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CENTER NEWS

Current Issues in Economic and Social Rights: Homelessness and Poverty

by Sarah C. Aird*

On March 7, 2000, the Washington College of Law's (WCL) Center for Human Rights and Humanitarian Law sponsored a presentation by Maria Foscarinis entitled "Current Issues in Economic and Social Rights: Homelessness and Poverty." The event was part of a series of presentations focusing on social and economic rights initiated by Co-Director of the Center for Human Rights and Humanitarian Law, Professor Herman Schwartz.

Foscarinis is executive director of the National Law Center on Homelessness and Poverty (Law Center), a non-profit organization dedicated to finding solutions to homelessness, which she founded in 1989. Foscarinis spoke about the work of the Law Center and the situation of homelessness in the United States. The Law Center's work has involved litigation to secure the rights of homeless people. The Law Center also protects the interests of homeless people by creating and enforcing applicable domestic law and by using international law to broaden the scope of domestic legislation and policy toward the homeless.

According to Foscarinis, a dramatic increase in homelessness took place during the early and mid-1980s. She attributes this increase to a variety of factors, the most important of which were the loss of affordable housing and the U.S. government's lack of commitment to low-income housing. For example, over 40 percent of homeless people work full or part-time, yet do not earn enough or receive enough government support to rent or pay for permanent housing. The de-institutionalization of the mentally ill is another factor responsible for the increase in homelessness. Foscarinis described how, in the 1960s and 1970s, policymakers believed that mental health facilities would be more effective if they were integrated into communities. Unfortunately, only half of the facilities that the government policymakers proposed ever were built. Today, roughly 25 to 30 percent of all homeless people suffer from some form of mental illness. In addition, up to 50 percent of those with mental illness also suffer from substance abuse dependence disorders, further complicating the issue. Because of the high cost of residential rehabilitation centers and the lack of treatment centers, homeless people have little opportunity to secure help.

Foscarinis came to Washington, D.C. in 1985 to establish the Washington, D.C. office of the National Coalition for the Homeless (Coalition), which is headquartered in New York, and to pursue advocacy work on behalf of homeless people. Initially, Foscarinis did not know how to approach the issue from a legal vantage point. Visiting law libraries and searching through statute books for relevant laws, she eventually found an obscure, long-overlooked but pertinent law that had never been enforced. This law requires the U.S. Department of Defense to establish a program to turn over surplus military property to the homeless. The Coalition then took the Department of Defense to court in 1987 and forced the Department to comply with its legal obligation.

Recognizing the dearth of legislation on the issue of homelessness, Foscarinis and Coalition staff also directed their attention toward creating a legislative framework for addressing this issue. Working with a group of legal service providers, Foscarinis approached Congress in 1986 with three distinct pieces of a comprehensive legislation package. The first piece of legislation later became the Stewart B. McKinney Homeless Assistance Act (McKinney Act). Passed on July 22, 1987, it became the first major piece of federal legislation to address comprehensively the issue of homelessness. The McKinney Act focuses on emergency relief for homeless families. It guarantees education for homeless children, establishes homeless shelters and transitional housing, and provides limited services for mental health care. The second and third pieces of legislation, which were intended to address prevention and long-term solutions to homelessness, were less appeal-

ing to members of Congress and thus, advocates could not elicit enough support from Congress to pass them.

Since the passage of the McKinney Act, Foscarinis and the Law Center have worked to enforce the newly created law, to educate homeless people, and to support organizations that work with homeless people on the scope and applicability of the law. Advocates for the homeless have used the McKinney Act to address a number of problems arising from the condition of homelessness, a couple of which Foscarinis outlined in her presentation. For example, the McKinney Act prohibits schools from turning away homeless children who are not residents of its district. Under the McKinney Act, a child is entitled to attend school in his or her original place of enrollment if that is in the child's best interest. The Law Center has litigated this issue with great success around the country. The Law Center also has used the McKinney Act to enforce conversion of unused federal real property to shelters, job training facilities, day care facilities, transitional housing, and other uses that fulfill needs of the homeless population.

Most recently, the Law Center has addressed the criminalization of homelessness. Many cities make certain conduct, such as urinating in public and sleeping on public benches, criminal, unfairly penalizing homeless people whose circumstances often force them to carry out private activities in public. The Law Center has challenged these laws on constitutional grounds. In arguing these cases, the Law Center had to prove that such behavior is necessary and involuntary conduct on the part of homeless people. The Law Center demonstrates that the behavior is involuntary by showing, for example, that the number of homeless people within a city exceeds the number of spaces available in the city's shelters and that, as a consequence, homeless people are forced to carry out private behavior in public space. The Law Center has had mixed success on this issue, as courts have ruled on both sides of the debate.

Currently, the Law Center is considering bringing a suit challenging the creation of separate educational facilities for homeless children. Many school districts have created classes limited to homeless students, while other school districts have established entire schools for homeless children. This separation of homeless children from other students violates the letter and spirit of the McKinney Act in two ways. First, these separate facilities deny homeless students access to mainstream school systems. Second, forced separation isolates and stigmatizes children for being homeless.

The Law Center also uses international human rights law to broaden domestic policy and to interpret ambiguous U.S. law. As Foscarinis explained, international human rights law comes closer to addressing issues such as homelessness than does U.S. domestic law. For example, while U.S. law does not prohibit discrimination based on property ownership, the International Covenant on Civil and Political Rights, to which the United States is a state party, does. U.S. law focuses on civil and political rights, premised on the belief that once civil and political rights are realized, citizens will be able to use them to enforce economic and social rights. Unfortunately, this has not been possible for poor people, particularly the homeless.

Foscarinis and the Law Center have made tremendous progress in securing the rights of homeless people. The Law Center will continue to push the federal government to accept its responsibility for homeless people and to develop truly progressive laws recognizing the economic and social rights of all U.S. citizens. ☺

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