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Domestic Violence, the Rucker Decision Interpretation of 42 U.S.C. 1437d (1) (6), Sexual Harassment in Public Housing, and Municipal Violations of the Eighth Amendment: Making Women Homeless and Keeping Them Homeless

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Preface

Poverty is the worst form of violence.¹

Homeless women accompanied by at least one child comprise the fastest growing segment of America’s homeless population. This article examines the great poverty that has befallen so many women in America, focusing specifically upon the links between domestic violence; the Rucker decision interpreting 42 U.S.C. 1437d(i)(6); sexual harassment in publicly subsidized housing; and municipal violations of the Eighth Amendment and the phenomenon of increasing female homelessness. Section I discusses presents statistics for homelessness in the United States. Section II examines domestic violence as the principal cause of female homelessness. Section III analyzes the decision in the Department of Housing and Urban Development v. Rucker and its impact upon female homelessness for women in public housing. Section IV addresses the impact of municipal violations of the Eighth Amendment that criminalize women and keep them homeless. Section V reports the adverse psychological effects of homelessness upon women and their children. Section VI presents proposals to ameliorate the great poverty of homeless women.

Section I.

Homeless in America:
The Statistics

¹ Mohandas Gandhi
In 2000 an estimated two million Americans were homeless on any given night. In the last decade between 2.5 and 3.5 million people experienced homelessness every year, thirty percent having been homeless more than two years. These are modest estimates of the size of the homeless population. They do not include the newly-homeless class left in the wake of Hurricane Katrina, nor do they include the thousands of Americans who are losing their homes as a result of the bursting housing bubble. They also fail to include homeless individuals who are doubled up in the homes of friends and family. A more accurate estimate of America’s homeless population would be approximately five million. The mind does not easily comprehend the meaning of “five million homeless people” in the abstract. The following are two attempts to give flesh to the words five million people:

Illustration 1: Metropolitan Atlanta is a gigantic, sprawling hub of international commerce, skyscrapers, world class hotels and urban living. Metropolitan Atlanta has one of the busiest airports in the world and is home to Coca Cola and the Atlanta Braves. Greater Atlanta includes the cities of Marietta, Jonesboro, Cherokee, and Smyrna to house a population of approximately five million. The homeless population would fill every dwelling in Greater Atlanta, Georgia.

Illustration 2: If five million homeless men, women, and children extended their arms sideways and joined hands to form a living chain, the chain would stretch across America, from the Atlantic Ocean to the Pacific.

The “homeless adult male alcoholic” no longer personifies the homeless population. Women accompanied by at least one minor child comprise the fastest growing segment of this mammoth group of Americans.

Section II.
Making Women Homeless:
Domestic Violence

In the world of female homelessness, domestic violence is the elephant in the parlor. Domestic violence is by far the most pervasive cause of female homelessness in the United States. More than fifty percent of homeless women became homeless as a direct result of domestic abuse.
Violence began in their nuclear family for many homeless females. Homeless women suffer domestic violence as children significantly more frequently than members of the general female population. Domestic violence against adult females targets women of every race and socio-economic group. The rates of violence are not uniform, however. Both a woman’s race and her economic condition significantly influence the probability of her becoming a victim as the following statistics indicate.

A.

Rates

American women of color are at the greatest statistical risk for encountering domestic violence. African American women suffer domestic violence at higher rates than any other group; 35% higher than Caucasian women and 22% higher than estimated combined rates for women of other races. Approximately 40% of African-American women who participated in a study conducted by Tufts University reported experiencing coercive sexual victimization by age eighteen. Hispanic-American women fare little better. In 2002 the Texas Council on Family Violence concluded that 39% of Hispanic females had previously suffered severe abuse in their homes.

American women of Japanese descent reported severe incidences of family violence in a study conducted in California. Fifty-two percent of the survey subjects had been violently assaulted by a household member. A 2002 survey of one hundred sixty South Asian women in Boston reported that some 40% of the subjects had been abused within the past twelve months. Interestingly, women of Chinese descent reported the lowest rates of household abuse. Only

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8 Id.
eight percent of Chinese-descent subjects reported any severe episode of violence. The study noted that Chinese women whose households retained traditional Chinese cultural values reported low rates of abuse. American-acculturated subjects suffered twice the rate of abuse.

Female same-sex households also suffer from domestic violence, though the rates of reported violence are markedly lower than in heterosexual partnerships. A 2003 National Violence against Women survey found that only 11% of lesbian subjects had been physically abused by a female partner. While same-sex partners suffer intimate partner violence less often than their heterosexual counterparts, they are more likely to report domestic abuse to the police than are heterosexual females.

Total rates of domestic violence in America are sobering. Statistically, one in every four women in the United States will experience domestic violence in her lifetime. Approximately 1.3 million women are assaulted in their homes by an intimate partner every year, and between 3.3 and 10 million children witness this abuse. In 2004, approximately five hundred thousand women reported an episode of domestic violence. Many of those women and their minor children now live in the streets.

Researchers disagree about the causes of the intimate partner violence that has created a permanent underclass of homeless women. There are, however, four well-researched and respected theories of causality.

B. Causes of Violence against Women

1. Biomedical Influences

Some studies indicate that men who have sustained head trauma are as much as six times likelier to abuse an intimate partner than the general population of males. Other researchers in

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15 Id.
17 Id.
20 Bureau of Justice Statistics, U.S. Dept. of Justice, NCJ-210674, “Criminal Victimization in the United States” (2004). This figure must be regarded as the proverbial tip of the iceberg since many abused women fail to report intimate partner violence.
the bio-medical field theorize that males who have high testosterone levels and low serotonin levels may be predisposed toward aggressive, sexually dominant actions toward female intimate partners.\textsuperscript{22}

2. The “Culture of Violence” Hypothesis

The “Culture of Violence” hypothesis suggests that exposure to poverty and violence in youth presupposes some males to accept violence against women as an acceptable norm. Researchers contend that domestic violence in inner cities is reflective of a mindset that “condones violence in general and assaultive behavior against women in particular.”\textsuperscript{23} These researchers hypothesize that young males in the inner city do not believe they can escape the environment; therefore, they “have no stake in conforming to cultural norms that dictate against violence.”\textsuperscript{24} Researchers frequently identify Rap as an example of “culture of violence” entertainment that promotes the degradation and humiliation of women.

3. The Under-employment Hypothesis

In 1999 the New England Journal of Medicine reported that women with under-employed or unemployed intimate partners were at high risk for domestic abuse.\textsuperscript{25} A later study corroborated the Journal’s report, concluding that unemployment “was the single most predictive factor in whether a woman would be killed by her intimate partner.”\textsuperscript{26}

4. The Reproductive Access Hypothesis

Evolutionary biologists surmise that male sexual jealousy is linked to some domestic violence. The theory suggests that male jealousy is fueled by the male imperative to procreate and thereby to assure the survival \textit{homo sapiens}\textsuperscript{27} as a species. Researchers also hypothesize that male sexual jealousy will in some instances cause a male to commit domestic violence against his female partner’s offspring by another male if he consciously or unconsciously perceives the child as blocking his access to his female partner. Researcher Molly Walker Wilson describes the theory as follows:

\textsuperscript{22}Id. (“Some human male aggression against females may correlate with well-documented primate aggressions against females in order to assure reproduction.”)
\textsuperscript{24}Id.
\textsuperscript{25}Demetrios N. Kyriacou, Deidre Anglin, Ellen Taliaferro, Susan Stone, Toni Tubb, Judith Linden, Robert Muellman, Erik Barton and Jess Kraus, “Risk Factors for Injury to Women from Domestic Violence,” 341 New England Journal of Medicine 1892 (1999). (The study also confirmed that poorly educated male substance-abusers are more likely to abuse a female partner than other males in the general population.)
Paternity assurance is the process by which the male of the species guarantees that he is not devoting valuable resources to supporting juveniles who are not his own offspring. The concern over the issue of paternity leads a male to adopt an attitude of proprietoriness with respect to his female partner. In Homo sapiens, research has demonstrated that men and women have markedly different patterns of sexual jealousy. A human male, like males of other species, has the problem of determining whether his sexual partner’s children are also his offspring...Fundamental biological differences cause men to be particularly concerned with sexual difficulties...28

No comprehensive study has yet been made of the impact of female sexual jealousy as a causal factor for violence in same-sex female relationships, and at this point researchers do not accept any explanation of domestic violence against women as conclusive. While the cause or causes of violent and coercive abuse 29 remain worrisomely inexplicable and unpredictable, one effect of pervasive domestic violence, however, is disturbingly predictable; female homelessness.

Section III.
Making Women Homeless:
The United States Supreme Court’s Interpretation of 42 U.S.C. 1437d(1)(6); Subsidized Public Housing Lease Provisions

The United States Supreme Court’s decision in Department of Housing and Urban Development v. Rucker has led to an increase in female homelessness. Female tenants in subsidized public housing are frequently evicted for criminal acts committed by other people. The Housing Authority relies upon 42 U.S.C. 1437d(1)(6) and the Rucker decision for its authority to use its sole discretion to evict entire households for a criminal act performed by one household member or guest. Section 42 U.S.C. 1437d(1)(6) reads in pertinent part:

Each public housing agency shall utilize leases which...provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant’s household, or any guest or other persons under the tenant’s control, shall be the cause for termination of tenancy. 30 (Emphasis supplied)

A.
The Tiffani Alvera Story

Tiffani Alvera’s story is illustrative of the bizarre implications of a strict interpretation of this provision of the Act. Ms. Alvera’s husband her, while they resided in public housing.31 Ms. Alvera sought legal protection against further abuse. The court granted Ms. Alvera a temporary

28 Id.
30 42 U.S.C. 1437 (d) (1) (6)
restraining order against her husband that prohibited him, inter alia, from returning to the housing project or otherwise approaching her.\textsuperscript{32} Ms. Alvera provided a copy of the order to the manager of the housing complex. Twenty-four hours later, the manager presented Ms. Alvera with her eviction notice.\textsuperscript{33} The notice stated in pertinent part: “You, someone in your control, or your pet, has seriously threatened immediately to inflict personal injury, or has inflicted substantial injury upon the landlord or other tenants.”\textsuperscript{34} The lease had been adapted to conform to language found in 42 U.S.C. 1437d (1) (6).

The Public Housing Authority in Oregon interpreted Section 1437d (1) (6) to permit the eviction of Ms. Alvera, \textit{the victim}, because “a household member” had committed a crime. If Ms. Alvera had not played the part of the responsible citizen by notifying the Housing Authority of her husband’s conduct, she would not have been faced with eviction and probable homelessness. Ms. Alvera’s story attracted the attention of housing advocates and the public. Only under community pressure did the Housing Authority relent and permit her to lease another, smaller apartment in the complex.\textsuperscript{35} The Housing Authority’s conduct no doubt chilled other residents of the complex from reporting domestic violence. Ms. Alvera, herself, will think twice before reporting crime again if she wants to remain in the only housing she can afford. It beggars the imagination that such an eviction scenario was the intent of Congress. Yet, in \textit{Rucker} that is precisely what the Supreme Court decided.

\textbf{B.

The Pearlie Rucker Story}

Pearlie Rucker, a sixty-three year old grandmother, was evicted from public housing because her mentally disabled daughter was found in possession of illegal drugs three blocks away from the housing complex.\textsuperscript{36} Barbara Hill, another sixty-three year old grandmother, was evicted because her grandsons were caught smoking marijuana in the parking lot. There was no evidence to suggest that either of these grandmothers knew or had reason to know what their younger family members were doing, or that they could they have stopped them if they had known. Rucker, Hill, and others sued to enjoin the Housing Authority for terminating their leases. \textit{Rucker} brought the issue of the proper interpretation of Section 1437d (1) (6) squarely before the United States Supreme Court.

The Supreme Court, in an exquisitely tortured interpretation of the provision, held that Congress had vested sole discretion in local housing authorities to evict innocent tenants for the criminal actions of their household members and guests without proof of their knowledge or

\textsuperscript{32} Id.
\textsuperscript{33} Id.
\textsuperscript{34} Id.
\textsuperscript{35} See, C.B.M. Group, No. 01-857-PA at 7.
\textsuperscript{36} Department of Housing and Urban Development v. Rucker, 535 U.S. 125 at 128, (2002). (The complaint alleged, inter alia, : (1) that the respective grandsons of respondents William Lee and Barbara Hill, both of whom were listed as residents on the leases, were caught in the apartment complex parking lot smoking marijuana; (2) that the daughter of respondent Pearlie Rucker, who resides with her and is listed on the lease as a resident, was found with cocaine and a crack cocaine pipe three blocks from Rucker’s apartment; \textsuperscript{FN1} and (3) that on three instances within a 2-month period, respondent Herman Walker’s \textit{caregiver} and two others were found with cocaine in Walker’s apartment. (Emphasis supplied).
complicity in the crimes.\textsuperscript{37} In reaching its conclusion the Court parsed \textit{42 U.S.C. § 1437d(1)(6)} grammatically and used a dictionary to determine the meaning of the word “any.” The Court concluded that “the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’” \textsuperscript{38} Based upon its definition of “any” the Court construed 1437d(1)(6) to mean that \textit{any} drug-related activity engaged in by the persons specified is grounds for termination (for everyone), not just drug-related activity that the tenant knew, or should have known, about. \textsuperscript{39} The Court cited the absence of an “innocent tenant” clause in 1437d(1)(6) as further support of its holding that Congress intended that every person in the household of the offender be subject to eviction.\textsuperscript{40, 41} One might logically conclude that a provision so convoluted that members of the United States Supreme Court had to parse the provision and resort to the dictionary to understand it would be viewed as ambiguous. Nonetheless, the Supreme Court held that 1437d(1)(6) is unambiguous.\textsuperscript{42} The Court, therefore, refused to consider the intent of Congress. The Court also found no support for Ms. Rucker’s argument that the provision as interpreted would yield absurd results.\textsuperscript{43} The plaintiffs, two indigent grandmothers and two elderly men, one disabled, were evicted from public housing based upon the \textit{Rucker} interpretation. One might reasonably consider that an absurd result.

The implications of the Court’s interpretation could scarcely be exaggerated. The \textit{Rucker} interpretation would permit the eviction of an innocent grandmother from public housing if the tenant’s eleven year old grandchild were caught shoplifting a tee-shirt five hundred miles away. Under this interpretation, since Section 1437d(1)(6) contains no provision prohibiting retroactive application, presumably the housing authority has the discretion to oust an entire indigent family upon learning that a household member or guest had been convicted on drug charges years ago.

The Supreme Court’s interpretation of Section 1437d(1)(6) creates strict liability\textsuperscript{44} for every member of a publicly subsidized household for the actions of every other regardless of circumstances. Granting that public housing complexes are often hotbeds of violence and drug-related crimes and that it was the intention of Congress to curb crime, the Court’s interpretation of Section 1437d(1)(6) works to defeat that intention. This interpretation chills innocent tenants from participating in the justice system by reporting crime for fear that they will be left homeless at the end of the day.

Section IV.

Making Women Homeless:

Sexual Harassment in Public Housing and the Fallacy Embedded in 42 U.S.C. 3604(b)

\textsuperscript{37} Id. at
\textsuperscript{38} Id. at 134, citing \textit{United States v. Gonzales, 520 U.S. 1, 5, 117 S.Ct. 1032, 137 L.Ed.2d 132 (1997)}
\textsuperscript{39} Id.
\textsuperscript{40} Id. at 132. “[N]o property shall be forfeited under this paragraph ... by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.” \textit{21 U.S.C. § 881(a)(7) (1994 ed.)}
\textsuperscript{41} Id. at 132.
\textsuperscript{42} Id.
\textsuperscript{43} Id. at 135.
\textsuperscript{44} Id.
Your house is your larger body
It grows in the sun and sleeps
in the stillness of the night...  

Every year indigent women living in public housing are subjected to hundreds of incidences of sexual harassment in their own homes by landlords and complex managers. Some become homeless as a result. Others become enslaved by harassment.

Examples of sexual harassment in public housing include instances of managers or landlords grabbing female tenants’ breasts and buttocks, rubbing against tenants in an overtly sexual manner, demanding sex in exchange for favorable treatment, and letting themselves into the tenant’s apartment without permission. A particularly disturbing incident of harassment occurred when a female tenant returned to her apartment to find the apartment manager masturbating in her living room.

The gross imbalance of power between an indigent woman and a landlord who controls her access to housing is immediately apparent. A woman who does not comply with demands for sexual behavior risks immediate violent confrontation and/or threats of eviction. For women in public housing, eviction means homelessness. The Title VIII’s Fair Housing Act provides a cause of action for a tenant who is sexually harassed, but the system-wide deck is stacked against a woman who seeks redress. Unless she can persuade a court to enjoin her eviction, which is unlikely, she will be homeless while she waits for her case to progress. When she gets to trial, she bears a sometimes impossible burden of proof, will probably lose, and her homelessness will become permanent.

Title VIII 42 U.S.C. 3604(b)

“It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, or religion, sex, familial status, or national origin.” Hereinafter, the Fair Housing Act.

Title VIII affords residents of public potential causes of action for two different acts of sexual harassment; quid pro quo harassment and hostile environment harassment. Of the two, female tenants of public housing have had greater success with claims based upon quid pro quo.

45 Kahlil, Gibran, The Prophet at 35.
46 Regina Cahan, “Home Is No Haven: An Analysis of Sexual Harassment in Housing,” 1987 Wis. L. Rev. 227(1992). (Female tenants may have claims for invasion of privacy, assault and battery, false imprisonment, and intentional infliction of emotional distress in addition to claims under Title VIII 42 U.S.C. 3604 (b).)
49 Greiger v. Sheets, 689 F Supp. 835 (N.D. Ill. 1988) (The landlord insisted upon sex, and, upon Greiger’s refusal, he threatened to shoot a household member and made her give away the family dog.)
51 Id.
52 42 U.S.C. 3604 (b)
A.
Quid Pro Quo

Quid Pro Quo, harassment occurs when an authority figure withholds or denies a tangible housing benefit because the tenant refuses sexual advances. For example, a landlord may evict or threaten to evict a tenant unless she performs a sexual act. An interpretation found in 24 C.F.R. §100.65(b) (5) specifically prohibits any actions that result in “denying or limiting services or facilities in connection with the sale or rental of a dwelling because a person failed or refused to provide sexual favors.” Plaintiffs who have stated Quid Pro Quo claims have alleged, inter alia, that they were subjected to demands for sex, demands for nude photos, and demands to “date” the landlord.

In order to establish a prima facie case of quid pro quo sexual harassment in housing, a tenant must offer competent evidence of each of the following elements:

1. That she is a member of a protected class;
2. That she was subjected to an unwelcome demand or request for sexual favors;
3. That the unwelcome demand was based upon her gender;
4. That because of her response to the unwelcome demand she was denied housing or otherwise denied housing benefits; and
5. That if the harassment was perpetuated by an agent or employee of the owner and the owner is a named defendant that the owner knew or should have known of the harassment and failed to act.

Women have had some success with quid pro quo claims because they need only substantiate one incident of quid pro quo harassment to prevail. The chief difficulty facing the tenant is proving that a landlord knew or should have known that an employee was engaging in harassing behavior and failed to act curatively. When the defendant is the landlord, the tenant is excused from the burden of showing notice per se, though the issue must be addressed indirectly when she establishes that the advances were unwelcome.

Fewer tenants have prevailed on a hostile environment theory, which is a more prevalent and difficult to establish form of harassment.

53 See, Shellhammer v. Llewelyn, 1 Fair Hous. – Fair Lending Rep. at 16, 128. (Shellhammer is the seminal case in housing sexual harassment. The landlord harassed Ms. Shellhammer while she was working in the complex as a housekeeper.)
54 Id.
55 Id. (See also, Woods v. Foster, 884 F. Supp. 1169 (N.D. Ill. 1995) Women were sexually harassed in a homeless shelter. They all acquiesced, fearing that they would be forced to leave the shelter. Their claims under the Fair Housing Act were sustained.
56 Id. supra note 47.
57 Id. at 1572.
B. Hostile Housing Environment Harassment

A hostile housing environment claim differs from quid pro quo in that the defendant need not make a specific demand or threat of retaliation against a tenant. If a landlord or his agent makes repeated unwelcome sexual overtures, his conduct may become actionable without proof of a quid pro quo. To sustain a hostile environment claim the tenant must prove:

1. That she is a member of a protected group;
2. That she was subjected to unwelcome and extensive sexual harassment in the form of sexual advances, requests for sexual favors, and other verbal or physical conduct that is undesired;
3. That the harassment was based on sex;
4. That the harassment makes continued tenancy less desirable; and
5. That if there is a count for the vicarious liability of the owner, the owner knew or should have known of the harassment and failed to act.\(^59\)

For example, a repairman’s repeated grabbing of the plaintiff in the elevators and laundry rooms was found sufficiently severe that a jury could be permitted to find a hostile housing environment.\(^60\) In New York City multiple female plaintiffs filed a hostile housing environment suit against a broker who made sexually suggestive remarks.\(^61\) A federal District Court in California concluded that an indigent or near-indigent woman’s unique vulnerability to harassment in her home would render any wrongful sexual touching sufficient to support a sexual harassment claim under the Fair Housing Act when it is done by one whose role is to provide housing.\(^62\) The majority of jurisdictions, however, have rejected that analysis in favor of a requirement that hostile environment harassment be severe and pervasive to support a cause of action. The “severe and pervasive” requirement has proven difficult to satisfy in many courts. In Saxon v. American Tel & Tel. Co.\(^63\) the landlord placed his hand on the plaintiff’s leg, kissed her until she pushed him away, and later hid in a bush, jumped out at the tenant and grabbed her.\(^64\) The court held that the landlord’s actions were not sufficiently severe or pervasive to sustain a hostile housing environment claim.\(^65\) The Saxon court concluded that the conduct of the landlord could be viewed as merely “sporadic”.\(^66\) In DiCenso v. Cisneros, the landlord told the female tenant that she could pay her rent with sexual favors and referred to her as “bitch” and “whore.”\(^67\)

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59 Id. at 16, 128
62 Beliveau, supra note 42.
63 Saxon v. American Tel & Tel. Co., 10 F. 3d 526 (7th Cir. 1993).
64 Id.
65 Id.
66 Id.
67 Dicenso 96 F. 3rd 1004.
The Seventh Circuit held in a 2-1 split that the conduct was not sufficiently severe and pervasive to permit a recovery.\textsuperscript{68} The Seventh Circuit specifically analogized the case to workplace harassment cases that had failed.\textsuperscript{69} These and other similar cases have prompted articles such as “Notice to Career Predatory Landlords- It’s Legal to Sexually Harass Your Tenants ‘If You Only Do It Once.’”\textsuperscript{70}

The courts did not create the “severe and pervasive” standard out of whole cloth. Since Congress provided no guidance, the courts superimposed the severe and pervasive standard found in Title VII workplace cases.\textsuperscript{71} It is well settled that a Title VII plaintiff must prove that sexual harassment has reached severe and pervasive levels to recover for workplace harassment; however, there is a crucial distinction between sexual harassment in one’s home and in the workplace. Landlords and managers of public housing invade a woman’s fundamental right to privacy and freedom from intrusion in her own home and they receive a federal paycheck while they do it. The 2003 landmark case, Lawrence v. Texas,\textsuperscript{72} identified the home as the very citadel of privacy. Justice Kennedy, writing for the majority, stated:

Although the laws involved in \textit{Bowers} and here purport to do no more than prohibit a particular sexual act, their penalties and purposes have more far-reaching consequences, touching upon the most private human conduct, sexual behavior, and \textit{in the most private of places, the home}. They seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals. The liberty protected by the Constitution allows homosexual persons the right to choose to enter upon relationships \textit{in the confines of their homes} and their own private lives and still retain their dignity as free persons.\textsuperscript{73}

Sexual harassment in the home threatens one’s essential dignity differently than marketplace harassment. A person confronting harassment in the work arena can seek solace at home. A woman whose home is invaded has lost her last vestige of privacy. The \textit{Beliveau} Court recognized that harassment in the home subjects the victim to an elevated aspect of terror.\textsuperscript{74} So long as courts treat housing harassment like workplace harassment, landlords can sexually harass indigent and near-indigent women without real fear of court intervention. A female tenant will remain caught between two evils: She must either accept sexual harassment, sexually transmitted diseases, and possible pregnancy or face living on the mean streets of America. If a woman seeks redress for sexual discrimination under Title VIII under either quid pro quo or hostile housing environment harassment, she may ultimately recover actual damages,\textsuperscript{75} a permanent restraining

\textsuperscript{68} Id. at 1006.
\textsuperscript{69} Dicenso, 96 F. 3rd at 1008, citing Meritor Savings Bank v. Vincent, 477 U.S. 57. See, also, Robert G. Schwemm and Rigel C. Oliveri, “A New Look at Sexual Harassment under the Fair Housing Act: The Forgotten Role of 3604(c ),” 771 Wis. L. Rev. 771 (20002)}
\textsuperscript{70} “The Agonist,” available at \url{http://agonist.org/node/33086/print last visited January 14, 2007}
\textsuperscript{72} 539 U.S. 558, 2003.
\textsuperscript{73} Id. (Emphasis supplied.)
\textsuperscript{74} Beliveau supra note 56.
\textsuperscript{75} 42 U.S.C.$3613 (a).
order allowing her to return to her housing,\textsuperscript{76} and her attorneys’ fees and costs; however, she must wait for years for the case to conclude. While she waits, the defendant will evict her. She and her children will be homeless.

Section V
Keeping Women Homeless:
Municipal Violations of the Eighth Amendment

A.
Harassment and Death in the City

Women fleeing domestic violence or evicted from public housing frequently have no funds and no social support.\textsuperscript{77} When they flee, they have no place to go but to the streets, literally.\textsuperscript{78}

Life for homeless women on the streets of major cities is brutal. Pimps, homeless men, and gangs prey upon homeless females and their children. Ingram, Corning and Schmit’s study of homeless women reported that forty-five of homeless female subjects had been raped.\textsuperscript{79} A 1995 Experimental and Clinical Psychopharmacology study found that sixteen percent of its homeless female subjects had been raped \textit{at least once} during the past twelve months.\textsuperscript{80} Another seven percent of the subjects reported being the victims of attempted rape.\textsuperscript{81}

Homelessness for women can be a death sentence. Mortality rates among homeless women are remarkable. Homeless women between the ages of eighteen and forty-four form the largest component of the homeless female population.\textsuperscript{82} Women in this group are as much as thirty-one times more likely to die in a given year than women in the general population.\textsuperscript{83} A homeless woman in her mid-fifties is as physiologically old as housed women who are seventy years of age or more.\textsuperscript{84} They suffer age-related illnesses such as cancer, high blood pressure, and diabetes in rates characteristic of much older women.\textsuperscript{85} While these homeless women have

\begin{itemize}
\item \textsuperscript{76} Id.
\item \textsuperscript{77} Bassuk supra note 7.
\item \textsuperscript{80} Judith A. Stein and Lillian Gelberg, “Homeless Men and Women: Differential Associations Among Substance Abuse, Psychological Factors and Severity of Homelessness,” Experimental and Clinical Psychopharmacology, February 1995 Vol. 3.
\item \textsuperscript{81} Ann M. Burkhart, “The Constitution Underpinnings of Homelessness,” 40 Hous. L. Rev. 211, (2003) No. 1, 75-86. (Only one percent of homeless men reported having been sexually assaulted while living on the streets.)
\item \textsuperscript{82} Id.
\item \textsuperscript{84} Id.
\item \textsuperscript{85} Id.
\end{itemize}
bodies that are clinically seventy year old, they cannot obtain housing set aside for the elderly because they are technically too young.

Municipal authorities greatly compound the hardships of homeless women by harassing them without mercy.86 In 2005, Sarasota, Florida approved an ordinance making it a crime to sleep in public, whether in a tent or makeshift shelter.87 The ordinance specified that arrest would be warranted for an individual who, when awakened, stated that she has no other place to sleep.88 The proposal of a Dallas, Texas, City Councilman in 1993 to give the entire homeless population of Dallas a bus ticket out of town leaves no doubt about the city’s attitude towards its homeless.89 Dallas is considering the Mayor’s suggestion that persons who give money to homeless beggars be ticketed as though they had committed a traffic offense.90

The police also harass food providers for the homeless.91 In 1984, city officials in Miami, Florida, directed the police “to identify food sources for the poor and to arrest and/or force an extraction of the undesirables from the area.”92 In nearby Santa Anna, the police refused to serve food to the hungry homeless they had jailed for sitting, standing, sleeping and keeping knapsacks outdoors,93 though they fed three meals a day to all non-homeless individuals awaiting trial for serious crimes. Santa Anna, California has threatened to tax providers of free meals to the homeless forty thousand dollars for “clean up.”94

When Little Rock, Arkansas shut down its only day shelter for the homeless in 2005 by cutting the last of its funding,95 the spokesperson for Little Rock’s urban renewal partnership stated that she was “glad” that it was gone but would not be satisfied until the soup kitchen was shut down as well.96 In the summer of 2005 Little Rock’s manifested its determination to starve out its homeless with an indecent, public display of police power. Little Rock hosted a free public event in the park, at which various businesses and manufacturers of goods set up booths and tents to give away samples of their food and merchandise.97 The vendors encouraged homeless persons to take free samples.98 However, officers of the Pulaski County Sheriff’s Department forced the homeless individuals in attendance, including a handicapped man at a

88 Id.
89 Id.
91 Id.
94 Id. at 1567
95 Id.
96 A Dream Denied, supra, n. _____.
97 Id.
98 Id.
picnic table, to leave or be arrested. The sheriff allowed Little Rock’s more affluent citizens to eat the free food once the hungry homeless had left. Santa Anna, California is considering taxing providers of free meals to the homeless forty thousand dollars for “clean up,” a thinly veiled attempt to shut down a food source.

While Little Rock arguably is America’s most heartless city towards the homeless, Las Vegas, Nevada is in hot pursuit of that title. In July 2006, Las Vegas, Nevada, enacted an ordinance that subjects all persons who give food to homeless persons to a fine of one thousand dollars and/or a jail term of up to six months. Mayor Oscar Goodman of Las Vegas is considering the idea of privatizing the public parks in order to deny access to the homeless and has openly stated, “I don’t want them there. They’re not going to be there. I’m not going to let it happen. They think I’m mean now; wait until the homeless try to go over there.” Apparently, Mayor Goodman does not care that there are helpless women and children among the homeless he drives about Las Vegas like cattle.

Since a homeless woman jailed by the city must sleep, sit, urinate, and eat in public again as soon as the police release her from her cell, the city has accomplished nothing more than tagging a largely helpless homeless woman with a criminal record. Her newly-acquired criminal record will prevent her from getting a job and getting off the streets. Her city is keeping her homeless.

B.
Keeping Women Homeless:
The Use of Cruel and Unusual Punishment against the Homeless

*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*

City ordinances punishing the homeless for sleeping, standing, sitting, or eating in public are particularly effective in keeping women homeless. Once a homeless woman has a police record, she has virtually no chance of finding employment.

I.
The Robinson and Powell Analysis of Status versus Conduct

City ordinances such as those mentioned above punish the homeless for their status as homeless persons. The Constitutional debate regarding imposing criminal sanctions upon an individual based solely upon her status began with *Robinson v. California.* Robinson presented the United States Supreme Court with the issue of the constitutionality of a California

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99 Id.
101 Id.
102 Const. VIII Amend.
103 370 U.S. 660 (1962)
statute making it a criminal offense to be addicted to narcotics. The California statute read in pertinent part:

“No person shall use, or be under the influence of, or be addicted to the use of narcotics, excepting when administered by or under the direction of a person licensed by the State to prescribe and administer narcotics. It shall be the burden of the defense to show that it comes within the exception. Any person convicted of violating any provision of this section is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in the county jail. The court may place a person convicted hereunder on probation for a period not to exceed five years and shall in all cases in which probation in granted require as a condition thereof that such person be confined in the county jail for not less than 90 days. In no event does the court have the power to absolve a person who violates this section from the obligation of spending at least 90 days in confinement in the county jail.”\(^{104}\)

Under the statute, the state was not required to prove that the defendant possessed, trafficked or even used narcotics.\(^ {105}\) Being an “unreformed “addict was in itself the crime. Robinson contended that any punishment of his mere status as an addict would be cruel and unusual, thus violating the Eighth Amendment. He argued that such a scheme of punishment would “shock the moral sense and outrage those innate principles of humanity which have been broadened and expanded by civilized enlightenment.”\(^ {106}\)

Justice Stewart, writing for the majority, analogized criminalizing the status of addiction to criminalizing physical illness, stating that “It is unlikely that any State at this moment in history would attempt to make it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease. A State might determine that the general health and welfare require that the victims of these and other human afflictions be dealt with by compulsory treatment, involving quarantine, confinement, or sequestration. But, in the light of contemporary human knowledge, a law which made a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.”\(^ {107}\)

Justice Stewart went on to point out that California had the inherent police power to take action to ameliorate the societal ills caused by drug addiction. California could lawfully impose criminal sanctions, for example, against the unauthorized manufacture, prescription, sale, purchase, or possession of narcotics within its borders.\(^ {108}\) In the interest of discouraging the violation of such laws, or in the interest of the general health or welfare of its inhabitants, California might also establish a program of compulsory treatment for those addicted to narcotics.\(^ {109}\) Such a program of treatment might require periods of involuntary confinement. And penal sanctions might be imposed for failure to comply with established compulsory

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\(^{104}\) Id. at 661, citing Section 11721 of the California Health and Safety Code.

\(^{105}\) Id. at 666, 667.

\(^{106}\) Id., citing In re Finley 1 C.A. 198 and (?) United States v. Rosenberg, 195 F. 2d 583 (?)

\(^{107}\) Id. at 666, citing State of Louisiana ex rel. Francis v. Resweber, 329 U.S. 459

\(^{108}\) Id. at 664.

\(^{109}\) Id. at 665.
treatment procedures. What California could not do without offending the Constitution was to criminalize an individual for being an addict. The Court opined that punishment of truly involuntary conduct resulting from mere status constitutes cruel and unusual punishment. The Court concluded that “[e]ven one day in prison would be a cruel and unusual punishment for the ‘crime’ of having a common cold.”

Six years later, the Supreme Court entertained another argument concerning the tension between status, which cannot be criminalized, and conduct in Powell v. Texas. In Powell, an individual convicted of drinking in public challenged his conviction under the Eighth Amendment. The appellant claimed that his public drunkenness was the involuntary result of his chronic alcoholism. He further argued that his conviction for public drunkenness amounted to cruel and unusual punishment because it in essence punished him for being an alcoholic. The United States Supreme Court rejected this argument, holding that the appellant’s conviction for public drunkenness did not constitute cruel and unusual punishment. In reaching this conclusion, the Justices divided into three camps. Justice Marshall, writing for a plurality of four Justices, noted that the statute at issue in Powell did not punish mere status, but instead imposed upon appellant a criminal sanction for public behavior which may create substantial health and safety hazards, both for appellant and for members of the general public, and which offends the moral and esthetic sensibilities of a large segment of the community … The plurality concluded that the holding in Robinson should be narrowly construed to prohibit only punishment imposed without proof of any criminal act. “The entire thrust of Robinson’s interpretation of the Cruel and Unusual Punishment Clause is that criminal penalties may be inflicted only if the accused has committed some act, has engaged in some behavior, which society has an interest in preventing, or perhaps in historical common law terms, has committed some actus reus. It thus does not deal with the question of whether certain conduct cannot constitutionally be punished because it is, in some sense, ‘involuntary’ or ‘occasioned by a compulsion.’” Justice Fortas, writing for four dissenting members of the Court, contended that the appellant’s conviction should be reversed. He argued that criminal penalties should not be imposed upon a person for being in a condition that “he is helpless to change.” The dissenting members relied upon the trial court’s finding that the appellant’s public drunkenness was the involuntary result of his alcoholism. On this basis, they urged reversal of the appellant’s conviction. In his swing vote opinion, Justice White agreed with the reasoning of

110 Id. citing Jacobson v. Massachusetts, 197 U.S. 11 (   ).
111 Id. at 667.
113 Id. at 517
114 Id.
115 Id.
116 Id. at 535
117 Id. at 532
118 Id.
119 Id.
120 Id. at 569
121 Id. at 559
122 Id. at 560, 561
Justice Fortas’s dissent, writing. “If it cannot be a crime to have an irresistible compulsion to use narcotics . . . I do not see how it can constitutionally be a crime to yield to such a compulsion.”

However, he found the record below insufficient to support Powell’s claim that his alcoholism compelled him to appear in public in a drunken state. Justice White, on that basis alone, joined the plurality of the Court in rejecting the appellant’s challenge to his conviction. Justice White in dicta, however, engages in a striking hypothetical rumination about the constitutionality of criminalizing an alcoholic defendant who is arrested for public drunkenness who is also homelessness.

Justice White’s Hypothetical Homeless Alcoholic

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

II

The Eighth Amendment: Getting It Wrong: The People v. Kellogg

Justice White’s hypothetical homeless alcoholic materialized years later in California. In the People v. Thomas Kellogg a homeless alcoholic had been arrested several times for public intoxication. He was eventually sentenced to one hundred eighty days in jail. He appealed his conviction, arguing that because he was both homeless and an alcoholic, he had no choice but to appear drunk in public. He contended that his arrest violated the Eighth Amendment proscription against cruel and unusual punishment because of his status as both alcoholic and homeless. The California Court of Appeals rejected the status argument, opining:

The public intoxication statute, Penal Code section 647, subdivision (f), is carefully crafted to impose criminal culpability only if the publicly intoxicated person is unable to exercise care for his or her own safety or the safety of others, or is obstructing a public way. The statute does not punish the mere condition of being a homeless, chronic alcoholic but rather punishes conduct posing a public safety risk. Although criminal prosecution may not be the

123 Id. at 563
124 Id.
125 Id.
126 Id. at 548 (Emphasis Supplied)
127 14 Cal. Rptr. 3d 507 (2004)
128 Id. at 511.
129 Id. at 508.
preferred way to address the daunting challenges faced by a person in Kellogg's position, the Legislature's policy choice to retain the misdemeanor offense of public intoxication to provide for the public welfare does not rise to the level of cruel and/or unusual punishment even as applied to a homeless, chronic alcoholic.\textsuperscript{130}

The Court of Appeals specifically considered Justice White’s hypothetical in his \textit{Powell} concurrence. In upholding Kellogg’s conviction and sentence, the court reasoned that Kellogg had been arrested, not just for being drunk in public, but for posing "a safety hazard" and by "blocking a public way," thus fulfilling \textit{Robinson}'s requirement that criminal guilt be based on conduct, as opposed to mere status.\textsuperscript{131} Yet, a logically persuasive argument can be made that Kellogg was in fact punished for his status as a homeless alcoholic, rather than for any actual conduct he committed. The court’s own characterization of Kellogg’s arrest illustrates the fallacy:

"The facts of Kellogg's public intoxication in the instant case show a clear potential for harm. He \textit{was found} sitting in bushes on a freeway embankment in an inebriated state. It is not difficult to imagine the serious possibility of danger to himself or others had he wandered off the embankment onto the freeway."\textsuperscript{132}

Had Kellogg been drunkenly staggering alongside a busy highway, his conduct could be said to be endangering the public. If he had been drunkenly menacing another individual, the arrest may have been warranted. If Kellogg had a home where he could have retreated in complete privacy, one might morally view him as guilty of the crime of public drunkenness. In this case, however, the police had to find Kellogg where he sat in the bushes in an intoxicated state. The city convicted Thomas Kellogg for being a homeless alcoholic hiding in the bushes.

\textbf{III.}
\textbf{The Eighth Amendment: Getting It Right}
\textbf{The Ninth Circuit: \textit{Jones v. California}\textsuperscript{133}}

In 2006, the United States Court of Appeals for the Ninth Circuit heard the case of Edward Jones and five other individuals who were all homeless and living on the streets of Los Angeles Skid Row district.\textsuperscript{134} In \textit{Jones}, homeless individuals brought a §1983 action, seeking limited injunctive relief against enforcement of an ordinance that criminalized sitting, lying, or sleeping on public streets and sidewalks at all times and in all places within the city.\textsuperscript{135} The United States District Court for the Central District of California granted summary judgment for the City.\textsuperscript{136} However, the Ninth Circuit reversed, stating that the City could not expressly criminalize the status of homelessness without violating the Eighth Amendment.\textsuperscript{137} The Court

\begin{footnotesize}
\textsuperscript{130} \textit{Id.} at 508
\textsuperscript{131} \textit{Id}. at 603 (Emphasis Supplied)
\textsuperscript{132} \textit{Id} at 603 (Emphasis Supplied)
\textsuperscript{133} 444 F. 3d. 1118 (9th Cir. 2006)
\textsuperscript{134} \textit{Id.} at 1125.
\textsuperscript{135} \textit{Id.}
\textsuperscript{136} \textit{Id.}
\textsuperscript{137} \textit{Id.} at 1132.
\end{footnotesize}
further held that the City could not criminalize acts that are an integral part of the status of being homeless.\textsuperscript{138} Punishing involuntary sitting, lying, or sleeping on public sidewalks that is an unavoidable consequence of being human and homeless (because they cannot obtain shelter) was found to constitute cruel and unusual punishment.\textsuperscript{139} The Court disagreed with the analysis of Robinson conducted by the District Court in the case at bar, holding that the conduct at issue was involuntary and inseparable from status.\textsuperscript{140} The dissent appeared to suggest that the homeless could avoid sitting, lying, and sleeping for days, weeks, or months at a time to comply with the City’s ordinance, as if human beings could remain in perpetual motion.\textsuperscript{141} That being physically impossible, there was no other reasonable conclusion to reach but that the City was in fact criminalizing the appellants’ status as homeless individuals.\textsuperscript{142}

Disagreement concerning Eighth Amendment claims inevitably turns on the "status-conduct" issue.\textsuperscript{143} Courts hesitant to designate homelessness as a "status" have assumed that status is an unyielding notion that confers unqualified and presumably permanent protection from otherwise applicable laws.\textsuperscript{144} This idea should be rejected, in favor of a fact-based method focused on whether a certain activity is voluntary or involuntary during the relevant period of time.\textsuperscript{145} Under this approach, the availability of nonpublic places to the homeless for sleep and other life-sustaining activity is of supreme importance.\textsuperscript{146} When there is a lack of such alternatives, criminal penalties on activities such as sleeping in public - as applied to the homeless - are cruel and unusual in violation of the Eighth Amendment.\textsuperscript{147} This approach allows for an altered result based on changed facts, and does not grant "unconditional protection" for all time and in all circumstances.\textsuperscript{148} By focusing on the question of whether targeted conduct is innocent or culpable, judges and lawmakers can look to objective principles in deciding whether a law punishes innocent citizens because of their status.\textsuperscript{149}

Section VI.

The Psychological Effects of Homelessness upon Women and Children: The Bell Tolls for Them

The psychological trauma of homelessness is severe. Homeless women experience more substantially greater psychological distress than female residents of public housing.\textsuperscript{150} The loss of her home is itself a precipitating factor in high levels of post traumatic stress disorder in

\textsuperscript{138} Id.
\textsuperscript{139} Id. at 1138.
\textsuperscript{140} Id. at 1131, 1132.
\textsuperscript{141} Id. at 1136.
\textsuperscript{142} Id. at 1137.
\textsuperscript{143} Downward Spiral, supra note 30 at 49.
\textsuperscript{144} Id. at 50.
\textsuperscript{145} Id.
\textsuperscript{146} Id.
\textsuperscript{147} Id.
\textsuperscript{148} Id.
\textsuperscript{150} Ingram, supra, note 150 citing L. Goodman, L. Saxe, & M. Harvey (1991) “Homelessness as Psychological Trauma: Broadening Perspectives,” American Psychologist, 46, 1219-1225
Results of regression analyses suggest that even the trauma of life in shelters for the homeless contributes to elevated psychological distress for women.\textsuperscript{152} Data indicate that rates of clinical depression are five times higher among homeless women than in general community samples.\textsuperscript{153} Among homeless women, those living with a child or children report less drug or alcohol use, low rates of mental institutionalization, and minimal criminal conduct as compared with other homeless adults.\textsuperscript{154} Homeless mothers, despite their trauma, depression, and anxiety continue to attempt to function as caregivers to their children. Nevertheless, their children suffer manifest physical and psychological injury.

Homeless children make up approximately a quarter of the homeless population.\textsuperscript{155} The psychological effects of homelessness are profound for children and adolescents. They experience “intense feelings of loss.”\textsuperscript{156} Homeless children experience what can only be described as “an injury to their sense of identity a disconnection from a part of themselves…”\textsuperscript{157} These homeless youth suffer from disproportionately high rates of emotional and behavioral problems, including depression, post traumatic reactions, anxiety, and aggressive behavior issues.\textsuperscript{158} On psychological surveys homeless children self-reported high incidences of anxiety, phobic anxiety, hostility, paranoid ideation, and psychoticism.\textsuperscript{159}

Homeless adolescents are a lightning rod for street violence. Fifty-one percent of homeless adolescents report being beaten up on the streets; forty-five percent had been chased, and twenty-six percent had been shot with seven percent having been wounded.\textsuperscript{160} Among homeless girls, twenty-five percent had been assaulted with a deadly weapon.\textsuperscript{161} Homeless boys report higher vulnerability to the stresses of homelessness than do girls.\textsuperscript{162} Being homeless even for short periods puts children and adolescents at elevated risk for bodily harm and severe psychological impairment.\textsuperscript{163}
For a homeless child or adolescent, school, a highly stabilizing factor, is the first thing to go. Forty-three percent of homeless children and adolescents do not attend school at all.\textsuperscript{164} Among the homeless youth who manage to attend school some of the time, there is a higher rate of school transfers, special education services, and failing grades.\textsuperscript{165} Cognitive development delays occur in younger homeless children at higher rates than in similarly poor, but housed children.\textsuperscript{166} Language development slows.\textsuperscript{167} Such children often become homeless again as adults as a result of unresolved psychological conflict resulting from their time spent on the streets.

In 1992, Justice Atkins wrote in his landmark decision in Pottinger v. Miami that “a second generation”\textsuperscript{168} of the homeless were born under Miami’s bridges and overpasses while the case was decided. \{FN\} In 2008, a third generation of traumatized homeless children is living on our streets with their mothers.

Section VIII

Proposals

The catastrophic rise in female homelessness is a problem that does not easily admit of solution. There are, however, steps that can and should be taken to stem this tide.

First, there must be a shift in both tax structure and in funding allocations. The present tax structure reduces tax liability for America’s wealthiest,\textsuperscript{169} while cutting funding for programs for the poor. People earning over two hundred thousand dollars a year have received tax cuts by the Bush administration. Those who earn over one million dollars a year have received larger tax cuts.\textsuperscript{170} Cutting taxes for the rich cost the nation 225 billion dollars in 2005.\textsuperscript{171} As a result, the Department of Housing and Urban Development (HUD) and the Department of Health and Human Services (HHS) have been severely under-funded.\textsuperscript{172} HUD programs that are suffering the worst funding cutbacks include the Community Development Block Grant \textsuperscript{173} Section 202, housing for the elderly, and Section 811, housing for people with disabilities.\textsuperscript{174} The Grants for

\textsuperscript{164} Walsj, supra, at note
\textsuperscript{165} Id.
\textsuperscript{166} Id.
\textsuperscript{167} Id.
\textsuperscript{168} Pottinger at 1558.
\textsuperscript{170} Id., See, also, Ann M. Burkhart, “The Constitutional Underpinning of Homelessness, 40 Housing L. Rev. 211 (The wealthiest. In 1995 the top 1% of families in America owned 38% of the wealth. The top 2% of the population owns 54% of all net financial assets. Over half of all families own no financial assets or own less than they owe.
\textsuperscript{171} Id.
\textsuperscript{173} Id.
\textsuperscript{174} Id.
the Benefits of Homeless Individuals (GBHI) lost five million in funding.\textsuperscript{175} This policy of taking from the poor to give to the rich is directly related to increases in homelessness for women and children, the elderly, and people with disabilities.\textsuperscript{176} While the present administration purports to “prevent and end chronic homelessness,” its taxing and funding policies tend to say one thing and do another. The Bush administration’s policies actually strongly resemble those of the Reagan administration whose mantra was, “We're getting out of the housing business. Period.”\textsuperscript{177}

Tax reforms must re-incentivize private investors to construct and maintain housing for low-income Americans. Between 1973 and 1993, 2.2 million low-rent units disappeared from the market.\textsuperscript{178} By 1995, four million five hundred thousand people had no affordable housing.\textsuperscript{179} Homelessness cannot be stemmed without tax reform to increase affordable housing and to reallocate funding for America’s HUD and HHS programs. Lastly, because domestic violence is the principal cause of female homelessness, tax increases must be used to fund educational programs in public schools that instruct America’s youth about the unacceptable, destructive effects of domestic violence. Tax dollars must also be spent to educate and impress upon law enforcement that domestic violence is not a household dispute.\textsuperscript{180} It is the single most significant crime against women.

Congress must amend Section 42 U.S.C. 1437d to include an “innocent tenant” exception so that innocent women cannot be evicted from public housing for crimes they did not commit and could not stop. Congress must also amend the Fair Housing Act to permit a woman who alleges she is being evicted from public housing for resisting sexual harassment to remain housed until her suit is resolved.

Lastly, since the jurisdictions are in conflict as to the constitutional propriety of permitting the states to punish the homeless for performing survival acts such as sleeping, sitting, standing, and eating in public places, the United States Supreme Court should entertain the issue as expeditiously as possible. The rule in \textit{Jones}\textsuperscript{181} expresses the best of the American spirit when it states that the states violate the Eighth Amendment proscription against cruel and unusual punishment by criminally punishing an involuntarily homeless person for her innocent acts of survival. The United States Supreme Court should do the same.

CONCLUSION

The federal government, the states, and the courts must act in concert to remedy the circumstances that lead to female homelessness. Domestic violence must become rare, and it must be severely punished. Congress must act to protect women in public housing from wrongful

\begin{thebibliography}{99}
\bibitem{175} Id.
\bibitem{176} Id.
\bibitem{177} Tusun, supra, note _____.
\bibitem{178} Id.
\bibitem{179} Id. at 1178
\bibitem{181} Jones, supra, at note _____
\end{thebibliography}
evictions based upon the criminal acts of others. Congress also must amend the Fair Housing Act to provide housing for women claiming sexual harassment while they litigate their claims. Most critically, Congress must abandon the policies of the Bush administration and reform the tax code. Finally, the United States Supreme Court must protect the homeless by affirming the status-versus-conduct decision for the homeless philosophy articulated in *Jones v. California*.182

“Make us worthy to serve those people throughout the world who live and die in poverty and hunger.”183

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182 Id.