



Ensuring the Right to Shelter: The First Court Decision in *Callahan v. Carey* Requiring the Provision of Shelter for Homeless Men in New York City

Following is the text of the December 5, 1979, decision in Callahan v. Carey, the class action litigation brought by Coalition for the Homeless that established a legal right to shelter for homeless individuals in New York City. This decision by New York State Supreme Court Justice Tyler was the first time that the City and State governments were ordered to provide shelter from the elements for homeless individuals in New York City. The lawsuit was settled as a consent decree in August 1981.

"CALLAHAN v. CAREY - This is an application by three destitute and homeless men in behalf of all the destitute, homeless derelicts roaming the neighborhood of the Bowery for a temporary mandatory injunction directing state and city officials to furnish lodging and meals to the derelicts seeking lodging and shelter and meal at the 'Men's Shelter,' on the ground that such shelters for homeless men are mandated by the Constitutions of the United States and the State of New York, and that the failure to presently provide such relief will cause serious and permanent injury to some of the derelicts and possibly death to others during the winter cold.

"Defendants move to dismiss the action contending that the controversy is non-justiciable and that the complaint fails to state a cause of action.

"The number of derelicts on the Bowery and its environs vary, but no single statement by any responsible city or state official denies that there are derelicts on the Bowery. Nor do state and city officials offer one iota of proof that the Men's Shelter on the Bowery or its satellite 'hotels' are sufficient to house all of the destitute and homeless alcoholics, addicts, mentally impaired derelicts, flotsam and jetsam, and others during the winter months. Nor is there a scintilla of proof that the other 'hotels' vouchered at the Men's Shelter are sufficient to lodge these derelicts for the cold weather.

"Reverend Edward M. O'Brien, Executive Director of the Holy Name Centre for Homeless Men located at 18 Bleecker Street, New York, New York, states: 'During previous winters, indigent, homeless men living on or near the Bowery have suffered frostbite- including loss of limbs from frostbite- and in several instances death from exposure.' He further states that in his opinion this winter will be worse because of the closing down of several shelters that accommodate these derelicts during the winter months.

"State and city officials have not addressed themselves to the statement of Michael I. Drohan, an employee of Holy Name Centre: 'As part of my duties I identify at the New York City Morgue the bodies of certain persons who have died on the Bowery. On a number of occasions the cause of death for several of the persons whose bodies I identified was given as "hypothermia" (freezing)...'

" 'Since last winter, the number of beds available in Bowery lodging houses has decreased due to the closing of several of these lodging houses. The shortage of shelter for indigent homeless men living on or near the Bowery will be even more severe this winter than in previous winters.' Mr. Drohan sums it up by saying that in his opinion there will be more deaths from exposure than in previous years.

"The forthright statement of Calvin Reid, Director of the Men's Shelter at 8 East 3rd Street, Manhattan, states: 'The Men's Shelter is not primarily under budgetary restrictions in providing shelter care, since funding is open ended and all applicants can be given available services.' Mr. Reid then goes on to state that the problem is not monetary, but that lodging is in short supply: that the Men's Shelter utilizes lodging houses within a half-mile distance of the shelter to lodge the derelicts.

"Robert Trobe, Deputy Administrator of Family and Adult Services of the New York City Department of Social Services, suggests that the city and state provide more shelter space in accessible place, and this is a sensible contribution.

"Barbara B. Blum, Commissioner of the State Department of Social Services, states honestly that 'the group in question is extremely difficult to define,' falls within no specific category calling for public assistance, and that it is 'largely composed of individuals with histories of alcohol abuse, drug abuse, mental disorder or combinations thereof. These conditions are chronic and seriously preclude and prevent independent functioning.'

"It can thus be observed that every public official, from Governor Carey and Mayor Koch down to the Director of the Men's Shelter, is vitally concerned that no New Yorker (including the Bowery derelicts) freeze to death by reason of exposure to the cold of the winter, or starve to death due to deprivation of food. The difficulty is finding the necessary lodgings to accommodate them.

"The Court is of the opinion that the Bowery derelicts are entitled to board and lodging. However, there is no reason why these homeless and indigent men cannot be lodged and fed at institutions wherever

available in the State, and it is incumbent on those public officials responsible for caring for the needy to find such lodgings.

"Accordingly, the temporary injunction is granted to the extent noted above, and is otherwise denied. Defendants' motion and cross-motion to dismiss the action are denied.

"In the order to be entered hereon the defendants shall submit a plan to provide at least 750 beds (and board for 750 men) for the helpless and hopeless men of the Bowery, in addition to the Men's Shelter and its satellites, including LaGuardia.

"Under no circumstances shall the Department of Social Services close the Men's Shelter during the pendency of this action. Such action would be catastrophic.

"The application for counsel fees is referred to the trial court."

"*The legal authorities for the decision may be found in Article XVII, Sec. 1. of the New York State Constitution. Sections 61 (1) and (3) (1) and (3) of the Social Services Law. Section 604.1.0 (b) of the New York City Administrative Code. Matter of Jones vs. Berman, 37 N. Y. 2nd 42."

December 5, 1979