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# CHECKING OUT OF NEW YORK CITY'S WELFARE HOTELS\*

## INTRODUCTION

In November 1987, New York City announced plans to stop housing homeless people in welfare hotels and to move the hotels' residents to other housing. Since New York has one of the largest homeless populations of any American city<sup>1</sup> and has faced considerable legal and political pressure to do more about its homelessness problem, the City's plan may foreshadow the efforts other cities will have to make in the coming years. Most pertinent is the question why a system of housing as expensive and with such poor living conditions as welfare hotels has been used. Ironically, New York City's use and subsequent removal of people from welfare hotels is largely a product of Washington's desire to save money on public housing.

This Note first discusses the unhealthy conditions and high cost of welfare hotels. Next, the Note explores how New York City has been forced by the right to shelter in New York State, heavy press coverage, and a proposed federal funding cut-off to cease using the hotels. A proposed legislative solution, allowing welfare funds to be used for building permanent housing, is then examined, as well as why such a solution has not been enacted. Finally, this Note gives a six-point proposal for better combatting homelessness.

## WELFARE HOTELS: EXPENSIVE AND SQUALID

Welfare hotels are privately owned hotels in which indigent families are placed by city and state welfare agencies.<sup>2</sup> While such hotels are located in many American cities, New York City uses them the most extensively, housing 3,600

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\* The author thanks Peter Salsich, Professor of Law, St. Louis University School of Law, and Visiting Professor 1988-89, Notre Dame Law School, for his thoughtful suggestions for this Note.

1. Estimates of the number of homeless in New York City vary from Mayor Koch's estimate of 26,000, *Use of Emergency Assistance Funds for Acquisition of Temporary and Permanent Housing for Homeless Families: Hearing Before the Subcommittee on Public Assistance and Unemployment Compensation of the House Ways and Means Committee*, 99th Cong. 2d Sess. 7, 24 (1986) [hereinafter *Use of Emergency Assistance Funds*], to writer-activist Jonathan Kozol's 68,000 (400,000 if one includes families "doubled up" in housing). KOZOL, RACHEL AND HER CHILDREN: HOMELESS FAMILIES IN AMERICA 97, 219 (1988). Of New York City's homeless, 76% are families. Keyes, *Housing and the Homeless*, MIT HOUSING POLICY PROJECT (1988) (citing a December, 1986 U.S. Conference of Mayors report).
2. Welfare hotels should be distinguished from Single Room Occupancy units (SROs). While welfare hotels house families, SROs house the elderly and single poor. The federal government does not contribute to SRO rents, and New York City pays only one-tenth as much for SRO rooms as for welfare hotel rooms. According to New York City Code D26-107(a)(17), an SRO consists of "a single room, or of two or more rooms which are joined together, separated from all other rooms within an apartment in a multiple dwelling, so that the occupant or occupants thereof reside separately and independently of the other occupant or occupants of the same apartment."

families in sixty-one welfare hotels.<sup>3</sup> Although supposedly short-term housing, the average stay at New York City's welfare hotels now averages thirteen months.<sup>4</sup>

Welfare hotels are expensive; the average cost for a room in a New York City welfare hotel is \$1,800 a month<sup>5</sup> with some hotels receiving as much as \$37,000 a year to house a single family.<sup>6</sup> Half of these costs are paid by the federal Department of Health and Human Services' (HHS) Aid to Families with Dependent Children (AFDC) program<sup>7</sup> from its Emergency Assistance Fund (EAF),<sup>8</sup> while the City and State of New York each pay one-quarter of the costs. Under the terms of Emergency Assistance, each state may set the level at which it provides assistance; there is no cap on the monthly rental payments.

New York City officials argue that the limited supply of low-income housing does not permit them to demand lower rents; "We tell the hotel we need a room, and they tell us how much it will cost," states Greg Kalidjian, the official in charge of the City's homelessness programs.<sup>10</sup>

For \$1,800 a month, welfare hotel residents get poor living conditions. Most live in single, inadequately furnished rooms. Rats and insects commonly infest these rooms.<sup>11</sup> Cooking facilities are typically not provided; in fact, a New York City ordinance forbids cooking in hotel rooms.<sup>12</sup> Inadequate security allows prostitution, rampant drug sales and use, and high rates of violent crime to occur in the hotels.<sup>13</sup> The hotels often have dangerous housing code violations, with one recently closed hotel accumulating 1,000 such violations.<sup>14</sup> Unsanitary conditions and inadequate medical care cause an infant mortality rate higher than in even some developing nations.<sup>15</sup>

3. N.Y. Times, Aug. 15, 1987, at 1.

4. *Id.*

5. Comment, *Homeless Families: Do They Have A Right to Integrity?*, 35 U.C.L.A. L. REV. 159, 186 (1987); N.Y. Times, Aug. 2, 1988, at B1.

6. *Use of Emergency Assistance Funds*, *supra* note 1, at 6.

7. Title IV-A, Social Security Act of 1935, 42 U.S.C. §§ 601-20 (1935).

8. Social Security Amendments of 1967, Pub. L. No. 90-248, §206, 81 Stat. 893 (1967).

9. While the overall vacancy rate in New York City is two percent, the rate for rents under \$200 is 0.37 per cent. *Use of Emergency Assistance Funds*, *supra* note 1, at 46. This lack of low-income housing stems in part from the decline in the number of SROs (*see supra* note 2); the number of SROs has fallen from 127,000 in 1976 to 14,000 today, with many landlords converting SROs to more profitable uses. Note, *A Right to Shelter for the Homeless in New York State*, 61 N.Y. L. REV. 272, 275 n. 18.

The City has attempted to limit the conversion and demolition of SROs. Local Law No. 9 (1987), requiring SRO owners to rehabilitate all vacant SRO units and to rent them out to bona fide tenants, was recently declared unconstitutional by the New York Court of Appeals as a taking of property without just compensation. *Seawall Associates v. City of New York*, 74 N.Y. 2d 92, 542 N.E. 2d 1059, 544 N.Y.S. 2d 542. Local Law No. 19 (1983) remains in effect, forbidding demolition of SRO buildings unless the City has certified that no tenant harassment has occurred or has waived certification; this prevents SRO landlords from harassing tenants into leaving SROs and then converting the SROs. *See Welland Estates v. Charles Smith*, 109 A.D. 2d 193, 491 N.Y.S. 2d 342 (N.Y. App. Div. 1985).

10. Coulson, *The \$37,000 Slum: Dumps on the Dole*, 196 NEW REPUBLIC 15, 16 (Jan. 19, 1987).

11. N.Y. Times, Jan. 14, 1988, at B1.

12. Coulson, *supra* note 10, at 15; Kozol, *supra* note 1, at 239; *Use of Emergency Assistance Funds*, *supra* note 1, at 13.

13. N.Y. Times, March 9, 1988, at B1; Kozol, *supra* note 1, at 239; *Use of Emergency Assistance Funds*, *supra* note 2, at 13.

14. The Holland Hotel. N.Y. Times, March 9, 1988, at B1.

15. The welfare hotel rate is 25 deaths of infants under the age of one for every 1,000 births; the rate in public housing projects is 17 per 1,000, and 14 per 1,000 in the city as a whole. N.Y. Times, June 10, 1986, at B3.

Knowledge of the unsafe conditions and high expense of New York City's welfare hotels is not new; in 1970, recent Mayor Edward Koch decried then-Mayor John Lindsay for housing families in "fleabags at Waldorf Astoria prices."<sup>16</sup> What is new is that the dimensions of the problems have grown—more than three times as many people are housed in welfare hotels today as in Mayor Lindsay's day.<sup>17</sup> What is also new is that legal, fiscal and political pressures have forced the City to remove indigent people from the hotels.

### ABANDONING THE HOTELS

One factor causing New York City to end use of the welfare hotels is litigation by advocates of the homeless under New York State's right to shelter. Article XVII, Section 1 of the New York Constitution declares:

The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions and in such manner and by such means, as the Legislature may from time to time determine.<sup>18</sup>

A right to shelter under this provision was first recognized in *Callahan v. Carey*.<sup>19</sup> The court therein issued a preliminary injunction in December 1979, ordering the State and County of New York to "provide adequate shelter . . . to any person who applied for shelter at the Municipal Care Center for Men."<sup>20</sup> While not specifically declaring a right to shelter, the court cited article XVII, section 1 as well as other statutes and case law to support the granting of the injunction. The subsequent consent decree provides that sanitary and safe shelter be provided to such homeless men.<sup>21</sup>

In *McCain v. Koch*,<sup>22</sup> the right to shelter was held to require minimal livable conditions in welfare hotels. The plaintiffs were indigent families housed in New York City welfare hotels, seeking an injunction to require the City to remedy unsafe and unsanitary conditions in the hotels. The Court of Appeals held that the New York County Supreme Court had properly granted such an injunction, requiring the City, when it "under-take[s] to provide emergency shelter, . . . [to] ensure that the shelter meets minimal standards of cleanliness, warmth, space, and rudimentary conveniences."<sup>23</sup> The conditions in New York City's welfare hotels today would arguably not meet this standard, leaving the City open to further litigation if it does not substantially improve the hotels or end their use.

The City, however, apparently has no legal obligation to provide shelter to homeless people for the long stays that have been prevalent. In *Tucker v. Toia*,<sup>24</sup> while the New York Court of Appeals held that a statute limiting welfare relief

16. Coulson, *supra* note 10, at 15.

17. *Id.* at 15.

18. N.Y. CONST. art. XVII, §1.

19. No. 79-42582 (N.Y. Sup. Ct. Aug. 26, 1981)(Final Judgment by Consent); see Mort, *Establishing a Right to Shelter for the Homeless*, 50 BROOKLYN L. REV. 939, 944-46; see also Comment, *Homelessness: The Policy of the Law*, 16 URB. LAW. 317, 323-36. (1984).

20. See Comment, *supra* note 19, at 324.

21. Callahan Decree, *supra* note 19. The Decree was extended to homeless women on Equal Protection grounds in *Eldredge v. Koch*, 118 Misc. 2d 163, 459 N.Y.S. 2d 960 (N.Y. Sup. Ct. 1983), *rev'd on other grounds*, 98 A.D. 2d 675, 469 N.Y.S. 2d 744 (N.Y. App. Div. 1983).

22. 511 N.E. 2d 62, 70 N.Y. 2d 109, 517 N.Y.S. 2d 918 (N.Y. Ct. App. 1986).

23. 511 N.E. 2d at 65, 70 N.Y. 2d at 117, 517 N.Y.S. 2d at 921.

24. 371 N.E. 2d 449, 43 N.Y. 2d 1, 400 N.Y.S. 2d 728 (1977); see Note, *supra* note 9, at 275-77.

violated Article XVII, Section 1 of the state constitution, it recognized the legislature's broad discretion to limit welfare amounts.

Although *our Constitution provides the Legislature with discretion in determining the means by which this objective [of aiding the needy] is to be effectuated, in determining the amount of aid, and in classifying recipients, and defining the term "needy,"* it unequivocally prevents the Legislature from simply refusing to aid those whom it has classified as needy.<sup>25</sup>

The State or City, thus, could presumably issue a highly restrictive definition of "needy" that excludes most welfare hotel families, or, much more likely, exercise reasonable<sup>26</sup> discretion in "determining the amount of aid" and limit welfare hotel stays to a relatively brief length.<sup>27</sup>

Indeed, the courts in *McCain* indicated as much. The New York Appellate Division found "that plaintiffs have a high probability of establishing that the City is mandated to provide emergency shelter to eligible families *for thirty days in one twelve-month period* . . ."<sup>28</sup>; the New York Court of Appeals merely stated that the right to shelter was not before the Court.<sup>29</sup>

New York City, however, has chosen not to deal with the high expense of welfare hotels by sharply limiting stays in emergency shelter or by curtailing eligibility for such shelter. Public pressure and hopefully human compassion have dictated that such a path not be taken.

Such public pressure, incited by extensive press coverage of the City's welfare hotel problem, has been considerable. CBS "Sixty Minutes" and "48 Hours" broadcasts about the hotels' poor living conditions and high cost, a rash of newspaper stories, and national newsmagazine coverage have given air to long-existing complaints by advocates of the homeless. Especially notable has been the publication of Jonathan Kozol's *Rachel and Her Children*,<sup>30</sup> which describes the plight of homeless families in the Martinique Hotel; it is probably no coincidence that the Martinique was among the first hotels to be closed under the City's removal plan.

Most important in causing New York to cease using welfare hotels has been the federal proposal to stop funding long-term stays at the hotels. On August

25. 371 N.E. 2d at 452, 43 N.Y. 2d at 8, 400 N.Y.S. 2d at 731 (emphasis added).

26. Welfare regulations are valid when they are "reasonably expected to be in furtherance of the optimum utilization of public assistance funds." *Bernstein v. Toia*, 373 N.E. 2d 238, 244, 43 N.Y. 2d 437, 449, 402 N.Y.S. 2d 342 348 (N.Y. 1977). Compare *RAM v. Blum*, 425 N.Y.S. 2d 735, 103 Misc. 2d 237 (N.Y. App. Div. 1980); "the clear meaning of the [State] Constitution now prevents a court from substituting its judgment for that of the legislature in welfare matters." 425 N.Y.S. 2d at 738, 103 Misc. 2d at 240.

27. The New Jersey Supreme Court has upheld such a measure, limiting stays in emergency housing to five months, as a reasonable exercise of administrative discretion. *Franklin v. N.J. Dep't of Human Services*, 543 A. 2d 1, 111 N.J. 1 (1988). This may foreshadow the action of New York courts, for New Jersey's approach to shelter rights is similar to New York's. The Franklin Court did not reach the Appellate Division's finding of a right to shelter under the New Jersey Constitution, except to note that "even were we to find such an obligation, we would generally hold that the Legislature has broad discretion in determining how best to 'vindicate . . . a constitutional obligation.'" 543 A. 2d at 9, 111 N.J. at 17. (quoting *Hills Dev. Co. v. Bernards Twp.*, 103 N.J. 1, 21 (1986)).

28. 502 N.Y.S. 2d 720, 728, 117 A.D. 2d 198, 212 (1986) (emphasis added).

29. 511 N.E. 2d at 65, 517 N.Y.S. 2d at 921-22, 70 N.Y. 2d at 118.

30. *Supra* note 12.

14, 1987, the Department of Health and Human Services (HHS) announced that it would propose new regulations whereby cities would be reimbursed only for the first thirty days of families' stays in emergency housing, including welfare hotels.<sup>31</sup> This would implement existing law, since "emergency assistance" is to be "furnished for a period not in excess of 30 days in any 12-month period . . ."<sup>32</sup>

New York City, faced with a possible loss of \$80 million,<sup>33</sup> promised in October 1987 that it would stop using the welfare hotels by 1992<sup>34</sup> in exchange for a one-year congressional moratorium on the proposed regulations.<sup>35</sup> Then, under the congressional threat in 1988 to allow implementation of HHS' proposed funding cut, the City said that it would no longer use the hotels after June 1990.<sup>36</sup> The moratorium on the funding cut was then extended to October 1, 1989.<sup>37</sup>

The current City plan calls for preventing homelessness by encouraging people to share apartments and by increasing efforts to help families in danger of eviction. In addition, some hotels will be condemned or leased for operations by nonprofit groups.

Homeless families, including those removed from the hotels, will receive one-third of the New York Housing Authority apartments which become vacant in the next two years, or about 1,800 apartments.<sup>38</sup> Setting aside so many apartments for the homeless is controversial; with 200,000 families on the Housing Authority waiting list, it will be much more difficult for non-homeless families on welfare and working families who live in substandard housing to obtain apartments. Many also fear that homeless families, particularly those from welfare hotels, will be especially disruptive tenants.

In addition, the current rehabilitation of 4,000 apartments per year will be increased to 5,000 per year.<sup>39</sup> Plans to build fifteen new shelters to house 6,000 homeless people have been scaled back under opposition by borough presidents to plans for eleven new shelters (seven for families) that will allow 3,000 people to leave welfare hotels.<sup>40</sup> In all, the plan commits the City to \$75-100 million in new spending by 1992.<sup>41</sup>

This plan has been criticized by many advocates of the homeless. Some complain that the new shelters will still house entire families in single rooms.<sup>42</sup> Others say that the plan is too slow, yet unlikely to be met.<sup>43</sup> The most persistent

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31. 45 C.F.R. § 223 (1987); N. Y. Times, Aug. 15, 1987, at 1, col. 1.

32. 42 U.S.C. § 606(e)(1) (1982).

33. 134 CONG. REC. H6218 (daily ed. Aug. 3, 1988).

34. N.Y. Times, Oct. 16, 1987, at B3, col. 2.

35. 42 U.S.C. 1383(c) (amended by Pub. L. No. 100-628, § 901, 100 Stat. 3250).

36. N.Y. Times, August 2, 1988, at B1, col. 5; 134 CONG. REC. H10381 (daily ed. Oct. 19, 1988).

37. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100-628, § 901, 102 Stat. 3250.

38. New York City Housing Authority, *NYCHA Role in City Interagency Plan to Help Homeless*, 1 HOUSING AUTHORITY REPORTER 1 (July-August 1988); N.Y. Times, Dec. 27, 1988, at B3, col. 6.

39. New York City owns 100,000 abandoned apartments, of which half have been rehabilitated. Coulson, *supra* note 10, at 18.

40. N.Y. Times, Aug. 21, 1987, at 26, col. 1.

41. *Id.*, Oct. 17, 1987, at 36, col. 1.

42. *Id.*, Oct. 16, 1987, at B3, col. 4.

43. Crain's New York Business, Aug. 15, 1988, at 1.

criticism has been that the plan places too little emphasis on permanent housing as opposed to temporary shelter.<sup>44</sup>

### LEGISLATIVE RESPONSES

Since welfare hotels are so expensive and squalid, why have they been used thus far? New York City officials argue that federal law gives them little choice but to resort to welfare hotels, because the Social Security Act forbids the use of AFDC/EAF funds to build permanent housing.<sup>45</sup> Many bills have been introduced in Congress, almost all unsuccessfully, which would allow AFDC funds to be used to build permanent housing.

Such legislation should be distinguished from legislation to increase permanent housing construction by the Department of Housing and Urban Development (HUD). The involvement of HUD in housing construction is well-established. The construction or rehabilitation of housing under HHS auspices, however, raises contentious issues including HHS' proper dominion and whether welfare relief is for short-term sustenance or longer-term support.

Most active in proposing that AFDC funds be used to construct housing have been Representative Charles Schumer (D-N.Y.) and Senator Daniel Patrick Moynihan (D-N.Y.). Representative of the bills they have introduced is Schumer's H.R. 5080 (1986).<sup>46</sup> This bill would allow AFDC Emergency Assistance funds to pay forty percent of the cost of building permanent housing for homeless families, with state and city governments paying the other sixty percent.<sup>47</sup> In order to receive these grants, a state would have to show that the total AFDC bill would be decreased within five years: "that the cost of one-time construction grants, plus the monthly welfare subsidy would be less than five years of grants to welfare hotels."<sup>48</sup> In addition, as the new housing units become available for occupancy, cities would have to discontinue the use of an equivalent number of welfare hotel rooms.<sup>49</sup>

President Reagan appeared to support this concept at a November 19, 1986, press conference:

I just read this morning in the paper about a needy family in New York that is being put up in a hotel, and the cost to welfare just for the rent of the hotel room is \$37,000 a year. And I wonder why somebody doesn't build them a house for \$37,000?<sup>50</sup>

Yet Reagan soon came out against the Schumer bill.<sup>51</sup>

44. N.Y. Times, Oct. 17, 1987, at 36, col. 1.

45. 133 CONG. REC. H408 (daily ed. Jan. 27, 1987) (statement of Rep. Weiss); *Use of Emergency Assistance Funds*, *supra* note 1, at 24 (statement of Mayor Koch).

46. 99th Cong., 2d Sess. Similar legislation proposed by Schumer includes H.R. 5740, 99th Cong., 2d Sess. (1986), and H.R. 1312, 100th Cong., 1st Sess. (1987). Schumer bills calling for demonstration projects rather than full-scale grant programs include H.R. 1906, 100th Cong., 1st Sess. (1987), and H.R. 363, 101st Cong., 1st Sess. (1989). Moynihan bills similar to H.R. 5080 include S. 2879, 99th Cong., 2d Sess. (1986), and S. 217, 10th Cong., 1st Sess. (1987).

47. *Use of Emergency Assistance Funds*, *supra* note 1, at 6, 11. This federal contribution would be limited to slightly more than the average total cost of housing a family in a welfare hotel for one year; in New York, then, the grant could be up to \$27,000. *Id.*

48. *Id.*

49. *Id.* at 9, 11.

50. *Id.* at 5.

51. 133 CONG. REC. E2507 (daily ed. June 19, 1987) (statement of Rep. Bryant, quoting June 17, 1987 Dallas Times Herald editorial).

The only successful legislation to provide for the construction or rehabilitation of housing using AFDC funds is a limited provision in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.<sup>52</sup> This provision calls for three demonstration projects by states to construct or rehabilitate transitional housing for the homeless using a total of \$20 million in AFDC funds. Like Representative Schumer's H.R. 5080, the McKinney provision requires cities to reduce the number of rooms used in "transient facilities" (welfare hotels) for each new unit of housing built, and mandates that the cost to the federal government for the demonstration projects must be less than the cost of housing families in transient facilities.<sup>53</sup> While the housing to be built is not permanent housing, it must be "easily convertible to permanent housing when such facilities are no longer needed as transitional facilities."<sup>54</sup>

There are several reasons why Congress has been reluctant to allow the use of AFDC funds for permanent housing construction. One reason is that many executive officials and members of Congress believe that housing construction is the province of HUD.<sup>55</sup> Similarly, in creating AFDC, Congress intended to help families in crisis to obtain rental housing rather than to fund the construction of permanent housing.<sup>56</sup> In addition, the McKinney Act is not designed to solve the homelessness crisis by providing permanent housing, but rather provides a "Band Aid"<sup>57</sup> to "address the acute and immediate needs of the homeless."<sup>58</sup>

Addressing the needs of the homeless, indeed, has become a political game that is well-exemplified by this battle over funding of welfare hotels and permanent housing construction. Federal housing funds fell from \$32 billion in 1980 to \$7 billion in 1987<sup>59</sup>, with HUD's budget falling from seven percent of the total Federal budget to less than one percent.<sup>60</sup> By proposing AFDC funding of permanent housing construction, members of Congress such as Senator Moynihan and Representative Schumer tried to get housing funding through HHS that they could not achieve through HUD.

The Reagan Administration, however, countered the Congressmen's move. HHS' proposed thirty-day limit on federal welfare hotel funding came only a few months after President Reagan came out against Representative Schumer's AFDC permanent housing bill. Schumer could convincingly argue that building homes with AFDC funds would save money over housing families in welfare hotels for months or years at \$1,800 per month. Schumer's proposed savings are less convincing, however, if the federal government must pay these rents for only thirty days per family.

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52. Pub. L. No. 100-628, 102 Stat. 3224-85 (1988).

53. *Id.* at § 903 (c)(2), (3).

54. *Id.* at § 903 (d)(1).

55. *See, e.g.*, 134 CONG. REC. H10383 (daily ed. Oct. 19, 1988) (statement of Rep. Gradison); *Use of Emergency Assistance Funds*, *supra* note 1, at 117.

56. 134 CONG. REC. H10383 (daily ed. Oct. 19, 1988) (statement of Rep. Gradison).

57. 134 CONG. REC. H6205 (daily ed. Oct. 19, 1988) (statement of Rep. Roukema).

58. 134 CONG. REC. S16941 (daily ed. Oct. 20, 1988) (statement of Sen. Glenn); *see* 134 CONG. REC. H6198 (daily ed. Oct. 19, 1988) (statement of Rep. Gonzalez).

59. KOZOL, *supra* note 1, at 12.

60. Turner & Cook, *New Directions for Federal Housing Policy: The Role of the States 7*, MIT HOUSING POLICY PROJECT (1988).



Ironically, however, the large amounts of money spent on welfare hotels are largely a product of Washington's attempts to save money. In a classic chain of cause and effect, Washington cut back housing funds, the number of homeless increased, causing New York to put more people in welfare hotels, which in turn causes Washington to limit welfare hotel funding.

The welfare hotel battle also illustrates how states have been forced to fill the gap left by cuts in federal housing spending. States adopted over 300 new housing programs between 1981 and 1987.<sup>61</sup> New York City's welfare hotel plan will be aided by New York State's 1988 adoption of the "Permanent Housing for Homeless Families Act."<sup>62</sup> This Act provides state money for the rehabilitation or construction or both of permanent housing for homeless families in cities of one million or more, with cities to match this with equal amounts of funding. New York City plans to commit \$85 million of matching funds.<sup>63</sup>

### A BETTER APPROACH

New York City's use and subsequent abandonment of welfare hotels tells us much about how homelessness should be combatted. First, there should be greater federal funding of housing construction. It is no coincidence that the number of people without homes in this country has dramatically increased as the number of homes built by the federal government has dramatically decreased.

Federal funding is needed because homelessness is not distributed evenly throughout the country, but rather many homeless people are concentrated in urban areas, such as New York City. These cities face an extraordinary financial burden in solving their homelessness problems.<sup>64</sup> This burden, as a matter of fairness and practical necessity, should also be borne by those in more prosperous areas.

Second, temporary housing should be just that—temporary. When families occupy emergency shelters or hotels for many months, the unstable environments there are especially harmful to children.<sup>65</sup> Thus, more government construction of permanent housing is needed; private developers find the development of low-income housing unprofitable.<sup>66</sup>

Third, public housing construction should be financed through HUD rather than HHS. HUD, which has traditionally handled housing construction, has greater expertise in the area. Clear mandates lead to greater accountability and avoid the kind of confusion that has led to the present welfare hotel debacle.

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61. *Id.*

62. N.Y. LEGIS. LAW § 261 (McKinney 1988); *see also id.* at §§ 121, 614. In addition, in July 1988, the Legislature authorized housing authorities to receive funds from a municipality's capital budget for the "construction, reconstruction, development and capital improvement of public housing," rather than receiving such funds only for current operating expenses for such housing, as under previous law. *Id.* at § 322.

63. *Id.* § 261, at sec. 65.

64. New York City's 1986-1996 housing budget is \$4.2 billion. *Use of Emergency Funds, supra* note 1, at 26.

65. *Id.* at 139. To help families get out of temporary housing, services such as day care, employment services, and assistance in searching for permanent housing are crucial.

66. *Id.* at 43. But Kozol argues that the primary emphasis should be on providing temporary rather than permanent housing, since the process of building permanent housing "offers little hope of housing to poor people in New York in this century." Kozol, *supra* note 1, at 244.

Just as emergency shelter must be distinguished from long-term housing, the provision of welfare benefits must be distinguished from the construction of homes. Indeed, if limited HHS funds are used to finance such construction, other needs such as food and clothing may be neglected.<sup>67</sup>

Fourth, cookie-cutter federal programs cannot meet the myriad housing problems of diverse locales. New York City must deal with very high housing costs and a lack of low-cost temporary housing, situations which may not exist in smaller cities. State and local governments are in the best position to understand local housing problems, coordinate local businesses and charities, and implement zoning and other land use regulations to help the homeless in their areas.<sup>68</sup>

Fifth, local administrators must nonetheless adhere to federal guidelines on housing costs and conditions. Governments should not be paying \$1,800 per month to house families in uninhabitable tenements.

Granted, cookie-cutter federal programs are often used to ensure tight federal control over housing costs and conditions. Yet while federal standards are clearly needed, they should be general ones allowing for local initiative in implementation. The federal government should set specific ceilings on costs, perhaps tied to indexes of local housing costs, and general standards for heat, sanitation and other living requirements; state and local officials should be permitted to determine the exact way in which these objectives are to be achieved. The experience of the 1970s should not be repeated, when Congress "wrote into law exactly what was desired and how it was to be achieved," leading to delays, confusion and often antagonism between local, state and federal officials.<sup>69</sup>

Finally, welfare shelter allowances should be raised to a rate where families have a realistic chance of getting an apartment. Many families are trapped in New York City welfare hotels for months or years because their housing allowance is only about \$300 a month, too little for most to find livable housing.<sup>70</sup> Granted, if shelter allowances are too high, families will have an incentive to declare themselves homeless and little incentive to become independent of government funds.<sup>71</sup> If governments are going to provide shelter allowances, however, it makes little sense to provide allowances that are so low as to be virtually unusable.<sup>72</sup>

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67. See *Use of Emergency Assistance Funds*, *supra* note 1, at 117.

68. See Terner & Cook, *supra* note 59. Indeed, this is another argument for financing public housing through HUD rather than HHS. HHS welfare programs such as AFDC are categorical assistance programs, funded by federal categorical grants that may be used only for specific purposes. Block grants, which HUD more often uses, can be spent by recipients in a less restricted manner, allowing for greater attention to local conditions. See Weiser-Varon, *Injunctive Relief From State Violations of Federal Funding Conditions*, 82 COLUM. L. REV. 1236, 1238 n. 2 (1982).

69. PETERSON, RABE & WONG, *WHEN FEDERALISM WORKS* 132 (1986). HUD's rent subsidy program, for example, specified more than 100 housing quality standards for adequate heating, security and sanitary conditions, taking up more than 30 pages of the *Code of Federal Regulations* in 1980. *Id.* at 122-23.

70. KOZOL, *supra* note 1, at 2, 19-20, and Note, *supra* note 9, at 274 n. 18.

71. A New York City Council committee has stated, "Present policy bases its programs on the theory that if homelessness is made comfortable, more people will allow themselves to remain or to become homeless . . ." KOZOL, *supra* note 1 at 96. See *Use of Emergency Assistance Funds*, *supra* note 1, at 73.

72. The low shelter allowances have been challenged in two court cases. In *Washington v. Wyman*,

**CONCLUSION**

Many say that throwing money at problems won't solve them, and the welfare hotel fiasco shows this is true. Millions of dollars have been spent to house families in inhumane conditions. Unfortunately, Washington often seems to operate this way; through piecemeal legislation, an alphabet soup of programs is created without a clear purpose and effective oversight. What the homeless desperately need, instead, is a cohesive set of programs to provide them with housing, programs with clear goals and adequate funding.

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54 F.R.D. 266 (D.C. N.Y. 1971), the court found that the plaintiffs stated a colorable constitutional claim in arguing that New York City's refusal to pay their reasonable rental costs while being willing to pay exorbitant rents for welfare hotel accommodations was a violation of the Equal Protection Clause. Similarly, in *Jiggets v. Grinker*, 548 N.Y.S. 2d 462 (Sup. Ct. N.Y. 1988), the court found that the plaintiffs stated a valid claim that the application of maximum rent schedules which did not enable families with children to obtain housing in New York City violated a statutory mandate that "allowances shall be adequate . . . to bring up the child properly . . ." Apparently neither case was pursued further.

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