelter: The Plight of The Homeless In Lands of Plenty*, L.A. TIMES, Oct. 4, 1994, World Report, at 1 (stating that the homeless historically were travelling laborers called "hobos, drifters, or vagrants," but that the homeless are currently a much more heterogeneous group); Lynn Weiner, *Sisters of the Road: Women Transients and Tramps*, in *WALKING TO WORK* 171,

estimated 3% of these homeless were women.⁴ Homeless families were even more rare than homeless women at that time.⁵ In stark contrast to this history, homeless women with children are the largest, fastest growing subgroup of all homeless people today.⁶

How and why did the composition of the homeless population change? Certainly, there have been multiple contributing causes to the overall increase in homelessness in America. Many of these causes have been documented, including the following: lack of affordable housing;⁷ unemployment;⁸ deinstitutionalization;⁹ neigh-

172 (Eric H. Monkokken ed., 1984) (stating that "[w]omen self-identified as tramps were barely visible").

4. HOWARD M. BAHR, *SKID ROW: AN INTRODUCTION TO DISAFFILIATION* 176 (1973) (stating that "[t]he scarcity of studies of homelessness among females may be attributed to a number of factors," including the fact that "skid row women are rare"). In support of this proposition, the author cites several studies: a "survey of Minneapolis skid row (in 1958) found only one female for every twenty-three males (citations omitted); a Philadelphia study conducted in 1960 identified a total of twenty-eight homeless women (citations omitted); and a study of Chicago's 'skid row' in 1963 found that only 3% were female (citations omitted)." *Id.*

5. Cf. Kay Young McChesney, *Homeless Families*, in *HOMELESSNESS: A NATIONAL PERSPECTIVE* 245, 245 (Marjorie J. Robertson & Milton Greenblatt eds., 1992) (stating that "service providers began to report that they were seeing homeless families in significant numbers for the first time since the Great Depression and that their numbers seemed to be growing").

6. Ellen L. Bassuk, *Women And Children Without Shelter*, in *HOMELESSNESS: A NATIONAL PERSPECTIVE*, *supra* note 5, at 257, 257; BETTY G. RUSSELL, *SILENT SISTERS* 3 (1991) (citing K. Hopper and J. Hamberg for the proposition that homeless women represent the fastest growing number of the homeless); see also Esther S. Merves, *Homeless Women: Beyond the Bag Lady Myth*, in *HOMELESSNESS: A NATIONAL PERSPECTIVE*, *supra* note 5, at 229, 232 (noting a consistent finding among the numerous reports, newspaper accounts, and local studies documenting an "astronomical increase" in homeless families' demand for food and shelter).

As early as 1989, one reporter noted that families comprised one of the fastest-growing segments of the homeless. See Scott Armstrong, *US Homelessness Rising Despite Growing Efforts*, *CHRISTIAN SCI. MONITOR*, Oct. 5, 1989, at 1.

7. Ellen L. Bassuk, *Social and Economic Hardships of Homeless and Other Poor Women*, 63 *AM. J. ORTHOPSYCHIATRY* 340, 342 (1993) (stating that "[e]xtreme poverty and lack of affordable housing form the backdrop of homelessness"); Curtis Berger, *Beyond Homelessness: An Entitlement to Housing*, 45 *U. MIAMI L. REV.* 315, 321, 329 (1991) (proposing that "[t]he systemic housing issue of the 1990s is affordability," and maintaining that there is a mass of data "showing that the affordable housing supply, relative to the growing demands upon it, is well below the level of a decade ago"); Martha R. Burt, *The Income Side of Housing Affordability: Shifts in Household Income and Income Support Programs during the 1970s and 1980s*, in *HOMELESSNESS: A PREVENTION-ORIENTED APPROACH* 238, 238 (Rene I. Jahiel ed., 1992) (stating that "[t]he decreasing availability of affordable housing in the 1980s is the factor most often cited as a cause of homelessness"); see also McChesney, *supra* note 5, at 192 (stating that "[h]omelessness among families . . . was inevitable, unless the supply of affordable low-cost housing increased rapidly").

8. Jill Hamsing & Kim Hopper, *The Changing Context of Subsistence*, in *HOMELESSNESS: A PREVENTION-ORIENTED APPROACH*, *supra* note 7, at 231, 233 (stating that one cause of homelessness was unemployment, where "[t]hose who lost jobs were less likely to regain them once the recession ended," and many "were also likely to stay jobless for extended periods"). The authors state that "[a]t the same time, surviving while jobless became more difficult since unemployment benefits were reduced by legislative changes." *Id.* Cf. McChesney, *Homeless Families: Four Patterns of Poverty*, in *HOMELESSNESS: A NATIONAL PERSPECTIVE*, *supra* note 5, at 245, 246-48 (describing one type of homeless family as "the unemployed couple").

9. Milton Greenblatt, *Deinstitutionalization and Reinstitutionalization*, in *HOMELESSNESS: A NATIONAL PERSPECTIVE*, *supra* note 5, at 47, 49-50 (noting that "the burden of care shifted dramatically from the mental hospitals to the community. . . . [W]hen no care was provided, the

neighborhood gentrification;¹⁰ racism;¹¹ displacement of manufacturing jobs by lower paying service jobs;¹² inadequate guaranteed minimum wage;¹³ historically high mortgage interest rates;¹⁴ a rapid rise in the number of single women as head of household;¹⁵ family violence;¹⁶ and the failure of public welfare housing allowances to match fair-

mentally ill were relegated to the streets," and that "a major factor in homelessness is deinstitutionalization"); see also Caton, *supra* note 1, at 15-17 (identifying deinstitutionalization of health and social welfare systems as a factor contributing to homelessness).

10. See MARY E. HOMBS, *CONTEMPORARY WORLD ISSUES: AMERICAN HOMELESSNESS* 173 (1990) (defining gentrification as a process by which poor, inner-city neighborhoods are upgraded in order to "attract higher-income residents," leaving the poor displaced); Bassuk, *supra* note 7, at 342 (noting that "[g]entrification [has] further depleted the supply of affordable housing").

11. Gary A. Morse, *Causes of Homelessness*, in *HOMELESSNESS: A NATIONAL PERSPECTIVE*, *supra* note 5, at 5 (noting that the "disproportionate representation of minorities among the homeless suggests that racial discrimination is a significant contributing factor").

12. See DAVID WAGNER, *CHECKERBOARD SQUARE: CULTURE AND RESISTANCE IN A HOMELESS COMMUNITY* 80-82 (1993) (describing "low rates of pay and benefits [in the service sector]," and the recognition by most of his homeless subjects "that low-paying service jobs would never allow them to escape poverty"); JOHN R. BELCHER & FREDERICK A. DiBLASIO, *HELPING THE HOMELESS: WHERE DO WE GO FROM HERE?* 13 (1990) (stating that "management has worked hard to reduce the wages they pay workers and in the process exploit surplus value. In the majority of cases this has occurred by switching from manufacturing to services").

13. JACKSON UNDERWOOD, *THE BRIDGE PEOPLE: DAILY LIFE IN A CAMP OF THE HOMELESS* 322 (1993) (stating that the "minimum wage is currently at the lowest in inflation adjusted dollars since the 1950s," and that "[t]wenty to thirty percent of homeless people are employed and still can't afford a place to live"); see also Merves, *supra* note 6, at 77 (stating that "[t]he working poor will have difficulty obtaining housing as long as housing is provided as a commodity"); Peter T. Kilborn, *Rise In Minimum Wage Offers Minimum Joy*, N.Y. TIMES, Mar. 29, 1990, at A1 (stating that the 1990 increase in the minimum wage would not bring many workers above the poverty line).

14. Ann Meyerson, *The Changing Structure of Housing Finance in the United States*, in *HOUSING ISSUES OF THE 1990s*, at 155, 155-56 (Sara Rosenberry & Chester Hartman eds., 1989) (noting that housing "is greatly dependent on long-term mortgage financing" and that the fact that "the mortgage lending process has been altered" due to the deregulation and homogenization of the financial system has harmed the interests of those dependent on "low cost and community responsive housing"); see also Rene I. Jahiel, *Homeless-Making Processes and Homeless Makers*, in *HOMELESSNESS: A PREVENTION-ORIENTED APPROACH*, *supra* note 7, at 269, 276 (citing "[t]he high interest rates used in the late 1970s and early 1980s to combat inflation" as having deleterious effects on low-income households, including driving "some low- or moderate-income [home] owners who had variable-rate mortgages into forfeiture"); cf. U.S. DEP'T OF THE TREASURY BUREAU OF STATISTICS, *STATISTICAL ABSTRACT OF THE UNITED STATES* 1994, at 525 (1994) (showing that interest rates on mortgage loans ranged between approximately 10% and 13% between 1980 and 1987).

15. See HARVARD JOINT CENTER FOR HOUSING STUDIES, *THE STATE OF THE NATION'S HOUSING* 1990, at 4 (1990) (noting that 90% of single-parent households are headed by women, and that over half of single-parent households living in rental housing have poverty-level incomes).

16. WAGNER, *supra* note 12, at 52 (stating that "[v]irtually all of the (homeless) women interviewed . . . were abused both as children and again as adults."); Amy Somers, *Domestic Violence Survivors*, in *HOMELESSNESS: A NATIONAL PERSPECTIVE*, *supra* note 5, at 265, 265 (noting that the crisis of domestic violence has resulted in "a population of battered women and their children who must either remain housed in a potentially life-threatening situation or become homeless"); see also MAXINE HARRIS, *SISTERS OF THE SHADOW* 22 (1991) (noting that a recurring theme in the psychological profiles of homeless women is the "pervasive history of abuse").

market rental costs.¹⁷ Interwoven with these contributing causes is the pervasive gender discrimination that exacerbates the effects of each of these contributing causes¹⁸ and adds other causal factors unique to women.¹⁹

Structural inequalities limiting educational, economic, and employment opportunities for women, combined with gender-specific factors such as pregnancy, motherhood, and family violence, have contributed to the increase in the number of homeless women with children.²⁰ Parallel to the increase in homeless families headed by women is the dramatic increase overall in families headed by women. The number of female-headed families grew from 12% of the population in 1970 to almost 25% by 1994.²¹ Female-headed families are typically poor: 43% live below the poverty level.²²

Gender discrimination affects the societal view of female-headed families.²³ The stereotypical view of poor females heading families, often referred to as "welfare mothers,"²⁴ is negative.²⁵ These

17. Roberta Youmans, *The Shortage of Low-Income Housing: The Role of the Federal Government, in HOMELESSNESS: A PREVENTION-ORIENTED APPROACH*, *supra* note 7, at 255-66; BELCHER & DiBLASIO, *supra* note 12, at 86-91 (noting that the increased demand for rental housing has caused rental housing prices to increase, and that social welfare spending has not been sufficient to address this problem).

18. See Bassuk, *supra* note 7, at 340. See generally SANDRA S. BUTLER, MIDDLE-AGED, FEMALE AND HOMELESS: THE STORIES OF A FORGOTTEN GROUP 12-13 (Stuart Bruchey ed., 1994) (discussing female lack of power in society and the feminization of poverty).

19. Bassuk, *supra* note 7, at 345 (mentioning "inadequate child-support legislation and enforcement, wage discrepancies, job discrimination, limited child-care options, and family violence" as economic factors making women more vulnerable than men to the crisis in low-income housing); BETTY G. RUSSELL, SILENT SISTERS 107 (stating that "gender [is] a contributory factor in female homelessness, for homeless men do not take their children with them").

20. Merves, *supra* note 6, at 233 (recognizing the conjunction of factors such as "unemployment, depletion of low-income housing, and inadequate social welfare benefits" and "the pervasive influences of a patriarchal social system" in contributing to the rise in homeless women and families); Peter Marcuse, *The Pitfalls of Specialism: Special Groups and the General Problem of Housing*, in HOUSING ISSUES OF THE 1990S, *supra* note 14, at 67, 73 (stating that "[f]emale-headed single-parent households . . . have problems finding units they can afford. There is a direct link between household composition and quality of housing, because of structural discrimination (sexism)").

21. NATIONAL COMMISSION ON CHILDREN, BEYOND RHETORIC: A NEW AMERICAN AGENDA FOR CHILDREN AND FAMILIES 17-21 (1991) [hereinafter NATIONAL COMMISSION ON CHILDREN] (citing BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, SER. P-25, NO. 1018, PROJECTIONS OF THE POPULATION OF THE UNITED STATES BY AGE, SEX, AND RACE 1988-2080 (1989)) (stating that due to increased rates of divorce and extra-marital childbearing, female-headed households have become prevalent).

22. NATIONAL COMMISSION ON CHILDREN, *supra* note 21, at 24 (citing BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, SER. P-60, NO. 168, MONEY, INCOME AND POVERTY STATUS IN THE UNITED STATES: 1989, at 61 (1990)).

23. Cf. Bassuk, *supra* note 7, at 345 (noting that gender-related biases are part of the "overarching context of homelessness").

24. Richard Delgado & Jean Stephancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258, 1290 n.221 (1992) (referring to "welfare mothers" as a derogatory codeword); RUSSELL, *supra* note 19, at 107 (stating that "[t]he 'welfare mother' has become a stereotype in the American class system").

women are assumed to be lazy, to give birth to additional children just to increase their welfare grant, and to be generally satisfied to remain dependent on public welfare.²⁶ The pervasiveness and tenacity of this stereotype, contradicted repeatedly by fact,²⁷ is reflected in the emphasis on welfare reform proposals that punish mothers for becoming pregnant²⁸ and limit (frequently to two years) the amount of time individuals can receive welfare benefits.²⁹ Bassuk explains: "Gender biases in part explain our unwillingness as a nation to commit the necessary resources to extremely poor families, most of which are headed by women."³⁰

The public welfare program providing assistance to poor, female-headed families with children is called Aid to Families with Dependent Children ("AFDC").³¹ The assistance provided through AFDC

25. See DAVID T. ELLWOOD, *POOR SUPPORT: POVERTY IN THE AMERICAN FAMILY* 4 (1988) (stating that conservatives disapprove of welfare "because they see it as a narcotic that destroys the energy and determination of people who are already suffering from a shortage of such qualities"); Lee Anne Fennell, *Interdependence And Choice In Distributive Justice: The Welfare Conundrum*, 1994 WIS. L. REV. 235, 240 n.19 (1994) (noting that "there is a widespread perception that some subset of the poor presently receiving public assistance could, through effort, alleviate their own poverty").

26. See PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT* 71-78 (1990) (stating that the stereotype of lazy, irresponsible welfare mothers is one of four central harmful images of black women); see also Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, And The Right of Privacy*, 104 HARV. L. REV. 1419, 1444 (1991) (describing "the contemporary image of the lazy welfare mother who breeds children at the expense of taxpayers in order to increase the amount of her welfare check"); cf. CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980*, at 228-33 (1984) (arguing that federal assistance programs should be eliminated because they encourage the lower classes to become welfare dependent, and that AFDC encourages women to have children outside of marriage).

During the Congressional debates on the Social Security Act Amendments of 1967, Senator Russell Long stated that some welfare mothers "have never worked a constructive day in their lifetime [and] are descendants of people who have never made a constructive contribution to society except to have children." 113 CONG. REC. 33,545 (1967).

27. See ELLWOOD, *supra* note 25, at 149 (stating that single mothers work much more than married women, but many remain poor and on welfare); WAGNER, *supra* note 12, at 71 (stating that the reality of welfare and other social benefits is that "most people enter the relief system only with great trepidation, and once they do, they become engaged in a constant struggle to retain benefits").

28. See Tamar Lewin, *A Plan To Pay Welfare Mothers For Birth Control*, N.Y. TIMES, Feb. 9, 1991, at A11 (discussing a proposal of a Kansas state legislator that the state pay \$500.00 to any welfare mother who would use Norplant); Steve Burg, *Welfare Family Cap Pushes Hot Buttons*, STAR TRIB., July 17, 1994, at A1 (discussing the "family cap" programs operating in New Jersey, Georgia, and Arkansas).

29. Ruth Marcus, *President Pledges to Reform Welfare: Jobs Would Be Required After Two Years*, WASH. POST, Feb. 3, 1993, at A1 (reviewing President Clinton's proposal for a two-year eligibility limit); Elizabeth Shogren, *Clinton Unveils Welfare Reform*, L.A. TIMES, June 15, 1994, at A1 (noting that liberals criticized President Clinton's reform initiative as punishing children).

30. Bassuk, *supra* note 7, at 346.

31. 42 U.S.C. §§ 601-619 (1988).

AFDC is a federal and state program established by the Social Security Act. States set minimum standards of need, and have discretion to determine the appropriate level of aid to meet the minimum standards. See Sandra J. Newman & Ann B. Schnare, *Reassessing Shelter*

varies by state³² but is generally inadequate to provide for fundamental life needs.³³ A 1992 study in Chicago, Illinois, showed that only 58% of the monthly bills of an AFDC family were covered by their benefits, including food stamps.³⁴ A major contributing factor in the imbalance between benefits and actual costs is the high cost of rental housing.³⁵ Most of the families who receive AFDC spend a much higher proportion of their total income on housing costs than other families.³⁶ Government guidelines, used for establishing approvals for home mortgages, suggest that no more than 30% of total income should be spent on housing.³⁷ Yet the benefit levels provided by government programs force recipients to spend more than 58% of their poverty-level income on housing.³⁸

Besides facing the need to find resources for 42% of their expenses each month, female-headed families on welfare also face a hostile housing market.³⁹ The supply of low-income housing has eroded considerably over the past two decades while the demand has increased dramatically.⁴⁰ Commentators have identified many factors as contributing to the decrease in the availability of low-income housing units: shifting public policy, favoring voucher systems over construction or rehabilitation of housing;⁴¹ reduction in federal spending for subsidized housing from \$30 billion a year in 1981 to below \$7 billion in 1988;⁴² neighborhood gentrification;⁴³ landlord

Assistance: The Interrelationship Between Welfare and Housing Programs, in HOUSING ISSUES OF THE 1990s, *supra* note 14, at 121-23.

AFDC is currently a \$23 billion program that supports over five billion families with children with average monthly payments of \$379. Marcus, *supra* note 29, at A1.

32. 42 U.S.C. § 602(a)(3) (1988) (providing for the establishment and discretion of a state agency to administer or supervise its plan); 45 C.F.R. 201 (1993); Bassuk, *supra* note 7, at 341.

33. Most states have set aid levels that fail to meet the cost of standard rental housing. Newman & Schnare, *supra* note 31, at 125 (stating that "some states' specific shelter allowances have little relationship to the cost of standard housing").

34. CHRISTOPHER JENCKS, *RETHINKING SOCIAL POLICY: RACE, POVERTY, AND THE UNDERCLASS* 208 (1992).

35. See BELCHER & DiBLASIO, *supra* note 12, at 86-91.

36. Bassuk, *supra* note 7, at 342-43 (stating that mothers receiving AFDC cannot afford rent unless it is subsidized, and that nationally it would take 116% of an AFDC grant to afford fair market rent for a one-bedroom apartment).

37. A. LEONARD, ET AL., *A PLACE TO CALL HOME* 1 (1989).

38. Bassuk, *supra* note 7, at 342 (noting that between 1974 and 1987, the median proportion of income devoted to rent payments increased from 34.9% to 58.4%).

39. See *supra* notes 7, 10, 14, and 17 and accompanying text (delineating the causes of the hostile housing market).

40. Bassuk, *supra* note 7, at 342.

41. Bassuk, *supra* note 7, at 342 (noting that the federal government "has virtually stopped supporting [housing] construction or rehabilitation programs" and "has increasingly relied on [housing] vouchers").

42. Kay Y. McChesney, *Family Homelessness: A Systemic Problem*, 46 J. SOC. ISSUES 193, 193 (1990) (stating that "HUD appropriations for subsidized housing programs fell from a high of \$32.3 billion in fiscal year 1978 during the Carter administration, to \$9.8 billion in fiscal year

bankruptcy or bank foreclosure;⁴⁴ and an historic high in mortgage interest rates.⁴⁵ Some have used the analogy of "musical chairs" to describe the resulting situation in which too many low-income families scramble to secure too few housing units.⁴⁶ Others have quantified the resulting situation: in 1985, 11.6 million low-income families competed for 4.8 million low rent housing units.⁴⁷

The relative lack of affordable housing for female-headed families depending on AFDC is clearly a contributing cause of increasing homelessness among such families.⁴⁸ While efforts to create additional units of low-income housing are underway,⁴⁹ the gap between housing allowances provided by public welfare agencies and the fair market rental costs of housing continue to place female-headed families, dependent on AFDC, at risk of homelessness.⁵⁰ Having recognized this fundamental cause of homelessness, legal advocacy efforts have begun to address the inadequacy of the public welfare housing allowance.⁵¹ Class action lawsuits on behalf of public

1988 under Reagan, a decrease of more than 80% in constant dollars").

43. See *supra* note 10 and accompanying text (stating that neighborhood gentrification is a cause of increasing homelessness).

44. Richard P. Appelbaum et al., *A Progressive Housing Program For America*, in HOUSING ISSUES OF THE 1990s, *supra* note 14, at 313, 317-19 (citing the profit motivation of financial institutions that make mortgage loans and "the heavy dependence on private debt" as one of several "sources of high housing costs" in that housing costs have become "highly susceptible to fluctuations in the credit market"); U.S. DEP'T OF THE TREASURY, BUREAU OF STATISTICS, STATISTICAL ABSTRACT OF THE UNITED STATES 1989, at 498 (1989) (noting that the home mortgage foreclosure rate nearly tripled between 1980 and 1987).

45. See *supra* note 14 and accompanying text.

46. E.D. Sclar, *Homelessness And Housing Policy: A Game of Musical Chairs*, 80 AM. J. PUB. HEALTH 1039 (1990); see also McChesney, *supra* note 5, at 195 (stating that "[t]he more people playing the game, and the fewer the chairs, the more people left standing when the music stops").

47. LEONARD, *supra* note 37, at 7-8.

48. See *supra* notes 7, 46, and 47 and accompanying text.

49. See John Handley, *Fannie Mae Expands Affordable-Housing Program*, CHICAGO TRIB., Oct. 15, 1994, Home Guide, at 25 (stating that a joint program between the City of Boston and the Federal National Mortgage Association will provide \$1.5 billion in affordable financing for over 20,000 Boston families); Alva James-Johnson, *Development, Housing Ideas Draw Questions*, OMAHA WORLD HERALD, Oct. 13, 1994, at 135F (discussing a plan for housing affordability, community development, and reducing homelessness); Mike Vogel, *State Earmarks \$7 Million for Housing in Area*, BUFFALO NEWS, Oct. 2, 1994 (discussing the development and rehabilitation plans of various programs, including one program established by the National Affordable Housing Act of 1990).

50. Bassuk, *supra* note 7, at 343 (stating that single mothers who rely on AFDC payments cannot cope with a housing market characterized by unavailable or unaffordable housing); McChesney, *supra* note 5, at 250 (stating that "[i]n the housing market of the 1980s, the proximate cause of [AFDC mothers'] homelessness was an AFDC check that was insufficient to cover the cost of both housing and other necessities"); see also *supra* note 36 and accompanying text.

51. Gary L. Blasi, *The Role of Legal Organizations in Helping Homeless People*, in HOMELESSNESS: A PREVENTION-ORIENTED APPROACH, *supra* note 7, at 299-308; see also BAKAK, *supra* note 2, at 146

welfare recipients have become a front-line strategy in the battle to reduce family homelessness.⁵²

I. CLASS ACTION LITIGATION AND HOMELESSNESS

The use of litigation to address homelessness is well established.⁵³ Class action lawsuits are particularly prevalent in the history of litigation on behalf of homeless people.⁵⁴ Blau notes that "[l]awyers represent a special kind of advocate for the homeless. . . . [T]heir cases have . . . turned the courts into the branch of government that is most supportive of the homeless."⁵⁵

Use of the courts to address the sociopolitical and economic problems of homelessness has been both analyzed and criticized. Kirchheimer suggests that state courts provide authoritative bargaining arenas that can "facilitate policy change in the intergovernmental system by providing sites where actors can compete for political resources"⁵⁶ Courts, then, become an arena wherein weaker parties in a policy dispute can gain some measure of policy change. Historically, the distinct unwillingness of public officials and agencies to address homelessness encouraged legal advocates to use the courts as an authoritative bargaining arena.⁵⁷ In states such as New York, where the constitution provides a basis for public responsibility for the

(reviewing the history of struggle for legal recognition of the homeless); HOMBS, *supra* note 10, at 85-95 (reviewing significant court cases); Geoffrey Mort, Note, *Establishing A Right To Shelter For The Homeless*, 50 BROOK. L. REV. 939, 939 (1984) (stating that "[l]itigation has become the preferred tool of advocacy groups working to improve conditions for the homeless, largely because other methods of influencing government policy in this area show little potential for success").

52. Maria Foscarnis, *Beyond Homelessness: Ethics, Advocacy, and Strategy*, 125 ST. LOUIS U. PUB. L. REV. 37, 45 (1993) (outlining a two-part strategy for homeless advocacy, involving federal litigation and legislative advocacy, and specifically recounting class action litigation in which the author was involved).

53. JOEL BLAU, *THE VISIBLE POOR: HOMELESSNESS IN THE UNITED STATES* 98 (1992) (stating that lawyers have helped to bring cases that spawned new laws for the homeless and made the courts supportive toward the homeless); see also Donna Wilson Kirchheimer, *Sheltering the Homeless in New York City*, 104 POL. SCI. Q. 607, 620-21 (1990) (discussing landmark cases and the litigation campaigns that followed for a decade); Geoffrey Mort, *Establishing a Right to Shelter for the Homeless*, 50 BROOK. L. REV. 939, 940 (1984) (citing one response to homelessness as the initiation of a series of legal actions, especially in New York and Washington, D.C.).

54. See Mort, *supra* note 53, at 940 (discussing the use of litigation and class action lawsuits to establish a right to shelter and improve the situation of the homeless).

55. BLAU, *supra* note 53, at 99-100 (citing a class action suit in New York that became precedent for subsequent class action suits for the rights of the homeless).

56. Kirchheimer, *supra* note 53, at 619.

57. See BLAU, *supra* note 53, at 101 (noting that courts fill a political vacuum created by the executive and legislative branches that do not pass laws to adequately address festering social problems); see also Kirchheimer, *supra* note 53, at 622 (stating that courts positively affected the expansion of homeless shelters).

impoverished,⁵⁸ the courts became the arena in which the homeless could gain some assistance.⁵⁹ Class action lawsuits thus became the primary legal tools by which advocates attempted to secure such assistance.⁶⁰

The successes of this approach are well-known, especially in New York.⁶¹ Beginning in 1979, the Coalition for the Homeless brought *Callahan v. Carey*,⁶² a class action lawsuit, on behalf of homeless men in Manhattan, charging a critical shortage of shelter beds⁶³ and dangerous, unsanitary conditions in existing shelters.⁶⁴ The resulting consent decree established a legal right to shelter in New York State.⁶⁵ This decree marked the beginning of continuous class

58. N.Y. CONST. art. XVII, § 1 (recognizing that the "aid, care, and support of the needy are public concerns and shall be provided by the State and of its subdivisions" using legislative means); see also Christine R. Ladd, *A Right to Shelter for the Homeless in New York State*, 61 N.Y.U. L. REV. 272, 272-73 (1986) (arguing that a right to shelter for the homeless is guaranteed in the New York State Constitution and stating that New York courts have recognized the state's constitutional duty as mandatory).

59. Mort, *supra* note 51, at 940 (explaining that litigation has become the preferred tool of advocacy groups because other methods of influencing government policy are not as successful); cf. BLAU, *supra* note 53, at 100 (explaining that although courts have expanded some rights for the homeless, they do not want to be social welfare agencies, legislators, or instruments for difficult implementation).

60. See Stephen Wizner, *Homelessness: Advocacy and Social Policy*, 45 U. MIAMI L. REV. 387, 399 (1991) (citing the Yale Law School Homeless Clinic's class action litigation to force government to provide housing as an example of a strategy used in many class actions).

61. See Thomas Scheffey, *High Court to Consider Constitutionality of Poverty Programs*, CONN. L. TRIB., May 30, 1994, at 8 (discussing class action suits as a way of defining the duty to provide subsistence-level support to the poor); William J. Dean, *Success Story*, N.Y. L.J., May 29, 1992, at 3 (giving examples of successful legal intervention for the homeless and noting one law firm that devotes half of its practice to such pro bono issues); see also Bill Kislink, *Homeless Suit Looks to Miami: Class action attacking Matrix program echoes finding of Florida federal judge*, THE RECORDER, Nov. 24, 1993, at 1 (discussing a class action suit on behalf of the homeless in San Francisco, which relied on the precedent of a 1992 federal case holding that a Miami police program violated the constitutional rights of the homeless); Barbara Rabinowitz, *Servicing the Poor*, MASS. LAWYERS WKLY., May 10, 1993, at 29 (showing that Boston's Legal Services programs for the poor and needy have used class actions to change social programs).

62. No. 42582/79 (N.Y. Sup. Ct. Aug. 26, 1981) (consent decree).

63. See BLAU, *supra* note 53, at 99 (stating that the court brief in *Callahan v. Carey* estimated that only 1,200-2,000 out of 10,000 homeless in New York sought lodging in the winter because most were turned away due to overcrowding).

64. See BLAU, *supra* note 53, at 106 (describing some of the unsafe and unsanitary conditions in shelters in which infants sleep, such as inoperable plumbing, crumbling plaster, and exposed wires); see also McCain v. Koch, 517 N.Y.S.2d 918 (App. Div. 1987) (representing lawyers' attempts to secure safe, adequate emergency shelter for every family in New York).

65. See BLAU, *supra* note 53, at 100 (stating that the New York Supreme Court granted a preliminary injunction in *Callahan* recognizing a right to shelter, although implementation took five years); see also Steven Banks & Robert M. Hayes, *The Rights of the Homeless* 1990, at 329, 329-34 (PLI Litig. & Admin. Practice Course Handbook Series No. 428, 1992) (outlining both the provisions of shelter and the shelter facility standards to be provided by the city).

action litigation that has extended the right to shelter to homeless women in 1982,⁶⁶ and to homeless families in 1986.⁶⁷

Legal advocates and the class action lawsuits they initiate address immediate needs of homeless people, including one of the most basic human needs—shelter. Wizner states that “[l]egal advocates confront homelessness as an emergency condition.”⁶⁸ Hayes noted that most class action lawsuits provide “a bandage on a desperately bleeding victim.”⁶⁹ Without providing more than just the bandage, however, what becomes of that victim? In the absence of any significant social policy advances, the legal advocates’ bandages are applied directly to the daily experience of homeless people without effecting systemic solutions to homelessness.⁷⁰ It is within this context that the Yale Law School Homelessness Clinic has embraced affirmative class action lawsuits that “seek to change conditions in existing housing or to force government to provide effective housing assistance.”⁷¹

Critics of class action lawsuits, including lawyers such as Robert Hayes, who has litigated and won many class action lawsuits on behalf of homeless people,⁷² recognize the limitations of this approach to advocacy. Hayes characterized legal advocacy for homeless people as

66. See *Eldredge v. Koch*, 459 N.Y.S.2d 960 (Sup. Ct. 1983) (applying the *Callahan* decree to women), *rev'd*, 469 N.Y.S.2d 744 (App. Div. 1983).

67. See *Jiggets v. Grinker*, 554 N.Y.S.2d 92 (App. Div. 1990) (reversing the lower court and holding that provisions of social services law requiring the Social Services Commissioner to establish “adequate” shelter allowance for recipient families imposes a duty to establish allowances that reflect the housing costs in the city); *Barnes v. Koch*, 518 N.Y.S.2d 539 (Sup. Ct. 1987) (representing a class action suit brought by advocates of homeless families’ rights seeking to relocate families residing in one particular shelter. The city thereafter renovated the shelter and the court allowed it to reopen); see also Robert Hayes, *Litigating on Behalf of Shelter for the Poor*, 22 HARV. C.R.-C.L. L. REV. 79, 87 (1987) (stating that the right to shelter for families was extended when a New York appellate court held that equal protection applies to homeless women and children).

68. Wizner, *supra* note 60, at 391. Wizner argues that, while legal advocates attempt to confront the immediate needs of their clients, the shortage of affordable housing needs to be addressed by aggressive litigation and legislation. *Id.* at 391-98.

69. Hayes, *supra* note 67, at 79 (arguing that lawsuits are valuable for clients but they must work in conjunction with social change).

70. See Hayes, *supra* note 67, at 79-81 (arguing that lawsuits are beneficial to the daily lives of individual clients but do nothing significant in the larger context of poverty and homelessness).

71. Wizner, *supra* note 60, at 399-403 (suggesting three forms of advocacy, including eviction defense, workshop programs, and affirmative class action lawsuits to increase the amount of affordable low-income housing by giving legal and technical assistance to those developing and managing housing for the poor).

72. See BLAU, *supra* note 53, at 98-100 (stating that Robert Hayes began legal advocacy for the homeless, argued successfully for their rights in New York, and spawned similar litigation outside of New York).

"slow, god-awful, very ineffective, bull-in-a-china-shop kinds of efforts."⁷³

Underpinning most criticism of class action lawsuits is the relationship between the issues litigated and social policy advances. Critics argue that class action lawsuits address narrow issues and may result in decisions that are contrary to progressive social policy goals.⁷⁴ Wizner notes that "[s]ome [homeless] advocacy efforts may, by choice or necessity, implement social policies that do not properly address the causes of the problem they confront."⁷⁵ The fact is that social policy goals are long range in nature and nowhere near realization,⁷⁶ despite a decade of increasing homelessness.⁷⁷

An analysis of the arguments made by advocates and critics of class action lawsuits reveals that both short-term strategies represented by class action lawsuits and long range strategies directed at social policy change are necessary.⁷⁸ A synthesis of both strategies is required if change is to occur in the sociopolitical, economic problem of homelessness. Blau identifies the importance of creating a social movement that results in a political environment favorable to homeless peoples' rights.⁷⁹ Hayes addresses the need for litigation to educate the population and build a consensus about the sociopoliti-

73. Hayes, *supra* note 67, at 87 (stating that litigation is a central tool in the war on poverty, although it can take years).

74. Wizner, *supra* note 60, at 390-91 (defining some progressive policy goals as financial assistance to the homeless, housing vouchers for those who need assistance, and life management counselling. Social and legal theorists also claim that legal advocacy benefits only the immediate needs of clients); see also Ellickson, *The Homeless Middle*, 99 PUB. INTEREST 45, 59 (Spring 1990) (arguing that lawsuits for housing do not present a long-term solution to homelessness or fix the socioeconomic problems of the poor).

75. Wizner, *supra* note 60, at 398.

76. See Wizner, *supra* note 60, at 389 (arguing that homelessness will get worse when addressed only through litigation because the fundamental social and economic issues are not addressed through litigation alone).

77. See BLAU, *supra* note 53, at 10-11 (giving a brief historical overview of the rise in homelessness and noting that the recession and poor housing in the 1980s spawned an increase in homelessness that continued into the 1990s despite the disappearance of the factors that caused the rise); Caton, *supra* note 1, at 160-72 (giving the achievements and limitations of homeless advocacy in the 1980s and some reasons for the increase in homelessness).

78. See also Hayes, *supra* note 67, at 79 (arguing that class action lawsuits are a short-term solution to a larger social problem); see generally Wizner, *supra* note 60, at 395-98 (giving the liberal and conservative views of social policy attitudes toward homelessness, which maintain that homelessness is either a supply problem or a demand problem, respectively, with the housing market). Conservatives contend it is a demand problem that can be cured using the social service and welfare programs only for the dysfunctional victims of homelessness. Liberals contend that there is a housing supply shortage that can only be fixed by changing the current socioeconomic order that ignores the less fortunate. *Id.*

79. Blau, *supra* note 53, at 107-08.

cal, economic underpinnings of poverty and homelessness.⁸⁰ Until the public climate supports long-range policy changes on behalf of poor and homeless people, short-range strategies such as class action lawsuits are necessary.

II. *SHARP V. PERALES*: CLASS ACTION LITIGATION IN SUFFOLK COUNTY, NY

In 1988 in Suffolk County, New York, Sylvia Sharp sought assistance from the Nassau-Suffolk Law Services Committee ("Committee") because her shelter allowance was inadequate to rent even the least-expensive housing available.⁸¹ Ms. Sharp's experience, detailed below, typified that of many other female-headed, homeless families in the County.⁸² Her experience also demonstrated the detrimental effects of conflicting, even contradictory, mandates embedded in the public welfare system responsible for aiding such families.⁸³ To combat some of these problems in the public welfare system of New York, the Committee filed a class action lawsuit against the Suffolk County Department of Social Services, with Sylvia Sharp as named plaintiff.⁸⁴

Sylvia Sharp is an African-American woman with four children and strong family ties to her community. In 1981 she and her children were forced into homelessness when their landlord boarded up the unheated, unfurnished apartment they occupied.⁸⁵ Through public assistance, the Sharp family received a monthly shelter allowance of \$277.⁸⁶ However, at that time, the prevailing monthly fair market rental rate for a two-bedroom apartment in the County was \$463,⁸⁷ leaving the Sharp family \$186 short.

Unable to locate housing within the shelter allowance provided, the Sharp family spent the next nine months in two different welfare motels.⁸⁸ In January 1982 Ms. Sharp, desperate to leave the welfare

80. Hayes, *supra* note 67, at 89-91 (stating that the homelessness problem must be solved in part by an appeal to the "hearts and minds of the American people").

81. See generally Sylvia Sharp Intake Summary at 4, Nassau Suffolk Law Services Committee, Inc. (Mar. 15, 1988) [hereinafter Intake Summary].

82. See Bassuk, *supra* note 7, at 342-43.

83. See *infra* text accompanying notes 111-16.

84. Sharp v. Perales, 200 N.Y. L.J. 21, 26-27 (Sup. Ct. Sept. 23, 1988) (certifying the class and granting temporary relief), *rev'd in part*, 573 N.Y.S.2d 410 (App. Div. 1991).

85. Plaintiff-Respondent's Brief at 4, Sharp v. Perales, No. 88-3265 (App. Div. Jan. 15, 1990).

86. *Id.*

87. *Id.*

88. *Id.*

Suffolk County utilizes 16 welfare motels and 13 private shelters to quarter approximately 200 families with no home. Few placements have kitchen facilities, and most are far removed from the constellation of support services that are required to mount

motel and locate larger, more permanent housing, rented an apartment that consumed almost all of her total public assistance grant.⁸⁹ She managed in this way until August 1984, when the rent on her apartment was raised to the point that she could no longer afford it and she was evicted.⁹⁰ After another 144 days in four different welfare motels,⁹¹ the County Department of Social Services reviewed her case, documenting that no permanent housing could be located within the shelter allowance maximum, and that no public housing was available.⁹² Shortly thereafter, the Department of Social Services placed the Sharp family in an apartment costing \$270 more than her shelter allowance,⁹³ leaving a total of \$56.70 a month for all other expenses of this family.⁹⁴ After only one month the Sharp family was forced back into emergency housing.⁹⁵ This time they spent 318 days at one welfare motel before the County again placed the family in an apartment costing far more than their shelter allowance.⁹⁶ The Sharp family managed in this situation for eleven months when, in the middle of winter, the landlord cut off heat, hot water, and utilities, forcing the family back into emergency housing.⁹⁷

After another 418 days in a welfare motel, the Department of Social Services notified Sylvia Sharp that she was no longer eligible for emergency housing assistance because she had "not made diligent efforts to seek permanent housing" and "did not cooperate in the County's efforts to help acquire permanent housing."⁹⁸ To challenge these findings, Ms. Sharp requested an expedited fair hearing before the New York State Department of Social Services

a viable effort to secure permanent housing. Typically, entire families are cramped into single rooms more suited for afternoon trysts than for a child's play. Insect infestation, faulty plumbing, filthy linen, insufficient heat and doors without locks are only some of the amenities which characterize Suffolk's emergency housing stock.

Verified Class Action Complaint at 2-3, *Sharp v. Perales*, No. 88-3265 (N.Y. Mar. 7, 1988).

89. Plaintiff-Respondent's Brief, *supra* note 85, at 4 (citing Record at 78, *Sharp v. Perales*, 200 N.Y. L.J. 21 (Sup. Ct. Sept. 23, 1988)). In other words, the cost of renting the apartment consumed not only Ms. Sharp's entire shelter allowance but also most of her general public assistance grant, which was intended to cover food, utilities, clothing, and other necessities.

90. Plaintiff-Respondent's Brief, *supra* note 85, at 4-5 (citing Record at 78).

91. Plaintiff-Respondent's Brief, *supra* note 85, at 5 (citing Record at 72-73).

92. Plaintiff-Respondent's Brief, *supra* note 85, at 5 (citing Record at 79).

93. Plaintiff-Respondent's Brief, *supra* note 85, at 6 (citing Record at 49-50).

94. The \$56.70 was to cover food, clothing, utilities, and other necessities for Ms. Sharp and her four children.

95. Plaintiff-Respondent's Brief, *supra* note 85, at 6 (citing Record at 80).

96. Plaintiff-Respondent's Brief, *supra* note 85, at 7.

97. Plaintiff-Respondent's Brief, *supra* note 85, at 7 (citing Record at 82, 94).

98. Plaintiff-Respondent's Brief, *supra* note 85, at 8 (citing Record at 84, 94).

("NYSDSS").⁹⁹ Prior to the hearing, the County located several apartments, all either too small (one bedroom) or costing more than Ms. Sharp's shelter allowance, and offered them to Ms. Sharp.¹⁰⁰ She requested that the County pay the difference between the cost of the apartment and the shelter allowance they gave her, but her request was refused.¹⁰¹

On October 30, 1987, an administrative fair hearing was held in Hauppauge, New York, before an administrative law judge designated by the defendant in the class action suit, Mr. Perales. An attorney with the Committee represented Ms. Sharp at the hearing, which addressed NYSDSS's refusal to supplement Ms. Sharp's shelter allowance so that she could afford the housing options the Department social worker had presented to her. The denial of a supplemental housing allowance was upheld at the hearing.¹⁰² As a result of this denial, and because Ms. Sharp could not afford the housing options without a shelter allowance increase, the Sharp family lived in four different welfare motels during a four-month period.¹⁰³

Following these moves, the Sharp family moved into an apartment that was \$193 more than their shelter allowance.¹⁰⁴ The family continued living this way until September 1988, when the New York Supreme Court granted preliminary relief in the form of directing the County to supplement Ms. Sharp's shelter allowance, nearly doubling her award.¹⁰⁵

In total, Sylvia Sharp and her daughters spent 1,000 days homeless at a cost to taxpayers of about \$58,000.¹⁰⁶ If the Sharp family had received a shelter allowance equal to prevailing fair market rental costs for the same period, the cost would have been approximately \$20,000,¹⁰⁷ a savings of \$38,000, or 66%.

Of even greater significance is the social and human costs to the Sharp family. For 1,000 days—over two and a half years—Sylvia Sharp

99. Plaintiff-Respondent's Brief, *supra* note 85, at 8 (citing Record at 94).

100. Plaintiff-Respondent's Brief, *supra* note 85, at 8 (citing Record at 85-86, 94).

101. Plaintiff-Respondent's Brief, *supra* note 85, at 8.

102. Plaintiff-Respondent's Brief, *supra* note 85, at 8. After the administrative fair hearing, the decision by Defendant Perales, Commissioner of the New York State Department of Social Services, found that the county correctly denied Ms. Sharp's request for excess rent because "there is no regulatory authority that authorizes [the county] to provide a shelter allowance in excess of the schedule contained in 18 NYCRR 352.3 . . ." *Id.* (citing Record at 96-98).

103. Plaintiff-Respondent's Brief, *supra* note 85, at 9.

104. Plaintiff-Respondent's Brief, *supra* note 85, at 9 (citing Record at 99-102).

105. Plaintiff-Respondent's Brief, *supra* note 85, at 9 (citing Record at 10); *see also* Carolyn Colwell, *Homeless Family's Victory: Ruling in Suffolk could lead to aid for other welfare clients*, *NEWSDAY*, Sept. 13, 1988, at 3.

106. Plaintiff-Respondent's Brief, *supra* note 85, at 9.

107. Plaintiff-Respondent's Brief, *supra* note 85, at 10.

and her children were subjected to a series of destabilizing, dehumanizing, destructive, and dangerous situations brought about by the Department of Social Services' failure to meet the family's needs.¹⁰⁸ A social work intake summary, completed when Ms. Sharp contacted the Committee, describes the impact on Ms. Sharp of multiple emergency housing placements: "Ms. Sharp described feeling disoriented, confused and de-established. She said she could not cope with all those moves and described the effect of all the years of instability as being cumulative She simply could not stand being displaced again."¹⁰⁹ The intake summary draws the following conclusion: Ms. Sharp "appears to have done a yeoman's job in holding this family together up to now; the situation's becoming extremely tenuous . . . there is a very thin thread holding this entire family together and every threat to stability, routine and survival shreds the thread even finer."¹¹⁰

Sylvia Sharp's experience demonstrates that the Department of Social Services' policies are in conflict with themselves and with actual housing costs. Provided with a shelter allowance that was always substantially lower than even the least-costly housing available, Ms. Sharp had to obtain housing that cost far more than her shelter allowance provided. Consequently, Ms. Sharp was forced to use her public assistance grant to make up the difference,¹¹¹ even though she knew that the remaining \$56 a month would be insufficient to feed, clothe, and provide other necessities for herself and her four children. Following the mandate of the Housing Division of the Department of Social Services, however, Ms. Sharp accepted an apartment that left her with \$1.89 per day to meet all expenses.¹¹²

Moreover, when the Department of Social Services refused to increase Ms. Sharp's shelter allowance to cover the actual housing costs of a two-bedroom apartment, it violated the defendant's constitutional and statutory obligation to enable parents to raise their

108. See generally Esther S. Merves, *Homeless Women: Beyond the Bag Lady Myth*, in HOMELESSNESS: A NATIONAL PERSPECTIVE, *supra* note 5, at 229, 240-41 (discussing the various dangers faced by homeless women as a "major concern," specifically noting that "[s]helters are often located in high-crime areas; the crime rate may be equally high in the shelter"). Merves also discusses the psychological impacts of homelessness on women, including feelings of victimization, profound disillusionment, self-blame and punishment, disappointment with life and questioning its meaning, and resentment toward other social groups whom some agencies considered more worthy of services. *Id.*

109. Intake Summary, *supra* note 81, at 2.

110. Intake Summary, *supra* note 81, at 5.

111. Plaintiff-Respondent's Brief, *supra* note 85, at 4.

112. See Intake Summary, at 4 (stating that the amount Ms. Sharp had after paying rent was "clearly not realistic" to support her family).

children in a home.¹¹³ The New York State Constitution provides in relevant part: "The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivision, and in such a manner and by such means, as the legislature may from time to time determine."¹¹⁴ Attorneys for plaintiff Sylvia Sharp argued that based on the plain language of this section, as well as its legislative history and judicial interpretation, Ms. Sharp was entitled to an increase in her shelter allowance to enable her to afford permanent housing for her family.¹¹⁵ New York State Social Services Law Section 350(1)(a) further requires that allowances for families with dependent children

shall be adequate to enable the father, mother, or other relative to bring the child up properly, having regard for the physical, mental, and moral well being of such child. . . . Allowances shall provide for the support, maintenance and needs of one or both parents if in need, and a home¹¹⁶

Thus, Ms. Sharp argued that by failing to provide families with an adequate shelter allowance, the Department of Social Services forced impoverished families to remain in a permanent state of temporary housing,¹¹⁷ in conflict with constitutional and legislative mandates to provide allowances that result in stable, permanent homes for children. Ms. Sharp posed a seemingly simple question: Why will the Department of Social Services spend more than \$1,000 a month for my family to be housed in welfare motel rooms, but refuse to spend \$700 to \$800 for adequate, more permanent, housing? This question became the basis of *Sharp v. Perales*, the class action lawsuit brought by the Nassau-Suffolk Law Services Committee in 1987 against the Department of Social Services in Suffolk County, New York.¹¹⁸

In *Sharp* the New York Supreme Court ordered the Department of Social Services to pay a supplementary housing allowance to families living in emergency housing with open Aid to Dependent Children/Unemployed Caretaker cases ("ADC-U").¹¹⁹ This supplement raised total housing allowances for such families up to as much as \$800 per month, depending on family size.¹²⁰ For example, in 1990

113. These are two of plaintiff Sharp's arguments in the class action lawsuit against the Department of Social Services in Suffolk County, New York. Plaintiff-Respondent's Brief, *supra* note 85, at 28-35 (constitutional argument), 35-41 (legislative argument).

114. N.Y. CONST. art. XVII, § 1.

115. Plaintiff-Respondent's Brief, *supra* note 85, at 28-35.

116. N.Y. SOC. SERV. LAW § 350(1)(a) (McKinney 1992).

117. Verified Class Action Complaint, *supra* note 108, at 5.

118. *Sharp v. Perales*, 200 N.Y. L.J. 21, 26-27 (Sup. Ct. Sept. 23, 1988).

119. *Id.*

120. *Id.*

the usual maximum housing allowance allocated to families with five members was \$486 per month.¹²¹ With entry into the *Sharp* lawsuit, a family of five could receive \$800 per month for housing.¹²² However, the calculation used to determine the families' basic needs grant—approximately \$379 per month for a family of five¹²³—and Food Stamp allowance would be unaffected by this increase in housing payments.¹²⁴

To become a member of the lawsuit, the public assistance client residing in emergency housing first had to identify rental housing which passed inspection by the Department of Social Services,¹²⁵ and then go to the Legal Services office to sign up for the lawsuit.¹²⁶ This process is referred to as being "intervened,"¹²⁷ and members of the suit are referred to as "intervenors."¹²⁸

At the time of this writing, Legal Services continues to intervene eligible families on an ongoing basis and will continue to do so until the case goes to appeals court.¹²⁹ Membership in the lawsuit requires that the ADC-U family's housing allowance go to the landlord, rather than directly to the family along with their basic needs grant.¹³⁰ It also restricts families from moving: the housing supplement is not transferable from one housing unit to a new housing unit except in extreme cases of need.¹³¹

Therefore, if a family decides to move, they lose the supplement and, ironically, can only pick it up again if they return to emergency housing and re-apply through Legal Services.¹³²

III. COMBINING SOCIAL SCIENCE RESEARCH AND CLASS ACTION LITIGATION

Legal advocates at Nassau-Suffolk Legal Services recognized the need to document the effects of an increased housing allowance for *Sharp* intervenors, in order to provide evidence for appeal. The

121. *Id.*

122. *Id.*

123. Denise Lynn Healey, *Sharp* Procedural Manual 2 (unpublished manual, Nassau/Suffolk Law Services Committee, Inc.) (on file with *The American University Journal of Gender & the Law*).

124. *Sharp*, 200 N.Y. L.J. at 27.

125. See generally Healey, *supra* note 123 (reviewing procedures for *Sharp* intervenors).

126. See generally Healey, *supra* note 123.

127. See generally Healey, *supra* note 123.

128. See generally Healey, *supra* note 123.

129. See generally Healey, *supra* note 123.

130. Healey, *supra* note 123, at 7.

131. Healey, *supra* note 123, at 11.

132. Healey, *supra* note 123, at 11.

authors of this article, researchers based at a nearby university, were contacted for this purpose. Funding for the research was obtained from the Poverty and Race Research Action Council in Washington, D.C.¹³³ The authors designed a research project to ascertain the effects of an increased housing allowance for female-headed families who were members of the *Sharp* class.¹³⁴

Summarizing the findings, it is clear that for the women in this study, having the extra rent money, which reduces the gap between housing allowances and fair market rental costs, eased the transition from emergency housing into rental housing, because it allowed them to afford available housing, keep up with rent payments, and avoid eviction.¹³⁵ In addition, extra rent money meant moving into safer neighborhoods with less drug traffic.¹³⁶

Secondary effects of the extra rent money were also evident. For example, most of the women interviewed said that since joining the lawsuit they had been able to pursue job training and further their education.¹³⁷ It also appeared that the high rate of school failures among children in these families was reduced, in large part due to staying in one place for a longer period of time.¹³⁸

The limits of litigation-based advocacy for these families are also obvious. The housing supplement presents dilemmas to those people it represents because it is not a formally-sanctioned program and because it has restrictions.¹³⁹ For example, from the view of current lawsuit members, their inability to move without sacrificing the extra rent money is very problematic.¹⁴⁰ Moreover, the lawsuit has not affected the behavior of landlords regarding housing maintenance and upkeep.¹⁴¹ As a result, the housing conditions of these families were marginal at best.¹⁴² Several of the women interviewed wished to move because of substandard housing conditions, but could not

133. See generally Lynn Soine & Mary Ann Burg, *Evaluating the Effects of Court-Ordered Housing Subsidies for Homeless Families In Suffolk County, New York: Advocacy, Programs and Policy Implications* (March 1994) (unpublished study of intervenors in the *Sharp* lawsuit).

134. The authors conducted the research project over an eighteen month period, beginning in 1992. Full details of the research design, methodology, and findings are available from the authors or from the Poverty and Race Research Action Council.

135. Soine & Burg, *supra* note 133, at 26.

136. Soine & Burg, *supra* note 133, at 19.

137. Soine & Burg, *supra* note 133, at 25-26.

138. Soine & Burg, *supra* note 133, at 26.

139. Soine & Burg, *supra* note 133, at 26.

140. Soine & Burg, *supra* note 133, at 26.

141. Soine & Burg, *supra* note 133, at 26.

142. Soine & Burg, *supra* note 133, at 26.

afford to lose the rent money, and certainly were not willing to move back to emergency housing.¹⁴³

Furthermore, the economic circumstances of these families, though undoubtedly improved, has not improved enough to make the transition out of dependency possible. All of the families in this study were still just scraping by from month to month, rotating and delaying payment on bills and relying heavily on help from family and friends.¹⁴⁴ Even though the extra rent money meant that the women interviewed had more opportunities to increase their employability through job training, their potential wage income was still not enough to make it advantageous, or even possible, to escape public assistance dependency.¹⁴⁵

It should be noted that this study was not designed to draw conclusions about the effect of increased rent allowances for formerly homeless people. The nature of the lawsuit makes it impossible to design an empirical, controlled study. Two factors resulting in an unstable number of intervenors from which to draw a representative sample are the rolling admissions process into the lawsuit, and the ongoing but undocumented attrition from membership in the lawsuit due to changes in income, employment, and evictions. Over the history of the lawsuit, the total number of intervenors has progressively increased,¹⁴⁶ and the characteristics of the intervenors have undoubtedly changed as well.¹⁴⁷

In the first year of the lawsuit—prior to the development of a general local knowledge among service providers or sheltered individuals of the possibility of obtaining extra rent money by joining the lawsuit—those few individuals who joined may have been persons who had enough motivation and personal resources to enable them to seek unusual paths of assistance. As time passed and local knowledge of the lawsuit increased, formal and informal mechanisms of referral, access, and processing of people into the lawsuit were developed.¹⁴⁸ Over time this resulted in increased membership in the lawsuit,¹⁴⁹ and membership undoubtedly became increasingly more representative of the sheltered population in the County.¹⁵⁰

143. Soine & Burg, *supra* note 133, at 26.

144. Soine & Burg, *supra* note 133, at 27.

145. Soine & Burg, *supra* note 133, at 27.

146. Soine & Burg, *supra* note 133, at 28.

147. Soine & Burg, *supra* note 133, at 28.

148. Soine & Burg, *supra* note 133, at 28.

149. Soine & Burg, *supra* note 133, at 28.

150. Soine & Burg, *supra* note 133, at 28.

In addition, the cost-benefit differential of joining the lawsuit changed significantly over the time of the study. In the second year of the lawsuit, the Department of Social Services renegotiated Food Stamp allowances according to the amounts of housing allowance given to members of the *Sharp* lawsuit,¹⁵¹ thereby reducing the amount of Food Stamp assistance for most members of the lawsuit.¹⁵² According to anecdotal evidence from Legal Services' staff and surveyed intervenors, the impact of this change in NYSDSS budgeting of Food Stamp allowances presented a serious barrier to joining the lawsuit.¹⁵³

IV. IMPLICATIONS FOR ADVOCATES

This study, initiated as a result of legal advocacy, suggests other advocacy efforts are essential to meet the needs of homeless families. Providing shelter allowances equal to prevailing fair market rental costs is imperative. Political advocacy, especially as welfare reform proposals are considered,¹⁵⁴ is necessary at every governmental level to ensure that states follow fair market rental rates in establishing shelter allowances.¹⁵⁵

Equally important are provisions that automatically adjust shelter allowances in accordance with changing market rates. However, providing homeless families with a shelter allowance closer to fair market rental costs cannot be effective if there is insufficient housing. The lack of low-income housing is, therefore, an important target for

151. Soine & Burg, *supra* note 133, at 28-29.

152. Soine & Burg, *supra* note 133, at 29.

153. Soine & Burg, *supra* note 133, at 29.

154. See generally Prepared Testimony A. Sidney Johnson III, Executive Director, The American Public Welfare Association Before the House Government Operations Committee, Subcommittee on Human Resources and Intergovernmental Relations, FED. NEWS SERV., Sept. 29, 1994 (explaining that out of necessity states are beginning to implement their own welfare reform projects rather than waiting for the federal government. Many states have undertaken various research and demonstration projects and ideas.); Paul Offner, *Governor Weld's Welfare Dodge: Massachusetts' Workfare Plan*, 211 THE NEW REPUBLIC No. 10, Sept. 5, 1994, at 17 (stating that under this plan, "welfare recipients must go to work within 60 days of coming on to the rolls; those who don't find private-sector employment must accept public jobs provided by the state government . . . Welfare recipients could go to school or enroll in training while they're working, but they could not do so as an excuse to put off work"); Lisa Chedekel, *House Campaign in New Britain a 3-Way Affair: State House District 26*, HARTFORD COURANT, Oct. 28, 1994, at B1 (explaining that state representatives are considering welfare reform a priority because "welfare has become a way of life for some people, instead of a system that helps an individual through a time when they need help" . . . job-training programs, tighter residency rules and a crackdown on welfare recipients who use drugs are necessary reforms").

155. See NEWMAN & SCHNARE, *Reassessing Shelter Assistance: The Interrelationship Between Welfare and Housing Programs*, in HOUSING ISSUES OF THE 1990S, at 121-23 (noting the wide discrepancy in shelter allowances established by states). For example, a family of four in Mississippi would receive roughly 8% of the estimated cost of housing, whereas the same family in Washington state would receive over 90% of the estimated cost of housing in that area. *Id.*

advocacy efforts. Both the public and private sectors must be persuaded to increase and institutionalize efforts to make more low-income housing available. Advocates should also demand increased attention to the quality of current and future housing. Across the country, particularly in urban areas, public housing is deteriorating rapidly.¹⁵⁶ Budget problems faced by cities and municipalities over the past decade have resulted in decreased attention to proper maintenance of public housing.¹⁵⁷ The same situation exists with privately owned low-income housing.¹⁵⁸ Necessary repairs and maintenance are routinely neglected until housing units become uninhabitable.¹⁵⁹

Advocacy efforts are needed to encourage and support programs that maintain and improve the quality of public and private low-income housing. Local public welfare departments, charged with the responsibility of assisting homeless families, face conflicting policies and program requirements.¹⁶⁰ Homeless families are provided with

156. See K. HOPPER & J. HAMBERG, *THE MAKING OF AMERICA'S HOMELESS: FROM SKID ROW TO NEW POOR 1945-1984*, at 32 (1984) (stating that approximately 500,000 low-rent housing units disappear each year because of conversion, arson, abandonment, and demolition); William F. Powers, *Valley Green on the Verge of a New Life: Residents, Government Renew D.C. Development*, WASH. POST, June 20, 1992, at E1 (stating that public housing "is severely distressed: ragged buildings, drugs and violence . . . [approximately] 86,000 of the nation's 1.6 million public housing units deserve this label").

157. HOPPER & HAMBERG, *supra* note 156, at 55 (noting that public housing starts declined sharply during the Reagan Administration from 200,000 in 1979 to 30,000 in 1984); see also Brian Tumulty, *Increased Aid Sought For Homeless*, GANNETT NEWS SERVICE, Feb. 2, 1994 (stating that the Department of Housing and Urban Development's budget decreased from \$26.7 billion in 1980 to \$8.4 billion in 1992, thereby significantly reducing city funds allocated for housing needs).

158. See H.R. CONF. REP. NO. 426, 100th Cong., 1st Sess. 5, reprinted in 1987 U.S.C.A.N. 3489, 3489-3501 (discussing the removal of incentives for private sector owners of low-income housing to invest in housing production after the passage of the Tax Reform Act of 1986, Pub. L. No. 99-514, 252, 100 Stat. 2085 (1986)). But see Jeannie Humphries, *Company Banks Affordable Housing Tax Credit*, 12 GREATER BOSTON ROUGE BUS. REP. 8, 36 (Dec. 1993) (stating that "under President Clinton's new budget package, the low-income housing tax credit program was permanently extended It gives tax credits . . . to owners of newly constructed or substantially rehabilitated affordable housing").

159. See Wizner, *supra* note 60, at 402 (noting that some landlords abandon their properties when they fall into disrepair in an effort to avoid property tax liens); *Slumming It Privately With a Mortgage*, INDEPENDENT, June 6, 1994 (noting that in 1991, 1.8 million homes were deemed uninhabitable, and calling for policies that encourage private owners to spend more on housing repairs).

160. See N.Y. STATE DEP'T OF SOC. SERV., *HOMELESSNESS IN NEW YORK STATE* 4, 37-38 (1984) (noting that money allocated for rent by public assistance programs is not sufficient; therefore money allocated for food is used for rent); see also CENTER OF SOC. WELFARE POL'Y AND LAW, *LIVING AT THE BOTTOM: AN ANALYSIS OF AFDC BENEFIT LEVELS* 29 (1993) (showing that a family of three in Washington, D.C. on AFDC receives less than half the average cost of a two-bedroom apartment).

emergency shelter, but not for long,¹⁶¹ not in one place,¹⁶² and often nowhere near their prior place of residence.¹⁶³ Homeless families are provided with a shelter allowance that is known by the public department of welfare to be insufficient to rent any habitable housing unit;¹⁶⁴ families are then held responsible for failing to find housing.¹⁶⁵ Total AFDC grants, calculated to meet minimal needs of the children in these families,¹⁶⁶ are routinely "raided" and used to pay rent.¹⁶⁷ This redirection of benefits occurs with the public welfare department's full knowledge¹⁶⁸ and, as in the case of Sylvia Sharp, full complicity.¹⁶⁹ This contradicts child welfare policy¹⁷⁰ and identifies an important target for legal advocacy.

Overall, the conflicting array of policy and program requirements surrounding homeless families in the welfare system devastates children of these families.¹⁷¹ Their benefits are raided,¹⁷² and their emotional and educational needs are neglected.¹⁷³ Advocacy

161. See MARYLAND STATE DEP'T OF EDUC., EDUCATING HOMELESS CHILDREN AND YOUTH: HOW ARE WE MEASURING UP? A PROGRESS REPORT SCHOOL YEAR 1988-1989, at 1 (1989) (noting that limits on the length of stay at emergency shelters is one reason why homeless families often move).

162. *Id.* (stating that homeless children move many times each year).

163. Soine & Burg, *supra* note 133, at 35.

164. See CENTER OF SOC. WELFARE POL'Y AND LAW, LIVING AT THE BOTTOM: AN ANALYSIS OF AFDC BENEFIT LEVELS 29 (1993) (stating that a family of three in Washington, D.C. on AFDC receives \$409 per month, and the average cost of a two-bedroom apartment in that area rents for \$854 per month).

165. Soine & Burg, *supra* note 133, at 35.

166. See *Rosado v. Wyman*, 397 U.S. 397, 419 (1970) (acknowledging the individual authority of states to determine their own standards of need under AFDC); 42 U.S.C. § 601 (1988) (stating that the purpose of AFDC is to encourage "the care of dependent children in their own homes or in the homes of relatives . . ."). See generally James E. Brookshire, Comment, "Taking the Time to Look Backward," 42 CATH. U. L. REV. 901, 914 (1993) (discussing the factors used to calculate benefits, such as number of family members and the family income).

167. See Christine Robtischer Ladd, Note, *A Right to Shelter for the Homeless in New York State*, 61 N.Y.U. L. REV. 272, 275 n.18 (1986) (quoting NEW YORK STATE DEP'T OF SOC. SERV., HOMELESSNESS IN NEW YORK STATE 4, 37-38 (1984) (stating that in 1983 more than 60% of families in New York on public assistance used money budgeted for food and necessities to pay rent)).

168. Soine & Burg, *supra* note 133, at 35.

169. Soine & Burg, *supra* note 133, at 35.

170. See N.Y. SOC. SERV. LAW § 350 1(a) (Consol. 1994) (stating that payments "shall be adequate to bring up the child properly, having regard for the physical, mental and moral well-being of such child. . . . Allowances shall provide for the support, maintenance and needs of one or both parents if in need, and in the home . . .").

171. See generally Stanley S. Herr, *Children Without Homes: Rights to Education and to Family Stability*, 45 U. MIAMI L. REV. 337, 345 n.39 (1990-91) (discussing a study of homeless children that showed that "a majority of the school-age children tested stated that they had suicidal thoughts; one-third of the children scored so high on the Children's Depression Inventory that there was presumptive evidence of clinical depression").

172. See Ladd, *supra* note 167, at 275.

173. See U.S. DEP'T OF EDUC., REPORT TO CONGRESS: A COMPILATION OF THE FINAL REPORTS SUBMITTED BY STATES IN ACCORDANCE WITH SECTION 724(b)(3) OF THE STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT (1989) (estimating that only 69.2% of school-age homeless children

to establish the primacy of child welfare policy in providing benefits and services to homeless families is essential. These advocacy efforts should focus on achieving residential permanency for children, along with custodial/parental permanency as currently legislated.¹⁷⁴ Advocacy must address program changes to ensure that decisions regarding homeless families are made in the best interests of the children of those families.¹⁷⁵

CONCLUSION

As demonstrated in this case study, homeless, female-headed families can benefit from class action litigation.¹⁷⁶ The women who are a part of the class action lawsuit generally have experienced some improvement in their quality of life.¹⁷⁷ A housing allowance equal to prevailing fair market rental costs should not be considered a panacea, however. As noted by its critics, class action lawsuits afford limited and specific redress to large, complicated, multifaceted social problems.¹⁷⁸ Critics also question the relationship between narrowly focused class action lawsuits and broader social policy and program development.¹⁷⁹

This case study represents one way to link immediate, albeit narrow, benefits of class action litigation for women with children with the information and strategies to influence policy development. The use of social science research to investigate and document the effects of a particular class action lawsuit enables identification of additional factors that contribute to the conditions of the members

attend school).

174. See N.Y. SOC. SERV. LAW, *supra* note 170.

Studies have demonstrated the detrimental effects of repeated residential changes, especially involving changes in neighborhood, community, and schools. See also Bassuk & Rubin, *Homeless Children: A Neglected Population*, AM. J. ORTHOPSYCHIATRY 279, 284-85 (1987) (stating that their studies show that a majority of children living in shelters suffer from "developmental delays, severe anxiety, and depression"); Stanley S. Herr, *Children Without Homes: Rights to Education and to Family Stability*, 45 U. MIAMI L. REV. 337, 345 n.37 (1990-91) (quoting INST. OF MED., HOMELESSNESS, HEALTH AND HUM. NEEDS 156 (1988)) ("Homeless children have chronic physical disorders with rates nearly twice the general population for anemia, asthma, and malnutrition . . .").

175. See 42 U.S.C. § 605 (1988) (authorizing the state agency to provide counseling, make "protective payments," appoint a guardian, or impose civil or criminal penalties if payments under AFDC are not used in the best interests of the child).

176. See *supra* part III (discussing the findings of an empirical study on the benefits of class action litigation to female-headed homeless families).

177. See *supra* notes 135-38 and accompanying text (discussing primary and secondary benefits of class action litigation for female-headed homeless families).

178. See *supra* notes 72-77 and accompanying text (reviewing some critiques of class action litigation as a tool to improve the lives of female-headed homeless families).

179. See *supra* notes 72-77 and accompanying text.

of the class.¹⁸⁰ In the case of female-headed, homeless families it is helpful to document the actual experiences of these women and children as they attempt to improve their quality of life while receiving public assistance, in order to analyze the effects of class action lawsuits and assist policy development. To combat the multiple causes of homelessness, together with the consequences of gender discrimination, homeless women with children need the combined resources of legal advocates and social science researchers. Together, teams of lawyers and researchers can generate some immediate relief for poor women and children and gather data to inform policy-making and program development.

180. See *supra* part III (discussing the interrelationship between social science and class action litigation).