



September 1989

Court-Ordered Consent Decree for the Homeless: Process, Conflict and Control

Alice K. Johnson
Washington University

Larry W. Kreuger
University of Missouri-Columbia

John J. Stretch
St. Louis University

Follow this and additional works at: <https://scholarworks.wmich.edu/jssw>

 Part of the [Social Psychology and Interaction Commons](#), and the [Social Work Commons](#)

Recommended Citation

Johnson, Alice K.; Kreuger, Larry W.; and Stretch, John J. (1989) "Court-Ordered Consent Decree for the Homeless: Process, Conflict and Control," *The Journal of Sociology & Social Welfare*: Vol. 16 : Iss. 3 , Article 4.
Available at: <https://scholarworks.wmich.edu/jssw/vol16/iss3/4>

This Article is brought to you for free and open access by the Social Work at ScholarWorks at WMU. For more information, please contact maira.bundza@wmich.edu.



A Court-Ordered Consent Decree
for the Homeless:
Process, Conflict and Control*

ALICE K. JOHNSON

Washington University
George Warren Brown School of Social Work

LARRY W. KREUGER

University of Missouri-Columbia
School of Social Work

JOHN J. STRETCH

St. Louis University
School of Social Work

A 1985 class action suit on behalf of homeless individuals living in the City of St. Louis mandates both short-term and long-term services to homeless persons. These court-ordered requirements bring together an interesting tripartite system: (1) the adversarial and justice-oriented legal system, (b) the highly political city government, and (c) the traditionally voluntary system of human service providers. Service provision to the homeless, the utility of advocacy, privatization, and the ethics of public disclosure are examined from a sociological conflict and control perspective. The St. Louis experience provides guidance for communities wishing to engage the legal, political, and social service delivery systems on behalf of the complex needs of the homeless.

Only quite recently and only in a few large urban cities around the country have there been any successful attempts to use the courts to insure the rights of the homeless to minimal relief. The legal aspects of these court actions have been re-

*The authors wish to acknowledge the help of Ken Chackes of Missouri Protection and Advocacy Services for providing the chronology of events relating to the St. Louis homeless litigation.

viewed (Werner, 1984; Chackes, 1987; Hayes, 1987). Nonetheless, the court decree itself is a step marking the culmination of a long process of advocacy and the beginning of a process of implementation. This implementation process involves conflict and control, checks and balances among the several parties involved. In this article, we examine these processes in the light of a recent experience in St. Louis where the court, the local city political leadership, and social service organizations have come together to provide minimal guarantees of survival services to homeless people. This combination of the necessarily adversarial and justice-oriented legal system, the highly political city government, and the traditionally voluntary system of human services is examined from a sociological conflict and control perspective.

Background and Context for the Court Action

Until recently, St. Louis's political and legal systems remained disengaged from providing services to the homeless. Traditionally, only the human service sector had been engaged. However, with the filing of *Graham v. Schoemehl* (1985a), a class action lawsuit on behalf of homeless clients by Legal Services of Eastern Missouri, the City of St. Louis was charged to provide shelter and additional services to relieve the plight of poor homeless individuals in St. Louis. This action resulted in a court-ordered consent decree that effectually engaged the legal, political and human service sectors in services to homeless persons (*Graham v. Schoemehl*, 1985b).

Blumer (1971) points out that social problems exist as a fact of collective behavior; they are present in society in a greater or lesser degree at all times. But in order for a particular social problem to become part of public consciousness, it must come to the forefront and be recognized, or legitimized, as a public social problem. Using Blumer's model, Stern (1984) first outlined the process by which homelessness came to be defined as a public problem: (a) EMERGENCE: (through agitation, violence, interest groups, or political attention); (b) LEGITIMATION: the explanation of the problem is agreed upon; (c) MOBILIZATION: forces mount to attack the problem; (d) DEVELOPMENT: an official solution is determined; and (e) IMPLEMENTATION: the plan is operationalized.

This article draws out these stages and clarifies them by the St. Louis experience. It is shown how the assignment of these stages are distributed among the legal, political and voluntary human service systems in meeting the needs of the homeless.

Emergence: Advocacy

A common element in the background of cities which have moved toward litigation to insure the rights of the homeless is the existence of a powerful advocative force. Such advocacy appears collectively in groups like the National Coalition for the Homeless and New York's research-based Community Service Society. In St. Louis, however, a local evangelist, Larry Rice, is credited for bringing ongoing attention to the problem of homelessness. Reverend Rice, who has worked with the homeless for 14 years, operates New Life Evangelistic Center, a downtown shelter for homeless men, and several other shelters state-wide. His work and his calculated use of the media have brought constant awareness to homelessness as a critical social problem in St. Louis.

Rice has openly confronted the Mayor with nonviolent public demonstrations such as sleeping in a cardboard box in front of City Hall. Rice also owns a television station. On his nightly winter trips to gather homeless persons into shelter from abandoned buildings and under bridges, camera crews go with him to film and interview homeless people. Although one may disagree with his methods, the fact remains that he is largely responsible for bringing homelessness to bear on the public consciousness (Lobbia, 1985). In general, public opinion has responded to Rice. A recent City survey indicated that residents felt that homeless shelters and condemned building services ranked highest on the Service Need Index (Mayor's Task Force for Improved City Services, 1986).

Actual pressure for a trial to determine whether the City was responsible to provide shelter and services for the homeless began to build late in December 1984. Before discussing the other phases of the process, we shall present a brief chronology of events relating to the St. Louis homeless litigation:

12/17/84 Plaintiff's attorneys (Kenneth M. Chackes of Washington University School of Law, and Daniel Glazier, Michael Ferry and Sandra Farragut-Hemphill of Legal Services of

Eastern Missouri) sent a letter to Mayor Vincent Schoemehl describing the nature and scope of the homeless problem in St. Louis, asserting that the city had the power and the duty to provide shelter and other necessary services to the homeless, requesting the city to provide such relief, and inviting a discussion of those matters.

1/4/85 Plaintiff's attorneys met with representatives of the city (four attorneys from the City Counselor's Office and a representative of the Mayor) who indicated no dispute about the existence of a problem, but questioned whether the city had a duty, and requested information regarding the size and cost of the proposed shelter operation. Plaintiff's attorneys indicated they would file a lawsuit within three weeks and that if agreement could be reached it should be in the form of a consent decree approved by the court.

1/10/85 Plaintiffs' attorneys sent information to the city regarding the cost of operating a "decent" shelter.

1/85 Later in January the Mayor appointed a task force, chaired by George Eberle, to study the problem of homelessness and make recommendations for the city's response.

2/11/85 Plaintiffs filed a class action lawsuit against the Mayor and city seeking a declaration of the city's duty to relieve, maintain and support the homeless, and an injunction requiring the city to provide shelter and other services to the homeless, including food, health care, hygienic services, housing and employment assistance, and transportation. Along with the petition plaintiffs filed discovery requests to determine what the city knew about homelessness and what the city was doing to meet the needs of the homeless.

3/6/85 The city also filed discovery requests seeking information about the individual plaintiffs and information known to plaintiffs and their attorneys regarding the problems of the poor and homeless.

3/29/85 Plaintiffs responded to defendants' discovery requests providing substantial information.

4/8/85 Defendants objected to providing information in response to plaintiffs' discovery requests.

4/19/85 Defendants filed a motion to dismiss the lawsuit, contending that the court had no jurisdiction to hear the case

because the city's response to the problems of the poor and homeless was a political matter, not subject to interference by a court.

4/85 The Mayor's task force completed its study, making essentially the same findings that had been made by plaintiffs' attorneys, and recommending solutions in the same areas for which relief was sought in the lawsuit.

5/31/85 Attorneys for both sides engaged in oral argument before the court regarding defendants' motion to dismiss. While the judge postponed his ruling on the motion pending further briefing by the attorneys, on that and several other occasions he expressed concerns about the problems of the homeless, but serious reservations about his power to issue an injunction ordering the city to take steps to address those problems. Trial on the merits of plaintiffs' petition was scheduled for November 18, 1985.

7/11/85 A hearing was scheduled before the court for the presentation of evidence regarding class certification—whether the case should proceed as a class action and, if so, the proper definition of the class. The judge postponed the hearing because he had not yet ruled on the defendants' motion to dismiss.

9/4/85 A second class certification hearing was scheduled but postponed.

10/4/85 The judge formally overruled defendants' motion to dismiss but expressly reserved the issue whether the court could order any injunctive relief against the city. The attorneys submitted written evidence to the court regarding the class certification issues, and orally argued the discovery dispute arising out of the city's refusal to provide the information requested by plaintiffs. The judge ordered the city to provide whatever information it had readily available that would respond to plaintiffs' discovery requests.

11/8/85 With 10 days remaining before trial plaintiffs took the depositions of four city officials identified by defendants as having responsibility for the city's programs to aid the poor.

11/85 In preparation for trial, plaintiffs' attorneys met with the chairman of the Mayor's task force on homelessness to discuss his group's findings and recommendations, and to determine whether he would testify to those matters at the trial. The

chairman indicated that he would testify if necessary, but that there should be no trial because, as the task force had recommended, the city should provide the shelter and most of the other services sought in the lawsuit. By that time the city was already taking steps to implement many of the task force recommendations, but had made no progress toward making more shelter available. The chairman of the task force promised to convey to the Mayor his view that the case should be settled.

11/13/85 Five days before trial plaintiffs' attorneys met with the city's attorney to take the deposition of an aide to the Mayor. The chairman of the task force was present, however, and instead of taking the deposition, the attorneys negotiated the basic ingredients of a settlement. The city agreed to a court order establishing its duty to aid the homeless and requiring it to provide shelter and other specified services.

11/15/85 On the Friday before the Monday trial date attorneys for both sides met in court, but the city was not yet ready to sign the consent decree and sought a continuance of the trial. The judge put off ruling on that request and the parties agreed to work toward a settlement. By Friday afternoon one issue remained—the portion of the consent decree that would obligate the city to continue to meet the needs of the homeless after the initial one-year programs would expire. Before the day was over the city agreed to a continuing obligation and the parties and the judge signed the decree.

Legitimation: Issues of Ownership

Once advocacy and media attention had moved homelessness toward classification as a social problem, the next step, legitimation, commenced. Like the precedent New York case *Callahan v. Carey*, 1979 which catapulted homelessness into the national consciousness, *Graham v. Schoemehl*, 1985 legitimized homelessness as a public social problem in St. Louis. The legitimation stage is extremely important—even to the point of determining whether or not the social problem will, in the public sense, survive. And as Stern (1984) points out, the legitimation phase decides who owns the problem.

The law which backed the consent decree had been a state statute since Missouri's territorial days: "Poor persons shall be

relieved and supported by the county of which they are inhabitants" (Missouri Revised Statutes, 1978). The necessary and primary task that followed was the legal determination of class. Once the right to a class action suit is determined, the court must then decide whether or not a government is neglecting or failing to perform its duty within reasonable discretionary standards. It is the court's role to determine *if* government is meeting its responsibility, rather than dictating *how* government is to accomplish the mandate. In other words, the courts may require that government do something, but cannot say how that thing is to be done. This accounts for the differences noted later in this article between implementation of the New York and St. Louis consent decrees.

Notwithstanding, it is implicit in the law that relief for the poor must meet conditions necessary for survival. Chackes (1987, p. 193) argues,

Going even further, a court could determine that lawmakers intended that the duty encompass not only short-term help, but assistance to allow the homeless to better themselves and escape the cycle of homelessness. The assistance could include services like life skills education, job training, and assistance in finding employment or permanent housing.

At the same time, however, temperance must guide the use of the power of the court. Although remedial action needs to be taken when other branches of government are in violation of the law, the court must be guided by two additional principles in determining appropriate remedies: (a) the nature and scope of the remedy should be no more extensive than the nature and scope of the right violated; and (b) in order to respect the separation of powers doctrine, the remedy should intrude no more than necessary into the affairs of the coordinate branches of government (Chackes, 1987, p. 196).

Mobilization of Community Resources

Contingent with the filing of the lawsuit, as the chronology reports, the Mayor appointed a task force consisting of the heads of major social service agencies traditionally working with the homeless. Their task was to study the problem and make rec-

ommendations to the Mayor. When the recommendations of the task force aligned with the charges of the legal document, the City had little recourse but to provide services to these poor citizens within its domain. Directives from these professionals, although outside the adversarial stance of the lawsuit, nevertheless added strength to the lawsuit from the legal parties. As the court date grew near, the legal system also sought professional testimony from these same human service professionals, should the matter go to court. Thus, the human service sector provided expert testimony to both the legal and political systems in their adversarial stance.

Development of an Official Solution

The consent decree defined the homeless as "persons without shelter, temporarily staying in a private shelter for homeless people, or with inadequate shelter such that a person cannot live in it without substantial risk to life, health and safety" (*Graham v. Schoemehl*, 1987b, p. 2). The order mandated that no less than \$310,000 be appropriated during FY 1985–1986 to implement services for the homeless.

The consent decree charged the City to increase shelter for the homeless. During 1986, a minimum of 200 additional beds were to be added at the rate of 12 to 20 new beds per month. These temporary shelter beds, available for use 24 hours per day, allowed a maximum 60 day length of stay. Minimum service standards were also set for these temporary shelter facilities. In addition, the City was required to provide at least 100 units of permanent housing for the homeless at the rate of 7 to 10 per month.

A noteworthy and important component of the St. Louis consent decree was that it spelled out what additional services were to accompany the mandate for more shelter beds. Since these services were written into the court document, it was unequivocally established that the development of the official solution to homelessness in St. Louis was more than food and shelter. Specifically mentioned were: (a) a crisis-oriented reception center, (b) transportation services, (c) day center for women and children, and (d) transitional services (*Graham v. Schoemehl*, 1985b). These programs formed the core of the City's new Homeless Services Network (HSN) designed to coordinate ser-

vices to the homeless on a community-wide level. This Network is now nationally known as a model approach that works (Whitman, 1988).

Lastly, the decree required the City to provide copies of monthly reports submitted by the social service providers to the legal counsel on behalf of the homeless. This court-ordered demand for documentation engaged the services of professional researchers to verify that the consent decree was being followed.

Implementation: The Homeless Services Network

With the signing of the consent decree, the City established the new system to meet the needs of the homeless. Previous to the lawsuit, The Salvation Army Emergency Lodge was the only shelter receiving local government funding through block grant allocations. The Emergency Lodge's continuum of services model was expanded in the development of the Homeless Services Network (HSN). This multidimensional networking model (Hutchison, Searight & Stretch, 1986) is built on the conviction that comprehensive policy and program planning is needed to meet the needs of homeless persons (Bassuk & Lauriat, 1984; Kaufman, 1984; Stoner, 1984).

Because of their expert and timely involvement in the mobilization stage, social service agency executives were in key positions to responsibly implement the wide range of services specified in the consent decree. A public-private partnership was born as the City contracted out required services for the homeless to five major social service agencies:

(a) The Reception Center, a 24-hour walk-in, call-in crisis hotline operated by The Salvation Army. The Reception Center serves as the central intake and referral point for emergency shelter in St. Louis and the statistical center for the Network.

(b) Christ Church Cathedral Day Shelter for women and children operated by Consolidated Neighborhood Services (CNSI). The day shelter provides daily meals, shower and laundry facilities, and child care.

(c) St. Patrick's Center of Catholic Charities provides comprehensive employment counseling and housing placement services. In addition, life skills training classes are held on parenting, budgeting, and tenant rights and responsibilities.

(d) The American Red Cross supplies transportation ser-

vices between emergency shelters, Reception Center, Day Shelter, and other sites like health clinics and job interviews (Department of Human Resources, 1986).

(e) The Good Samaritan Center, in conjunction with Lutheran Family and Children's Services, operates a transitional housing program to prepare families for placement in permanent housing.

Because the implementation phase must necessarily follow directly from the constraints of the court order, the St. Louis case is unique in its requirement for services designed to move the individual homeless persons out of homelessness. Therefore, the privatization outcome of the St. Louis lawsuit departs significantly from the New York model of a public shelter system. Originally, the plaintiffs in the New York case had demanded the right to shelter along with a provision that the shelters be community based. Believing that there would be too much community opposition, the City would not enter into such an agreement (Main, 1983). The outcome of the New York model became the infamous "welfare hotels" where 7,800 families are currently housed. Landlords of these 61 hotels receive an average amount of \$30,000 per year for a typical room with no cooking facilities, perhaps a refrigerator, and few, if any, social services. Up to 10 families may share a bathroom (Sommers, 1987). In contrast, City government funding in St. Louis now reaches 41% of the homeless shelters. Most shelters are small and geographically dispersed (Johnson, 1988).

Conflict and Control

This partnership between the legal, political and human service systems in an effort to serve the homeless has inherent elements of conflict and control. These built-in differences, however, can provide a check-and-balance system that can maximize services for the homeless. These issues of conflict and control are perhaps most clearly seen in the area of data analysis and research.

Because the court mandated that monthly reports be relayed to the legal system for monitoring purposes, there was immediate necessity to move service delivery to the point that it could be documented that (a) the City was doing what it agreed to do,

and (b) that the problem was being handled to prevent a return to court. Should the issue go to trial and an unfavorable verdict be returned, more extensive or expensive constraints might be charged to the City. In order to avoid such consequences, it was in the City's best interest to abide by the decree and have reliable data to substantiate compliance.

Thus, part of the funding contract included a research component to computerize data collected from calls to the hotline. This system records demographic information on each homeless person, assesses their present condition of homelessness and reason for homelessness. The hotline staff makes appropriate shelter referrals, based on daily telephone contact with 24 shelter providers throughout the City.

Concerning referral to the shelter system, conflict surfaced around the definitional problem of who the homeless were. In other words, who was the City responsible to provide shelter for? Although the consent decree had already officially defined the homeless, high demand on the hotline system necessitated operationalization of the legal definition for actual service delivery. This resulted in three categories describing the situation of homelessness: (a) on the street, (b) immediate crisis (homeless within 48 hours), and (c) at risk (homeless within 30 days).

The City allowed that only those persons literally on the street be referred to shelter. Women and children fleeing abusive conditions were given second priority. The hidden homeless—those living in condemned, substandard or severely overcrowded living conditions were, by and large, exempted from referral. Should such persons slide into literal homelessness, referral could occur. However, during the second year of HSN operation, City funding for the hotline increased. A staff person was hired to intervene with at-risk persons to prevent their further descent into homelessness.

Use of the data for public and academic purposes also reveals the existence of conflict and control within the model. Although data collection activities were supported by public funds, a relatively closed system remains around access to and usage of the data. The City requests full knowledge and prior written consent be obtained for articles written for academic journals, books or media reports that use data collected from hotline calls. The data

have the potential to provide a rich source of documentation to advocate for federal funds for local services. However, it has basically been more narrowly used to establish the fact that the literal homeless have been referred to shelter. Thus, although the City works diligently through the HSN to create an open and participative system among community providers, access to data and the disbursement of provider agency reports has been minimal.

Discussion

It has been noted that the few cities which have used the courts in this way have not been totally satisfied with the outcome (Fabricant & Epstein, 1984). It has also been stated that the legal remedies in these cases, although used sparsely and although producing mixed results, have on balance seemed to be good leverage to quickly move political bureaucracy to assume some degree of responsibility along with private agencies in the respective jurisdictions (Sloss, 1984).

Although the courts clearly gave ownership of the problem of homelessness to the City, the City's response of privatization moved the responsibility for primary policy implementation into the existing human service marketplace. Traditionally, such a shift of responsibility through privatization allows government to shift ownership of the problem to the voluntary sector while still retaining control of implementation through its funding options. In other words, privatization frees politicians to say to social service providers "You bought the problem, now why isn't it solved?" In this case, however, the privatization model was not free to operate without the imperative check-and-balance monitoring system of the court; the City could not fully dislocate itself from the homelessness problem. Privatization can also lead to false assumptions on the part of the funding agency to believe that a social problem is taken care of. Sosin (1987, p. 3) writes: "Accordingly, government might make use of private agencies to deal with, or deflect demand through such mechanisms as contracting out . . . to claim that a problem is being handled."

Agencies which have been traditionally advocative for disadvantaged populations, also risk being co-opted by the contract-for-services model with government. At best, they

experience a sense of the loss of advocacy—or they advocate at risk of loss of funding. Within the privatization model, client advocacy must be tempered with the demands and/or constraints of the governmental funding agency. Bassuk and Lauriat (1984) point out the politicalization of homelessness and upbraid the lack of nonpartisan advocates taking a stand for more than short-term shelter provision for the homeless. In the St. Louis homeless arena, Reverend Rice remains an outspoken critic of homeless services. He charges that persons who have received the HSN range of services are being recycled into homelessness as another wave of urban renewal displaces them from Section 8 apartments on the near southside. The power of his advocacy remains based on his philosophical stance and unwillingness to take any public funds.

In summary, privatization as described here, though not without costs, nevertheless is a workable model for the provision of publicly-funded and mandated homeless services. Unlike the more problematic warehousing model of New York City, it does provide scattered site services to the poor. Additionally, needed financial resources are supplied to agencies traditionally working with disadvantaged populations like the homeless. More research needs to be done on the implications of such service delivery systems which employ privatization and the additional component of legal mandate. Smith (1987, p. 4) hypothesizes that “the increasingly extensive use of contracting for government services with nonprofit agencies . . . may generate a new politics of social welfare services with profound implications for the future of social welfare policy.”

References

- Bassuk, E. L. & Lauriat, A. S. (1984). The politics of homelessness. In H. R. Lamb (Ed.), *The homeless mentally ill* (pp. 301–313). Washington, DC: American Psychiatric Association.
- Blumer, H. (1971). Social problems as collective behavior. *Social Problems*, 18, 298–306.
- Callahan v. Carey*. (NY. Sup. Ct. December 5, 1979).
- Chackes, K. M. (1987). Sheltering the homeless: Judicial enforcement of governmental duties to the poor. *Journal of Urban and Contemporary Law*, 31, 155–199.

- Department of Human Services. (1986). *The St. Louis homeless services network: A successful year of working together* (pamphlet). St. Louis, MO: Author.
- Fabricant, M. & Epstein, I. (1984). Legal and welfare rights advocacy: Approaches in organizing on behalf of the homeless. *The Urban & Social Change Review*, 17, 15–19.
- Graham v. Schoemehl. No.854-00035 (MO. CIR. CT. 1985a).
- Graham v. Schoemehl. No.854-00035 Consent Decree (MO. CIR. CT. 1985b).
- Hayes, R. M. (Ed.). (1987). *The rights of the homeless*. NY: Practicing Law Institute.
- Hutchison, W. J., Searight, P., & Stretch, J. J. (1986). Multidimensional networking: A response to the needs of homeless families. *Social Work*, 31, 427–430.
- Johnson, A. K. (1988). *A survey of the St. Louis area emergency shelters for the homeless: A Report*. St. Louis, MO: Homeless Services Network Board.
- Kaufman, N. K. (1984). Homelessness: A comprehensive policy approach. *Urban & Social Change Review*, 17, 21–26.
- Lobbia, J. A. (1985, November 13). Gimme shelter. *The Riverfront Times*, p. 1.
- Main, T. (1983). The homeless of New York. *Public Interest*, 72, 3–28.
- Mayor's Task Force for Improved City Services. (1986). *St. Louis Service's Survey, August*. St. Louis, MO: Author.
- Mayor's Task Force on Homelessness. (1985). *Task force report on the homeless*. St. Louis, MO: Author.
- Missouri Revised Statute. (1978). 205.580.
- Sloss, M. (1984). The crisis of homelessness: Its dimensions and solutions. *The Urban and Social Change Review*, 17, 19–20.
- Smith, S. R. (1987). *Privatization and the politics of social welfare spending*. Paper presented at the Ninth Annual Research Conference of the Association for Public Policy Analysis and Management, Washington, DC.
- Sommers, A. (1987). *Primary health care needs of homeless families residing in New York City hotels*. Paper presented at the Annual Meeting of the American Public Health Association Study Group on the Homeless, New Orleans, LA.
- Sosin, M. R. (1987). *Homelessness and social services: A case study of government and non-profit relations*. Paper presented at the 83rd Meeting of the American Political Science Association, Chicago, IL.
- Stern, M. J. (1984). The emergence of homelessness as a public problem. *Social Service Review*, 58, 291–301.
- Stoner, M. R. (1984). An analysis of public and private sector provisions for homeless people. *Urban & Social Change Review*, 17, 3–8.
- Werner, F. E. (1984). Homelessness: A litigation roundup. *Housing Law Bulletin*, 14, 1–14.
- Whitman, D. (1988, February 29). Finally, hope for the homeless: Five approaches that work. *U.S. News and World Report*, p. 25–35.