

Migrant Farmworkers, Homeless and Runaway Youth: Challenging the Barriers to Inclusion

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I. Introduction

In the winter of 1991, the Skadden Fellowship Foundation awarded twenty-five, two-year fellowships to graduating law students and judicial clerks for legal work in the public interest beginning in September of 1992.¹ The class of Fellows was commissioned to work in a diverse series of placements, mainly grassroots legal services projects and a sprinkling of prominent impact litigation offices. The authors of this article were sponsored to work exclusively with transient populations, namely adolescent runaways, the homeless and migrant farmworkers. Ms. Nessel represented farmworkers at Farmworker Legal Services of New York, and Mr. Ryan represented homeless and runaway youth at Covenant House

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1. For more information, see SKADDEN FELLOWSHIP FOUNDATION, SKADDEN FELLOWSHIP FOUNDATION REPORT 1989-1991 (1991).

The Skadden Fellowships were established in April 1988 to commemorate the fortieth anniversary of the international law firm of Skadden, Arps, Slate, Meagher & Flom. . . . Each year . . . the Program will award twenty-five Fellowships to graduating law students and outgoing judicial clerks. The Fellows provide civil legal services to the poor, including the elderly, the homeless, the disabled and those deprived of their civil or human rights.

Id. at 1.

New York. The authors' fellowship experiences form the basis for the observations, strategies and legal criticisms set forth in this article.

In many ways, migrant farmworkers and homeless and runaway youth share a common lot. Both populations are essentially nomadic. Migrating frequently, many are alienated socio-economically from mainstream society. They are politically weak, disenfranchised from the law and its processes.² Their educational opportunities are limited. Poverty is pervasive. Consequently, this article focuses on the empowerment of, and advocacy at the grass-roots level for, people whose needs are largely unmet by the legal community.³

This article observes the disenfranchisement of migratory communities from the legal system.⁴ Multiple access barriers for poor people in need of legal representation lurk at the root of the problem. The authors will show that many of these barriers can be overcome. Section I introduces the authors' first impressions of their fellowship experiences. Section II demonstrates that migrant farmworkers and runaway and homeless youth have been excluded from legal processes. In Part A, Ms. Nessel profiles the typical migrant farmworker and contends that many have been denied basic legal protections in a variety of regulatory schemes. In Part B, Mr. Ryan provides a demographic overview of runaway and homeless youth in America. He argues that a causative link exists between legal processes and adolescent homelessness which results in poor young people's marginalization.

Section III surveys laws enacted to protect migrant farmworkers and homeless and runaway young people. In Part A, the authors relate the educational challenges faced by their clients and describe Congress's legislative response. In Part B, Ms. Nessel describes enforcement problems with the Migrant and Seasonal Agricultural Worker Protection Act.⁵ Part C features a discussion by Mr. Ryan of juvenile delinquency laws and New York's Runaway and Homeless Youth Act.

2. See *infra* note 64.

3. "[E]xperts estimate that less than 20 percent of the legal needs of the indigent are being met in the United States, which has nearly 800,000 lawyers," Ted Guest, *Doing Good is Doing Well*, U.S. NEWS & WORLD REP., Mar. 22, 1993, at 61.

In an important respect, the authors' practices have differed. Ms. Nessel has worked mainly in Federal court, protecting farmworkers' civil rights. Mr. Ryan's work has centered in family court, housing court and welfare's administrative bureaucracy.

4. In order to safeguard the confidentiality of client identities, the authors make use of pseudonyms throughout this article.

5. 29 U.S.C. § 1801 (1988), 29 C.F.R. § 500 (1993). See *infra* notes 104 *et seq.*

Access is at the heart of Section IV. In Part A, Ms. Nessel examines various strategies utilized by legal services providers to gain access to isolated migrant labor camps. Through the story of Maria, Ms. Nessel illustrates the barriers to access and how they can be overcome. In Part B, Mr. Ryan assesses more intrinsic barriers to access: client mistrust and ignorance. In Part C, the authors discuss the tendency to "sanctify" the poor and argue that such exercises in counter-stigmatization effectively block access to zealous legal advocacy for many poor people.

I. Fellowship First Impressions

A. *Farmworker Legal Services*

On September 14, 1992, I reported to Farmworker Legal Services of New York in New Paltz, New York,⁶ to begin my two year fellowship representing migrant farmworkers. Although my first day began uneventfully, by that evening I had some idea of the barriers which I would have to overcome in order to represent my clients. That evening I went on "outreach"⁷ to migrant labor camps for the first time. The staff paralegal and I set out to visit several local farms. When we arrived at the first labor camp, there were a few African-American farmworkers sitting on crates outside of their housing. We began our outreach process armed with our essentials: the New York State Attorney General Opinion guaranteeing farmworkers access to legal services without interference; booklets in English, Spanish and Creole that explain basic farmworker legal rights and update our latest legal victories; lists of health clinics and social service agencies that assist farmworkers; and, our toll-free phone number and intake forms. When we asked these workers if they had encountered any problems with their work or hous-

6. The New Paltz office of Farmworker Legal Services serves migrant and seasonal farmworkers in the Mid Hudson Valley and Long Island on matters including violations of the minimum wage laws, housing issues, farmers' failure to abide by minimal protections afforded farmworkers under State and Federal laws, pesticide issues and civil rights.

7. Outreach is a process of visiting farmworkers at the farm to inform, educate and answer questions about their legal rights. New York is a "stream state" which means that migrants are only here for part of the year. "Base states" refer to migrants' home states, such as Florida and Texas. The migrant "season" in New York State begins in April and normally lasts through October. During those months, farmworker advocates visit farms in the evenings. These visits are most frequently unannounced, but this is also the time during which we follow up with existing clients or respond to calls we may have gotten from farmworkers with legal problems or referrals from social service organizations. Since our sole representation is of farmworkers, we can not meet with clients during the day when they are at work in the fields. In addition, they usually lack access to telephones or transportation. Therefore, effective outreach to the labor camps is an essential part of our practice.

ing conditions, they appeared hesitant to disclose anything to us. Eventually, one of the workers asked if it was true that we had killed farmworkers. He said that the grower had told the farmworkers not to speak with anyone from legal services because "you come onto the farms talking to workers and then take them away and kill them." The barriers to reach this population and provide effective legal services appeared far more formidable than just their physical isolation at the labor camps.

B. *Covenant House New York*⁸

My first client in that second week of September spoke French, Italian, two Ethiopian dialects and broken Spanish. I spoke English. I managed "Bonjour." She smiled, and we were off to a relatively good start. In the excitement of the moment — she was, after all, that long-wished-for first client for whom I had readily traded in Mrs. Palsgraff — I wanted to relay that I, too, was new to Covenant House. I now believe that I told her, in a corrupted version of high school French, that I loved her. Again, she smiled.

8. Covenant House is one of the nation's largest nonprofit agencies for homeless and runaway youth. Its New York agency is located on the West side of mid-Manhattan and, over the past five years, has served approximately 35,000 discrete adolescents at its three homeless shelters and two outreach centers. COVENANT HOUSE NEW YORK, 1989 ANNUAL REPORT 1 (1989); COVENANT HOUSE NEW YORK, 1990 ANNUAL REPORT 6 (1990); COVENANT HOUSE NEW YORK, 1991 ANNUAL REPORT 9 (1991); COVENANT HOUSE NEW YORK, 1992 ANNUAL REPORT 12 (1992); COVENANT HOUSE NEW YORK, 1993 ANNUAL REPORT 17 (1993); COVENANT HOUSE, 1994 FIRST HALF REPORT 23 (1994).

The New York agency offers clients at least three distinct shelter-related services. Perhaps the best known facility is a three building complex located near the Lincoln Tunnel. Commonly described as the Crisis Center, it provides immediate shelter, food, clothing and social services to young people on a short-term basis. COVENANT HOUSE NEW YORK, 1989 ANNUAL REPORT, *supra* note 8, at 7-9. This program houses residents for a maximum of thirty days, though the average stay is significantly shorter. Most young people leave the Crisis Center for more permanent shelters, foster care, family reunion, or permanent housing.

The second shelter program, Rights of Passage, is housed in the Maritime Building of Manhattan's Chelsea section and offers a long-term transitional living regime for 130 residents. *Id.* at 21-23. Whereas the intake process at the Crisis Center is open, Rights of Passage residents are first rigorously screened to ensure that they possess the desire and capacity to work, save, and relocate to permanent housing at the conclusion of their enrollment. The program offers dormitory-style housing, meals, day care, health services, and educational and vocational training. Residents are required to work or attend school full-time.

The third shelter-component of the New York agency is a mother-child center in mid-town Manhattan which cares for an average of 100 mothers and infants. *Id.* at 10-12. Because single mothers are one of the fastest growing sub-groups of homeless young people served by Covenant House, the New York agency established this shelter to serve the special needs of the populace.

All of the clients are eligible for free legal services from Covenant House New York's Legal Services Office which is staffed by four full-time attorneys and a cadre of part-time and volunteer assistants who specialize in poverty law. *Id.* at 8.

Later that morning, a translator arrived and the teen-age client shared her story. She recounted a year of political torture and flight from persecution in her native African homeland. My notes from that first meeting⁹ read thus: Mother imprisoned as a political dissident. Infant child murdered. Repeated incarceration and rape by government officials. A stolen passport to Milan and months of jewelry-crafting in the hope of saving enough money to buy passage to the United States. Another stolen passport. Arrival and detention at Kennedy Airport. A good Samaritan, finding her in tears near a terminal, gives her money and directs her to Covenant House. Does she have a case to stay in the country?

I had not studied immigration law. I am embarrassed to confess that I had never even heard of her homeland. I had no idea how to address any of the issues her story suggested. But I did know the telephone number of another Skadden Fellow who specialized in immigration law, and I knew where the law library was located. That, as I learned over the next several months, was half the battle won.

II. Exclusions from the Law and its Processes

Migrant farmworkers and homeless and runaway youth are excluded from various laws which offer protection to others. For example, migrant farmworkers are denied benefits that other workers receive, such as overtime compensation, unemployment insurance, and the right to organize at work.¹⁰ Homeless and runaway youth do not have a cause of action for emancipation in New York, and are often neglected by social welfare systems which cater to adults. These exclusions emanate from very different concerns, which include the protection of small farmers from the costs of unemployment or overtime payments, on the one hand, and the protection of the parent's role to decide what is best for a minor, on the other. In both instances the effect of exclusion is the same: already vulnerable populations are left with fewer protections than those afforded to others who are similarly situated.

A. *Migrant Farmworkers*

Just over one hour from New York City, another world exists. To the surprise of many New Yorkers, agriculture is the biggest industry in the state, with annual revenues of over three billion dol-

9. In the interest of safeguarding client anonymity, several sentences and identifying phrases have been deleted.

10. See *infra* notes 28 (overtime exclusion), 33 (unemployment compensation exclusion) and 30, 32 (collective bargaining exclusions).

lars.¹¹ In addition to being a leading producer of dairy products, New York ranks "second in the nation in apple and tart cherry production; third in grapes, cauliflower, cabbage, and snap beans; fourth in pears and onions; fifth in sweet cherries; and tenth in potatoes."¹² New York is also the United States' fifth leading producer of fresh food market vegetables.¹³

In direct contrast with the wealth of New York's agricultural industry, the people of color who work the fields are among the most destitute in the country.¹⁴ There were over 55,000 full-time, year-round agricultural workers employed in New York State in 1982.¹⁵ In addition to this full-time workforce, there were over 77,000 farmworkers who worked less than 150 days during the year in 1982.¹⁶ Historically, the migrant laborers who traveled to New York to plant, harvest and process the local crops were largely African-Americans from Florida.¹⁷ This migrant farm labor workforce has become an increasingly immigrant population over recent years.¹⁸

11. N.Y. FARM FACTS, FARM BUREAU PERSPECTIVE (N.Y. Farm Bureau, Glenmont, N.Y.), Mar. 18, 1994, at 3.

12. DONALD J. BARR ET AL., LIBERALISM TO THE TEST: AFRICAN-AMERICAN MIGRANT FARMWORKERS AND THE STATE OF NEW YORK 1 (New York African American Institute 1988).

13. *Id.*

14. *Id.* at 1-3.

15. NEW YORK GOVERNOR'S TASK FORCE, REPORT OF THE GOVERNORS TASK FORCE ON AGRICULTURAL EMPLOYMENT, EDUCATION AND LABOR 17 (1990) [hereinafter GOVERNOR'S REPORT].

Nationally, there are estimated to be two million crop farmworkers, of whom 42% are migrant. NATIONAL COMMISSION ON MIGRANT EDUCATION, INVISIBLE CHILDREN: A PORTRAIT OF MIGRANT EDUCATION IN THE UNITED STATES 3 (1992) [hereinafter INVISIBLE CHILDREN].

Of those, 60 percent are immigrants and 31 percent are parents accompanied by an average of approximately two children (about 587,000 children) during 1990. According to [the National Agricultural Workers Survey] NAWS, migrant farmworkers within the general population of farmworkers are predominately male (82 percent), Hispanic (94 percent) born in Mexico (80 percent), and married (52 percent) with children.

Id. (emphasis omitted).

16. GOVERNOR'S REPORT, *supra* note 15, at 17.

17. According to Professor Barr, African-Americans from the South became the major source of migrant labor in New York, following World War II. BARR, *supra* note 12, at 5-6. This was due to the commercialization of cotton production in the South, and the resulting displacement of African-Americans from their own farms, combined with the racism and lack of industrial growth in the South which prevented them from gaining employment in other sectors of the southern economy. *Id.* at 5. These workers were able to fill the gap in New York created by postwar industrial growth which had siphoned workers away from the rural economy. *Id.* at 5.

18. Approximately half of the migrant workforce in New York is Hispanic (Puerto Rican, Portuguese, Mexicans and Latin Americans). The remaining half is

In 1960, Edward R. Murrow's documentary *Harvest of Shame* shocked the American public with its depiction of the inhumane work environments and squalid living conditions which faced farmworkers. Thirty-five years later, migrant farmworkers continue to face backbreaking work, long hours, low pay and uncertainty.¹⁹ Housing conditions in the onion fields sixty miles from Manhattan are abysmal. Many workers live in sub-standard housing which fails to comport with the minimal requirements imposed by law.²⁰ Many farmworkers endure contaminated water, sewage problems, lack of toilets or functioning privies, fire hazards, lack of heat and inadequate windows.²¹ As one farmworker recently pointed out, "the only thing that has changed for us is that those that were alive and able to work when that documentary was made are not now and [we] have absolutely nothing to fall back on."²²

While there are many Federal and State laws enacted which guarantee basic minimal rights for workers, farmworkers are often explicitly excluded from any protections offered by these laws. For instance, the Fair Labor Standards Act (FLSA)²³ guarantees a minimum wage of \$4.25 an hour, regulates child labor, provides for a private right of action against employers, and allows for administrative and judicial enforcement by the Department of Labor.²⁴ Nevertheless, two-thirds of all farmworkers are not covered by this statute because of threshold requirements for its applicability.²⁵ For example, there is an exemption for any agricultural worker em-

made up of a combination of Blacks (usually from Florida), Jamaicans, and an increasing number of Haitians, Chinese and Filipinos.

19. *INVISIBLE CHILDREN*, *supra* note 15, at 8. On average, farmworkers have only 26 weeks of annual agricultural employment per year. Only 36% are otherwise employed during the year. At the same time, national wages for farmworkers are abysmal. According to a 1993 national report on agricultural economics, half of the workers earned less than \$7,500 a year, signifying that half of the workers' families had incomes below the poverty level.

20. The New York State Sanitary Code sets forth the minimal housing conditions allowed in migrant labor camps. It is the responsibility of the local department of health to ensure that these minimal requirements are met. N.Y. COMP. CODES R. & REGS. tit. 10, § 15.1(e) (1992).

21. Farmworker's Legal Services has been involved in litigation seeking to have a county department of health held in contempt for its failure to enforce the State Sanitary Code in the migrant labor camps. The antiquated State Sanitary Code is presently under revision. As it exists now, employers can provide less square footage per farmworker than is required for prisoners. Outhouses are also allowed for farmworkers.

22. IMPLEMENTATION OF THE HELSINKI ACCORDS: MIGRANT FARMWORKERS IN THE UNITED STATES, BRIEFINGS OF THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE 120 (1993)(Testimony of Ms. Filoian, *Migrant Farmworker from Florida*) [hereinafter *HELSINKI ACCORDS*].

23. 29 U.S.C. §§ 201-219 (1989).

24. *Id.*

25. *HELSINKI ACCORDS*, *supra* note 22, at 16.

ployed by a farmer who did not use more than 500 "man days" of agricultural labor during any calendar quarter of the preceding year.²⁶ This means that a farmworker working on a small farm is not protected by the minimum wage or overtime provisions of the FLSA.²⁷ In addition, while most farmworkers work ten hour days, six days a week during the harvest period, they are explicitly excluded from the overtime provisions of the Act.²⁸ Farmworkers are eligible for overtime pay only when they engage in non-agricultural work, such as packing produce which is not grown at the farm where they are employed.²⁹

Although farmworkers are often subject to abuse at work, they are not protected under federal law if they organize themselves and form unions to fight for better working conditions. Farmworkers are explicitly excluded from collective bargaining rights under the National Labor Relations Act.³⁰ The same is true for most state laws. In New York, for example, Article I § 17 of the State Constitution guarantees all employees the right to organize and bargain collectively. The New York Labor Relations Act protects workers who seek to bargain and organize collectively.³¹ However, farmworkers are explicitly excluded from the coverage of this act as well.³²

26. 29 C.F.R. § 780.302(c) (1993). Everyday that a farmworker works at least one hour is counted as a "man day." Because farmwork frequently does not follow calendar quarters and seasonal work often straddles two quarters, the 500 "man day" threshold often is not reached. Thus many farms are exempted from coverage. Some states try to correct this by enacting their own state minimum wage laws. For example, in New York, minimum wage is \$4.25/hour for farmers with an annual payroll of \$3,000. N.Y. LAB. LAW § 673.1 (McKinney Supp. 1993). New Jersey raised the state minimum wage to \$5.05 an hour and applied this to farmworkers. N.J. STAT. ANN. § 34:11-56(a)4 (West Supp. 1994). The result is a patchwork of state law corrections to a national problem.

27. In a state such as New York, where the majority of farms are small ones, this exemption leaves most workers without any protection under the statute. "According to preliminary data from the 1987 Census of Agriculture, there are 37,743 farms in operation" in New York. GOVERNOR'S REPORT, *supra* note 15, at 11. Nearly 60% of New York's farms are smaller than 200 acres and 23% are smaller than 50 acres. 99.6% of New York State farms are family-run. *Id.*

28. 29 U.S.C. § 207(c) (1989).

29. For example, farmworkers who work in the field and also engage in packing shed work involving produce grown out of state are entitled to time-and-a-half for hours worked over forty hours a week. Historically, employers have avoided this obligation by mingling their own produce with produce from other farms or by varying the schedule so that the overtime-eligible work does not exceed forty hours per week.

30. 29 U.S.C. §§ 151,152(3) (1989).

31. N.Y. LAB. LAW § 700 (McKinney 1988).

32. The definition of an employee excludes "any individuals employed as farm laborers." N.Y. LAB. LAW § 701 (McKinney 1988).

Laboring as a farmworker almost always involves periods of unemployment due to the seasonal nature of the work and the time spent traveling from one state to another following the harvest cycle. Nevertheless, farmworkers are excluded from the protections of the unemployment compensation system unless they are fortunate enough to work for the exceptional very large employer.³³

The health and well-being of hired farmworkers are not adequately protected by federal laws and regulations. For instance, farmworkers are excluded from disability benefits under New York law,³⁴ a very serious problem given the overall poor health of farmworkers,³⁵ and the lack of a disability statute.³⁶ Similarly, the federal laws and regulations which are aimed at protecting employees from hazardous chemicals at the worksite do not adequately protect farmworkers from pesticide hazards.³⁷ Many hired farmworkers toil on small farms that are not required by federal

33. N.Y. LAB. LAW §§ 560, 560.1 & 564.1 (McKinney 1988). Under both Federal and New York law, farmworkers are exempt from unemployment compensation coverage unless their employers pay more than \$20,000 in wages in a calendar quarter or employ more than 10 employees for at least 1 day in 20 different weeks. N.Y. LAB. LAW § 560.1 (McKinney 1988). The way in which this disadvantages farmworkers can be understood by comparing the threshold requirements for non-agricultural workers under federal and state laws. Under Federal law, for all other workers in non-agricultural employment, the employer must pay for unemployment insurance if his or her payroll is \$1500 or more in any calendar quarter or if one person is employed for any day in each of 20 weeks. 26 U.S.C. § 3306(a)(1) (1992). Under New York law, for non-agricultural employment, the employer is liable for unemployment taxes for non-farmworkers if his or her payroll is \$300 or more in any calendar quarter. N.Y. LAB. LAW § 560 (McKinney 1988).

34. N.Y. WORK. COMP. LAW § 355.3(g)(4) (McKinney 1988).

35. For example,

[m]igrants have substantially higher rates of infant and maternal mortality, venereal disease, tuberculosis and meningitis than that of rural poor populations at large. The 1987 New York State Health Department report, *Statewide Strategies for Health Care for Migrant and Seasonal Farmworkers*, found that common health problems include respiratory problems, parasitic infections, delayed and discontinuous prenatal care, low birth weight, skin infections, gastroenteritis, mental illness, lung infections, visual and dental problems and alcohol and substance abuse.

GOVERNOR'S REPORT, *supra* note 15, at 93.

36. *Id.* at A5.

37. While the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 135 *et seq.* (1989), has recently been amended to specify that farmworkers have a right to know which pesticides are being used at the farm, in reality, farmworkers may fear retaliation or discharge if they ask these questions of the farmer. GAO REPORT TO CONGRESSIONAL REQUESTERS, *HIRED FARMWORKERS, HEALTH AND WELL-BEING AT RISK*, at 14 (1992) [hereinafter *HIRED FARMWORKERS*]. Also, under the statute they are entitled to label information on the pesticides, and this may be incomprehensible to the farmworker. *Id.* "A 1988 study of 460 farmworkers in Washington found that 89% did not know the name of a single pesticide they had been exposed to, and 76% had never received any information on appropriate measures for protection." *Id.* at 17.

law and regulations to provide field sanitation-drinking water, handwashing facilities, and toilets.³⁸ Children employed in agriculture, one of the most dangerous occupations in the United States,³⁹ are allowed by federal law and regulations to work at a younger age than children in other industries.⁴⁰

Excluded from laws which traditionally protect workers, especially given the extreme isolation of the farms and the power which the employer has over the worker who is dependent on him for work, food, shelter and often transportation, migrant farmworkers are ripe for abuse and exploitation.⁴¹

B. Runaway and Homeless Youth

1. A Demographic Overview

There are as many as 1,300,000 runaway and homeless youth living in the United States today.⁴² Covenant House New York

38. The Occupational Safety and Health Act of 1970, (OSHA), 29 U.S.C. § 651 *et seq.* is the Federal statute which guarantees basic protections in the workplace. However, the accompanying regulations which mandate field sanitation, drinking water and handwashing facilities in the fields only apply to farms with eleven or more field workers. 29 C.F.R. § 1928.110(A) (1994). Given the reality that most farmworkers in New York work on farms which do not meet this jurisdictional requirement, they are left without any protections in this important area.

39. "Agriculture has been found to be the second most dangerous occupation in the United States." HIRED FARMWORKERS, *supra* note 37, at 20. "Approximately 23,800 children and adolescents were injured on farms, and 300 died from these injuries during the years 1979 through 1983." *Id.* "In a 1990 study of migrant children working at farms in western New York, one-third of the children had been injured at work during 1991 through 1992." *Id.* at 20.

40. The federal statute which regulates child labor is the Fair Labor Standards Act of 1938 (FLSA). 29 U.S.C. §§ 201-219 (1994). Under this statute, children are permitted to work in "hazardous" farm work, such as operating a tractor or grain combine at age 16, while for other "hazardous" occupations, the minimum age is 18. HIRED FARMWORKERS, *supra* note 37, at 21.

41. In fact, courts have held that the discrimination suffered by farmworkers in employment and at labor camps has been so egregious as to violate the protections of the Thirteenth Amendment. The Thirteenth Amendment states, in pertinent part, that "[n]either slavery nor involuntary servitude, except as a punishment for crime . . . shall exist within the United States. . ." U.S. CONST. amend. XIII. While a discussion of the Thirteenth Amendment is beyond the scope of this article, see Elizabeth J. duFresne & John McDonnell, *The Migrant Labor Camps: Enclaves of Isolation in our Midst*, 40 FORDHAM L. REV. 279, 293-95 (1971). See also, Joyce McDonnell, *Beyond Metaphor: Battered Women, Involuntary Servitude And The Thirteenth Amendment*, 4 YALE J.L. & FEMINISM 207 (1992) (including a survey of the use of the Thirteenth Amendment in agriculture cases).

42. GAO REPORT, HOMELESSNESS, HOMELESS AND RUNAWAY YOUTH RECEIVING SERVICES AT FEDERALLY FUNDED SHELTERS, GAO HRD-90-45, at 13 (1989) [hereinafter HOMELESSNESS]. "One nationwide estimate cites a figure of between 1 and 1.3 million homeless and runaway youth in the course of a year". *Id.* The Children's Defense Fund estimates that 3,288 children run away each day. CHILDREN'S DEFENSE FUND, A VISION FOR AMERICA'S FUTURE: AN AGENDA FOR THE 1990'S: A CHILDREN'S DEFENSE BUDGET xxxvi (1989).

served just over 16,000 adolescents over the past two years, most between the ages of 16 and 20, at its three Manhattan shelters, two storefront clinics in the Bronx and Brooklyn,⁴³ and various outreach spots throughout New York City.⁴⁴ The agency's legal services staff met with and advised nearly 900 young people during that same period, a fraction of the agency's clientele, but a generally representative sample of the population in most respects.⁴⁵

There is no typical runaway or homeless young person. In many ways runaway and homeless youth are like most teen-agers. For example, many of them perceive filial estrangement during adolescence. A recent nationwide poll conducted by *The New York Times* and CBS News revealed that four out of ten teen-agers believe their parents are sometimes or frequently unavailable to them.⁴⁶ Runaway and homeless youth struggle with similar con-

Unfortunately, many of the studies which have been conducted on homeless and runaway youth lack rigor in their methodology. Most have relied on small, sample populations in urban environments. Consequently, the statistics presented herein best represent approximations of national demographics.

43. In 1993, Covenant House New York established a storefront walk-in center in the Highbridge section of the Bronx. Staffed by a team of social workers, the center provides social services for teens and adults, recreational programs for neighborhood children, and community organizing. See COVENANT HOUSE NEW YORK, 1993 ANNUAL REPORT, *supra* note 8, at 13. On a weekly basis, the site is visited by attorneys, nurses and doctors who provide legal and medical services. See generally *id.* A similar outreach center was founded in the Bedford-Stuyvesant section of Brooklyn in 1994 and a third is scheduled to open in Harlem in 1995. See generally *id.*

The philosophy behind the outreach centers is that poverty is not Manhattan-centric. Many homeless young people arrive in Times Square from adjacent boroughs after eviction. See, e.g., JONATHAN KOZOL, *RACHEL AND HER CHILDREN: HOMELESS FAMILIES IN AMERICA* 28 (1988) (citing a New York City Council report which stated that 34% of the families living in Manhattan's Martinique Hotel became homeless after eviction by a landlord.) By providing prevention services to communities in the Bronx and Brooklyn, the New York agency hopes to stem the Manhattan migration of homeless and runaway adolescents.

44. COVENANT HOUSE NEW YORK, 1993 ANNUAL REPORT, *supra* note 8, at 14; COVENANT HOUSE NEW YORK, 1994 FIRST HALF REPORT, *supra* note 8, at 23. Covenant House New York serves an older spectrum of youth than the teenagers served in runaway and homeless youth shelters nationally, mainly because youth are accepted at Covenant House until they reach their twenty-first birthday. COVENANT HOUSE NEW YORK, 1993 ANNUAL REPORT, *supra* note 8, at 14; COVENANT HOUSE NEW YORK, 1994 FIRST HALF REPORT, *supra* note 8, at 23. Covenant House New York's clients are principally African-American and Hispanic, reflecting the program's urban landscape, and evenly distributed between males and females. COVENANT HOUSE NEW YORK, 1993 ANNUAL REPORT, *supra* note 8, at 14; COVENANT HOUSE NEW YORK, 1994 FIRST HALF REPORT, *supra* note 8, at 23.

45. COVENANT HOUSE NEW YORK, 1993 ANNUAL REPORT, *supra* note 8, at 14; COVENANT HOUSE NEW YORK, 1994 FIRST HALF REPORT, *supra* note 8, at 23.

46. Susan Chira, *Teen-Agers, in a Poll, Report Worry and Distrust of Adults*, N.Y. TIMES, July 10, 1994, at 16. "Many appear to live in virtually separate worlds from adults. Four in 10 say their parents sometimes or often do not make time to help them. . . ." *Id.* at 1.

cerns over familial disunity,⁴⁷ and their feelings are often justified. The fragmentation of their families is more pervasive than is evidenced in society at large. Indeed, forty-six percent of homeless youth come to shelters from households headed by one or no parents.⁴⁸ A 1991 survey revealed that forty-five percent of runaway and homeless youth complained of an absent father,⁴⁹ while only twenty-three percent of children under eighteen in the general population live in fatherless homes.⁵⁰ This pattern, and others sug-

47. One study reported that approximately 74% of the runaways surveyed did not get along with their families. Gerald Adams, et al., *Homeless adolescents: A descriptive study of similarities and differences between runaways and throwaways*, *ADOLESCENCE* 715, 718 (1985). Most runaways perceive their parents in a negative way and do not identify well with their families. *Id.* S. Gutierrez & J. Reich, *A developmental perspective on runaway behavior: Its relation to child abuse*, 60 *CHILD WELFARE* 89, 90-91 (1981).

48. HOMELESSNESS, *supra* note 42, at 17.

49. See NAT'L ASS'N OF SOC. WORKERS, A SUMMARY OF PROGRAMS FOR RUNAWAY AND HOMELESS YOUTH AND PROGRAMS FOR OLDER YOUTH IN FOSTER CARE (1991). Among runaways, adolescents from stepparent families are overrepresented. OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, MISSING, ABDUCTED, RUNAWAY, AND THROWAWAY CHILDREN IN AMERICA: FIRST REPORT: NUMBERS AND CHARACTERISTICS, NATIONAL INCIDENCE STUDIES 11 (1990).

Studies show that between 20 and 25% of the runaway population come from homes in which a stepparent was present, compared to just 10.9% of the general population. ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, DEP'T OF HEALTH AND HUMAN SERVICES, ANNUAL REPORT TO THE CONGRESS ON THE RUNAWAY AND HOMELESS YOUTH PROGRAM, FISCAL YEAR 1989 (1989) [hereinafter HOMELESS YOUTH]; U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 1993, at 62,64 (1993) (discussing a 1990 study) [hereinafter CENSUS]. In addition, children from larger families appear to run away more frequently than children from single-child families. N. Johnson & R. Peck, *Sibship composition and the adolescent runaway phenomenon*, 7 *J. YOUTH & ADOLESCENCE* 301, 301-05 (1978); D. SHAFFER & C. CATON, RUNAWAY AND HOMELESS YOUTH IN NEW YORK CITY: A REPORT TO THE ITTLESON FOUNDATION (1984) (study finding that almost 40% of runaways had a sibling who had run away).

50. CENSUS, *supra* note 49, at 64. Interestingly, the Census Bureau reported in July of 1994 that the number of children living with a never-married parent rose 70% from 1983 to 1993 and now account for 27% of all children under the age of 18. Steven A. Holmes, *Out-of-Wedlock Births Up Since '83, Report Indicates*, N.Y. TIMES, July 20, 1994, at A1.

Most teenagers believe it is better if at least one parent remains at home, Chira, *supra* note 46, at 16 (chart depicting 54% of teenagers who say it is better if one parent stays home) despite, or perhaps because of, the growing labor force participation of mothers with adolescent children. In 1992, 76.6% of married mothers whose youngest child was between the ages of fourteen to seventeen years worked at least part-time. CENSUS, *supra* note 49, at 400. Over 67% of the nation's single mothers with children age six to seventeen worked at least part-time in 1992. *Id.*

Even when a parent works full-time, there is no assurance that the family will avoid the poverty that is highly predictive of adolescent homelessness and runaway behavior. The percentage of Americans working full-time but earning less than the poverty level for a family of four, about \$13,000 a year, has risen by 50% in the past 13 years. Jason DeParle, *Sharp Increase Along the Borders of Poverty*, N.Y. TIMES, Mar. 31, 1994, at A18. In addition, the median family income in America has dropped from a high of \$38,710 in 1989 to \$36,812 in 1992 in inflation-adjusted dol-

gesting decomposition of the traditional two parent family for many runaway and homeless adolescents,⁵¹ intensifies at Covenant House. Fifty-eight percent of our clients were raised by a single parent from the time they were thirteen or younger and one-quarter of them come to the agency from households in which a parent is not present at all.⁵²

In important respects, the characteristics and experiences of many homeless and runaway youth separate them from youth generally. Adolescent homelessness and running behavior frequently correlate to certain predictive characteristics and experiences. Among their ranks in apparently disproportionate numbers are children in poverty,⁵³ victims of physical and sexual abuse,⁵⁴ gay and lesbian youth,⁵⁵ foster care runaways,⁵⁶ and mentally ill young persons.⁵⁷ Covenant House's clients generally corroborate these patterns, although the agency does not inquire as to the sexual orientation of shelter residents. Nonetheless, studies conducted in nearby Times Square revealed that forty percent of adolescent street dwellers in the vicinity describe themselves as gay, lesbian, or bi-sexual.⁵⁸

2. Covenant House Legal Services

Covenant House's clients face a variety of legal problems. What startles is the prevalence of legal issues which facilitate homelessness and runaway behavior and the number of these is-

lars. Peter T. Kilborn, *More Women Take Low-Wage Jobs Just So Their Families Can Get By*, N.Y. TIMES, Mar. 13, 1994, at A24. Forty-one percent of the nation's homeless and runaway youth come from families with long-term economic problems and thirty-seven percent are without any means of support. NAT'L ASS'N OF SOC. WORKERS, *supra* note 49.

51. For an excellent discussion of changing patterns in American family life, see ANDREW CHERLIN, *MARRIAGE, DIVORCE AND REMARRIAGE* (1992).

52. COVENANT HOUSE NEW YORK, *YOUTH AT RISK* 8 (Apr. 1992) (unpublished report on file with Mr. Ryan) [hereinafter *YOUTH AT RISK*]. Formal interviewing for this study was conducted during two periods. The first extended from July 1989, through April 1990, and the second from June 1990, to February 1991. *Id.* at 1. Of the 318 individuals interviewed, 250 were currently Covenant House New York residents and 68 were contacted at outreach offices. *Id.* at 2.

53. *See id.*

54. HOMELESS YOUTH, *supra* note 49; HOMELESSNESS, *supra* note 42, at 22-23.

55. VICTIM SERVICES AGENCY, *THE STREETWORK PROJECT AND AIDS* (1987). While homosexual orientation is not a source of marginalization for many adults, social stigmatization remains potent and often crippling to young people. *See, e.g.,* Peter Cicchino, *Gay and Lesbian Youth Still Wait for Stonewall's Promise*, N.Y. TIMES, July 5, 1994, at A18 (stating "many gay adolescents who come out to their parents are thrown out of their homes and end up on the streets").

56. NAT'L ASS'N OF SOC. WORKERS, *supra* note 49; HOMELESSNESS, *supra* note 42, at 20.

57. SHAFFER & CATON, *supra* note 49.

58. VICTIM SERVICES AGENCY, *supra* note 55.

sues which are in part due to the exclusion of young people from legal processes. Five problems recur. The first type of problem concerns public benefits and entitlements for young people. Single mothers and infants are often unfairly denied income assistance, landing many on the street or in the shelter system. For instance, federal provisions governing Aid to Families with Dependent Children (AFDC)⁵⁹ describe in detail the types of persons within the household whose income and resources must be included in determining household eligibility for benefits.⁶⁰ Federal law prohibits consideration of most income and resources from persons not within the specified household unit.⁶¹ Despite this prohibition, many states overinclude and deny benefits. As a result, thousands of prospective beneficiaries, whom the AFDC system is designed to help, fall through the cracks.

Certain housing subsidies and public assistance benefits, including AFDC, are only accessible to minors who can demonstrate a measurable degree of autonomy and independence. This regime creates a perverse incentive for minors to leave home. In determining whether a minor mother and her child qualify for AFDC, program guidelines require, for example, inclusion of a co-resident parent's income and resources.⁶² This often results in the minor's ineligibility for the entitlement prompting many to leave home. Few young people are in a position to establish an independent household. The rest must be willing to live in New York's overcrowded shelter system or establish an independent household in some other fashion to qualify for AFDC benefits as a financially eligible head of an independent household.⁶³ That these require-

59. 42 U.S.C. §§ 601-617 (1989) and 45 C.F.R. §§ 201-6, 213, 232-37, 282 (1993). AFDC is a means-tested income support program which provides cash support to those impoverished families with dependent children that meet state and Federal standards. Nearly 4.3 million families received AFDC benefits in a typical month in 1991. STAFF OF THE HOUSE WAYS AND MEANS COMMITTEE, 102D CONGRESS, 2D SESS., OVERVIEW OF ENTITLEMENT PROGRAMS 660 (1992). The subsidy covered approximately 8.5 million children in an average month at an annual outlay of \$20.3 billion. *Id.* In January 1992, the AFDC benefit level for a family of three was less than the poverty level in every state. *Id.*

60. See, e.g., 42 U.S.C. § 602 (1988).

61. See 45 C.F.R. § 233.20(a)(2)(viii) (1993). However, the resources and income of AFDC "essential persons," like a co-resident stepparent and grandparent, will be considered in certain instances. 42 U.S.C. § 602(a)(31) (1989). See also 45 C.F.R. § 233.20 (a)(3)(xiv) (1993).

62. The income of a co-resident of a dependent child must be considered if the child's caretaker is the child's parent and the child is under the age of 18. 42 U.S.C. § 602(a)(39) (1988).

63. Some young people rent rooms from relatives and friends in order to establish the requisite independent household. However, many young mothers find it exceedingly difficult to attain space which accommodates their children and so turn, as a matter of last recourse, to public or private shelters.

ments encourage family separation is no accident: it speaks readily to the exclusion of poor people from legislative and regulatory processes.⁶⁴

These requirements posed an especially tough choice for sixteen year-old Consuela, a client I met in the Spring of 1994 at the Bronx storefront clinic. A high school drop-out and single mother, Consuela lived in a two bedroom apartment with her divorced father, younger brother and sister, her unemployed eighteen year-old boyfriend and newborn son. After her mother abandoned the family in 1986, Consuela had gradually become a matriarch of sorts: confidant to her father, nurturer to her siblings, family chef, school liaison and accountant. The prospect of leaving home with her baby and moving into the shelter system frightened her. She would miss her family, especially her boyfriend of three years, and would have to separate him from his newborn son. Ideally, she preferred to stay at home and use temporary government assistance to offset the drain on her father's limited resources. She approached me to determine if she could challenge the law, or circumvent its requirements. Informed that her father's income would disqualify her for public assistance and health care benefits while she was a member of his household, she ultimately decided to leave home with the baby.

A second type of legal problem arises when New York's overburdened Child Welfare Administration refuses to accept homeless adolescents into care despite an affirmative obligation to care for all abused, neglected and destitute children.⁶⁵ Because the bureaucracy often declines to satisfy its legal obligations to these

64. See DIANA DiNITTO, *SOCIAL WELFARE: POLITICS AND PUBLIC POLICY* 41 (1991).

The poor are not represented in Washington in the same fashion as other groups in society. The poor rarely write letters to members of Congress, and the poor are unlikely to make significant campaign contributions. They are not usually found on a representative's home-state lecture circuit - service-club lunches, civic meetings, memorials and dedications. The poor seldom come to Washington to visit their representative's office. Indeed, the poor do not turn out at the polls to vote as often as the nonpoor.

Id.

65. N.Y. SOC. SERV. LAW § 371.3 (McKinney 1992) describes a "destitute child" as one

who, through no neglect on the part of its parent, guardian or custodian, is (a) destitute or homeless, or (b) in a state of want or suffering due to lack of sufficient food, clothing, or shelter, or medical or surgical care, or (c) a person under the age of eighteen years who is absent from his legal residence without the consent of his parent, legal guardian or custodian, or (d) a person under the age of eighteen who is without a place of shelter where supervision and care are available.

Id. Various provisions of New York Social Services law obligate the state to provide care and services to destitute children.

children, many remain destitute and effectively homeless. It falls to legal advocates for these children to emphasize the requirements of the law to local child welfare workers. But because foster care can be a dismal existence,⁶⁶ especially for older children placed in group living situations, even successful advocacy sometimes offers hollow victories.

The third type of problem results from the inability of many young people to gain emancipation from their parents and guardians; that is, to assume legal rights and responsibilities which are traditionally reserved to adults. New York does not provide a private cause of action for emancipation, though some minors can be discreetly emancipated for the purposes of receiving public assistance,⁶⁷ obtaining medical care and attending their school of choice. This disability renders most of Covenant House New York's minor clients unable to rent an apartment, own a car, and thrive in a transactional culture.

The exclusion of young people from full participation in our social and economic organization can be debilitating. If one's frame of reference is intact families whose heads struggle to impart values, discipline and structure to their children, the failure of the state to provide to minors the rights of adulthood may seem altogether wise. But the children of these families are little in evidence at Covenant House New York. Most of our clients have been pushed out or thrown out of their homes with no resources. Their options, in the absence of an emancipation statute that allows minors to demonstrate their ability to live independently, are few and unattractive: foster care, street life, and temporary shelters.

A segment of our immigration law practice treats the fourth type of problem, namely the wilful failure of parents and guardians who have become permanent residents or naturalized citizens to ensure the proper sponsorship of their foreign-born children.⁶⁸

66. See, e.g., Kevin M. Ryan, *Stemming the Tide of Foster Care Runaways: A Due Process Perspective*, 42 CATH. U. L. REV. 271, 271-86 (1993) (describing the myriad of problems which plague foster care, including multiple placements, filial disruption, and lengthy placements); see also Kevin Ryan, *Foster Care's Ills Include Runaway Children*, N.Y. TIMES, Aug. 17, 1994, at A18 (pointing to the pervasiveness of running behavior among foster children as symptomatic of larger problems).

67. The child can be emancipated by parental consent if the parent, expressly or impliedly, surrenders all or part of his or her parental rights and responsibilities to the child. *Bates v. Bates*, 310 N.Y.S.2d 26, 30 (N.Y. Fam. Ct. 1970). Without parental consent, there are a few limited situations whereby a child can become otherwise emancipated. For example, a child can file for public assistance pursuant to New York law as an emancipated minor if he or she can meet the narrow requirements of that statute. N.Y. COMP. CODES R. & REGS. tit. 18, § 349.5(a) (1993).

68. Sponsorship of a minor child under Section 204 of the Immigration and Nationality Act is a voluntary proceeding in which the parent or legal guardian may file

When family tensions arise, there is a natural tendency for parents to seek control. Some immigrant parents apparently condition their sponsorship of a child on a measurable degree of submission. When the child dissents, often because of abuse, these parents neglect the paperwork necessary to ensure that the child becomes or remains documented and authorized to work. Without parental cooperation, undocumented children can become stranded without an income or an ability to support themselves. Non-immigrant or undocumented children who lack such support can, in fact, be excluded from the country.⁶⁹ In this way, the exclusion of minors from the legal process has a devastating effect and leaves children stranded, often forced into an underground economy.⁷⁰ Their work conditions are appalling and their compensation meager.⁷¹ In these instances, when filial estrangement results in a child's inability to work lawfully, I encourage clients to seek a supportive income from their parents through the family court system. New York allows children age twenty years old and younger to sue their parents for support.⁷² This resort to civil legal process typically awakens within the parent a new cooperativeness and enables the child to attain legal status in most instances.

Finally, and most prominently, are the landlord-tenant disputes which have become a major part of Covenant House New York's legal practice during the past year. Growth in this direction is a natural response to community needs. Post-eviction homelessness ranks high among the reasons clients come to Covenant House. In fact, nearly thirty percent of our clients described themselves as push-outs, a rubric comprising both procedural and familial evictions.⁷³ Over half of our storefront clients require legal representation in housing-related matters. Because their resources are scarce and their knowledge of New York's voluminous landlord-tenant law limited, most poor people do not secure representation and nearly all are unprepared to proceed *pro se*.

a petition for an immediate relative and claim entitlement for classification. 8 U.S.C. § 1154 (a)(1)(A), (B) (1994).

69. See Immigration and Nationality Act, 8 U.S.C. § 1182(a)(4) (1994). However, enforcement of this provision may be avoided or suspended if the child is declared to be dependent upon the juvenile court and becomes a juvenile special immigrant under Immigration and Nationality Act, Sec. 101(a)(27)(J), and can have their status adjusted to permanent residency. 8 U.S.C. § 1101(a)(27)(J) (1994).

70. See, e.g., Lora Jo Foo et al., *Undocumented Workers and California's Underground Economy*, OAKLAND TRIB., Nov. 2, 1994, at A-13.

71. *Id.*

72. FAM. CT. ACT, § 413 (1)(a) (McKinney Supp. 1994).

73. See YOUTH AT RISK, *supra* note 52.

Of course, many clients do not present discrete, easily catalogued issues. Consider, for instance, ten-year old Tonya, a victim of recurrent sexual abuse, and her single mother, Franky, who faced eviction after New York City's Human Resources Administration failed to pay their monthly rent as promised. The City had placed the family in their apartment, despite Franky's concern that the \$545 monthly rent was too high. In fact, in addition to locating the apartment, City officials had reviewed all of the lease documents before instructing Franky to execute them. They also promised the landlord timely payment of the rent because Franky's application for in-kind rental assistance had already been approved.

Eight months later, over \$4,000 in arrears had accumulated. Franky was summoned to court on a regular basis, often pleading with the landlord's lawyers for additional time. I represented Tonya and Franky on two fronts: defending them against eviction in the landlord-tenant dispute and advocating for the expeditious approval of the rental assistance application. Apparently, the original approval had been reversed when a case worker at the local welfare office entered the wrong address in the computer and erroneously determined that Franky was ineligible. Tonya and Franky have come to understand, better than me, the destabilizing nexus between poverty and the law.

III. Statutes Designed to Protect Migratory Communities

In the late 1960's, in response to the growing public awareness of the exploitation of migrant farmworkers and their families, Congress passed legislation aimed at protecting farmworkers in employment and creating educational opportunities for their children.⁷⁴ Later, Congress enacted similar legislation to ensure that homeless youth and their families can avail themselves of the many rights guaranteed to them by law.⁷⁵ Unquestionably, most of these measures have improved the situation of poor people. Still, the reality of disenfranchisement for transient groups continues to defy the efforts of lawmakers.

74. In response to the abuses by farm labor contractors, or "crewleaders", Congress enacted the Farm Labor Contractor Registration Act (FLCRA) in 1963. Pub. L. No. 88-582, 78 Stat. 920 (codified as amended at 7 U.S.C. §§ 2041-55 (1988)). It was not until the 1980s that this was repealed and replaced with AWPA. *See infra* notes 100-103 and accompanying text. *See also* Amendments to the Elementary and Secondary Education Act of 1965, Pub. L. No. 89-750, 80 Stat. 1191, 1192 (1966) (codified as 20 U.S.C. § 241(b), (c) (1989)).

75. *See e.g.*, Stewart B. McKinney Homelessness Assistance Act of 1987, Pub. L. No. 100-77 (1987) (codified as amended in scattered sections of 42 U.S.C.). *See infra* note 94 and accompanying text.

A. Education Challenges

Homeless and runaway youth are often unable to enroll in school because of residency requirements,⁷⁶ transportation problems and delays in the transmission of school records.⁷⁷ Migrant farmworker children face barriers to school enrollment including language barriers,⁷⁸ delays in the transmission of school records⁷⁹ and the time which is lost in migration. All of these children face the stigma which comes with being "rootless" in the community and placed in a given school for only a short period of time. This systematic exclusion denies poor children what may be their only source of stability and permanence.⁸⁰ Fifty-seven percent of homeless school-age children do not regularly attend school⁸¹ and the rate of school enrollment for farmworker children is lower than that of any other group in the country.⁸² While the nation's high school drop out rate hovers at 10.5 percent,⁸³ over half of the nation's homeless youth sixteen years old or older have dropped out of school or have been suspended or expelled.⁸⁴ Migrant farmworker children have the highest drop out rate of any group in the country, ranging from forty-five percent to sixty percent.⁸⁵

Migrant farmworker children exhibit many of the same characteristics as other poor children, especially the homeless. A national profile of migrant farmworker students suggests that eighty-

76. See, e.g., National Law Center on Homelessness and Poverty, Denial of Education to Homeless Children (1990) (reporting that 60% of twenty respondent states report that residency requirements continue to block school enrollment by homeless children). Many school districts require that children permanently reside within the school jurisdiction in order to be eligible for educational services. Runaway and homeless youth, by definition, do not satisfy this standard.

77. See, e.g., CAL. DEPT OF EDUC., HOPE FOR THE FUTURE, THE STATE PLAN FOR EDUCATING HOMELESS CHILDREN & YOUTH v (1991) ("Unlike children who have a home, however, homeless children must overcome many barriers in obtaining an education. They change school frequently, and they face difficulties in transferring between schools and districts, meeting residency requirements, obtaining transportation to and from school, and finding a quiet place to study").

78. See INVISIBLE CHILDREN, *supra* note 15, at 30.

79. The Migrant Student Record Transfer System [MRSTS] was implemented to remove this barrier. The goal is to have a national computer system so that school records are easily accessible when children migrate. However, there are still problems with the accuracy of the information and the timeliness with which it is exchanged. INVISIBLE CHILDREN, *supra* note 15, at 21.

80. See, e.g., NATIONAL COALITION FOR THE HOMELESS, BROKEN LIVES: DENIAL OF EDUCATION TO HOMELESS CHILDREN (1987).

81. *Id.*

82. INTERSTATE MIGRANT EDUCATION COUNCIL, MIGRANT EDUCATION: A CONSOLIDATED VIEW 8 (1987) [hereinafter MIGRANT EDUCATION].

83. CENSUS, *supra* note 49, at 169.

84. HIRED FARMWORKERS, *supra* note 37.

85. *Id.* at 37; MIGRANT ATTRITION PROJECT (TESTIMONY BEFORE THE NATIONAL COMMISSION ON MIGRANT EDUCATION, Feb. 1991).

four to ninety-four percent of them qualify for free or reduced lunch;⁸⁶

over one-third are one or more grades behind their age-appropriate grade level; for approximately forty percent, fluency in English interferes with classroom work; some have had little or no exposure to formal education; over forty percent are estimated to be achieving below the 35th percentile in reading.⁸⁷

Among New York City's homeless children, fifty-eight percent enrolled in grades three through ten read below their grade level.⁸⁸ Similarly, eighty percent of the adult migrant farmworker population functions at a fifth grade literacy level or less.⁸⁹ Homeless children are twice as likely to be retained, despite the fact that grade repetition among the homeless corresponds to a dramatic upswing in the drop-out rate.⁹⁰ The rate of school enrollment for farmworker children is lower than for any other group in this country.⁹¹

Congress has not ignored the problems of migrant children. The Migrant Education Program was enacted in 1966, in large part because Congress realized that children of migratory workers had unique educational needs that warranted a special program.⁹² The program funds supplementary educational and support services for children aged three through twenty-one whose parents are presently migratory or whose families have migrated in the past year.⁹³ Similarly, the Stewart B. McKinney Homelessness Assistance Act of 1987, orders states to develop programs which will ensure homeless young people equal access to "free, appropriate public education" as permanently housed children in the district.⁹⁴ Recent

86. INVISIBLE CHILDREN, *supra* note 15, at 30.

87. *Id.*

88. ADVOCATES FOR CHILDREN OF NEW YORK, INC., AND MILES TO GO: BARRIERS TO ACADEMIC ACHIEVEMENT AND INNOVATIVE STRATEGIES FOR THE DELIVERY OF EDUCATIONAL SERVICES TO HOMELESS CHILDREN 14 (Nov. 1991) [hereinafter MILES TO GO].

89. OFFICE OF VOCATIONAL AND ADULT EDUCATION, U.S. DEPARTMENT OF EDUCATION, THE EDUCATION OF ADULT MIGRANT FARMWORKERS, Vol. 2 (Jan. 1991).

90. INVISIBLE CHILDREN, *supra* note 15, at 14-16.

91. MIGRANT EDUCATION, *supra* note 82, at 8.

92. Amendments to the Elementary and Secondary Education Act of 1965, Pub. L. No. 89-750, 80 Stat. 1191, 1192 (1966).

93. 34 C.F.R. 201.3(b) (1994).

94. Pub. L. No. 100-77, Title VII, Subtitle B § 721(1), 101 Stat. 482, 525 (codified as 42 U.S.C. § 11431 (1) (1989)). See DINITTO, *supra* note 64, at 65.

The addition of families to the ranks of the homeless is perhaps the straw that motivated Congress to pass the Stewart B. McKinney Homelessness Assistance Act in 1987. This act provides money for emergency shelters, nutrition assistance, health and mental health care, job training, education for homeless children, and other social services for homeless individuals and families.

Id.

amendments to the law mandate state review of initiatives which will reform residency requirements and all other barriers to school enrollment.⁹⁵ Implementation of the law has been slow in most states.⁹⁶ Regulations based on residency continue to exclude homeless young people from the classroom.⁹⁷

Although special services offered to migrant children are supposed to supplement and not supplant the school's responsibilities to children, the reverse is common. Migrant children, like minority children in general, are disproportionately represented in special education.⁹⁸ Schools often do not allocate resources for migrant children's needs, principally because the children are only in school for short periods of time.

The myriad problems which face migrant children can be illustrated through Pablo, a ten year old migrant child whom Ms. Nessel represented last year. Pablo grew up migrating back and forth between Texas and New York with his family. This pattern of migration meant that Pablo would spend the first six weeks of school in New York and then leave for Texas, where he would be enrolled in school until April. In April, he would leave Texas and return to New York to finish the school year. The school which Pablo attended in New York did not offer a bilingual program and only provided Pablo with one period per week of English as a Second Language (ESL). Pablo fell behind in his classes and the school retained him to repeat second grade. Pablo continued to have difficulties at school and was referred to the Committee on Special Education. By the time that Pablo was evaluated by a bilingual psychologist, he was found to be severely deficient in both English and Spanish language skills and in need of special education.

Pablo's story is typical of the migrant child. If he had been given appropriate ESL classes early on, he might not have fallen so far behind. However, because of the transience common for migrant children, some school officials are content to babysit until the

95. Pub. L. No. 101-645, Title VI, § 612(a), 104 Stat 4673 (codified as amended at 42 U.S.C. § 11431(s)).

[I]n any State that has a residency requirement as a component of its compulsory attendance laws or other laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and homeless youth, the State will review and undertake steps to revise such laws to assure that the children of homeless individuals and homeless youth are afforded a free and appropriate public education.

42 U.S.C. § 11431 (2).

96. MILES TO GO, *supra* note 88, at 26-27.

97. See *supra* note 78 and accompanying text.

98. See JIM CUMMINS, BILINGUALISM AND SPECIAL EDUCATION: ISSUES IN ASSESSMENT AND PEDAGOGY 1 (1984).

children move to another school. Even the many teachers who are committed to helping all of the children they serve can misread a migrant child's abilities. Because a learning disability can be diagnosed based upon the disparity between the child's intelligence and the level at which she is functioning, migrant children of limited English proficiency, who have been ignored as they move from school to school, are often ultimately diagnosed as in need of special education.⁹⁹

B. *The Migrant and Seasonal Agricultural Worker Protection Act*

The basic federal statute covering farmworker employment is the Migrant and Seasonal Agricultural Worker Protection Act (AWPA).¹⁰⁰ Enacted in 1982 as a compromise between employers, farmworkers and the United States Department of Labor, AWPA imposes duties on farmworker employers,¹⁰¹ i.e., farmers, agricultural associations, packers¹⁰² and crewleaders.¹⁰³ AWPA's provisions protect farmworkers from false and misleading recruitment

99. In *Lau v. Nichols*, the Supreme Court held that a limited English proficient child must be given sufficient resources so that a language deficiency does not harden into a permanent educational disadvantage. 414 U.S. 563 (1974). However, the fact that a child is limited English proficient and/or migrant is not a valid reason for a referral to special education. See N.Y. EDUC. LAW, § 4401 (McKinney 1994). Notwithstanding, a limited English proficient migrant child who is not given appropriate assistance early on may fall behind and be at risk of being diagnosed as learning disabled.

100. 29 U.S.C. § 1801 (1988); 29 C.F.R. § 500 (1993). The predecessor statute, Farm Labor Contractor Registration Act (FLCRA), enacted in 1963, applied only to farm labor contractors, or "crewleaders." 29 U.S.C. § 1801 (1988); 29 C.F.R. § 500 (1993).

101. Migrant Legal Education Program, Migrant and Seasonal Agricultural Worker Protection Act, Mar. 7, 1991, at 1. See also *Bueno v. Mattner*, 829 F.2d 1380 (6th Cir. 1987).

102. Packers are middlemen who run the "packing houses" where the produce is brought to be weighed, packed and shipped-out.

103. Crewleaders, or farm labor contractors, recruit workers in different parts of the country on behalf of the grower. These crewleaders then transport the workers from the place of recruitment to the grower's fields. While crewleaders are required to be registered and licensed, this is seldom actually the case. For an in-depth discussion of the abuses inherent in the crewleader system, see Marc Linder, *Crewleaders And Agricultural Sweatshops: The Lawful And Unlawful Exploitation Of Migrant Farmworkers*, 23 CREIGHTON L. REV. 213 (1989/1990). Professor Linder noted that "[a]griculture is perhaps unique for its substantial number of middlemen whose raison d'être is reducing labor costs by violating labor laws." *Id.* at 213 (citing P. MARTIN, *SEASONAL WORKERS IN AMERICAN AGRICULTURE: BACKGROUND AND ISSUES* 38 (1985)). See also BARR ET AL., *supra* note 12 (providing an analysis which compares the role of the farm labor contractor and the abuses associated with it to the activities of the African-American overseers during slavery). *Id.* at 10. Professor Barr concludes that, "[i]n both cases, white bosses benefitted the most from the work of their African-American intermediaries." *Id.* at 10-11.

practices, require that farmworkers be transported in safe vehicles, and ensure that farmworker housing meets all substantive federal and state health and safety standards.¹⁰⁴ The substantive provisions of AWPAs are enforceable through the Department of Labor¹⁰⁵ or through the private right of action created by the statute.¹⁰⁶ Although statutory violations are punishable by a maximum award of \$500 per violation, or actual damages suffered, violations of AWPAs provisions remain rampant.¹⁰⁷

Consider, for example, a farmer's crewleader who has recruited and transported a Mexican crew from Florida to work the corn harvest for the past several years. This June, the crewleader recruited about thirty Hispanic farmworkers in Florida, promising them six days of work each week and free housing, as soon as they arrived in New York.¹⁰⁸ Eager to work long hours and make money to send back home, these workers accepted the crewleader's offer of employment and boarded his vans to travel to New York.¹⁰⁹ Once the crewleader brought the workers to the farm, he quickly departed.¹¹⁰ When the workers approached the farmer to begin working, the farmer told them that it was too early for the corn harvest so there was no work for them yet. Compounding the problem, the

104. 29 U.S.C. § 1801 (1989); 29 C.F.R. § 500 (1994).

105. 29 U.S.C. § 1853 (1989); 29 C.F.R. §§ 500.140-.147 (1994).

106. 29 U.S.C. § 1854 (1989); 29 C.F.R. §§ 500.140-.147 (1994).

107. There are many reasons that violations of AWPAs persist. First, the damages cap of \$500 per violation, 29 U.S.C. § 1854(c)(1) (1988), is not high enough to deter farmers and crewleaders. Adding to this problem is the lack of strict enforcement and the knowledge that courts rarely even award the full \$500 per violation. Workers are also reticent to make complaints because of the fear of retaliation by the farmer or crewleader.

108. Under the AWPAs, the workers are supposed to receive a written disclosure of the terms and conditions of their employment at the time of recruitment. 29 U.S.C.A. § 1821(a) (1988). This was not provided in this case, as often happens.

109. The AWPAs sets forth registration and licensing requirements for anyone recruiting and transporting farmworkers, as well as insurance requirements for any vehicles used to transport workers. 29 U.S.C. § 1841 (1988). Every year, farmworkers are injured and killed in accidents caused by crewleaders driving unsafe, unlicensed and overcrowded vehicles, which often do not even have seats in them. HELSINKI ACCORDS, *supra* note 22, at 250 (Testimony of Valerie Wilk, Farmworker Justice Fund, Inc.). See also *id.* at 119 (describing an incident in 1991 where eleven farmworkers were transported in a van without seats). These workers were sitting on boards which were placed on top of cinder blocks. The van was "broad-sided" by a truck, which caused the van to turn over numerous times. While the van was turning over, the cinder blocks and wooden boards "were like missiles" which resulted in the deaths of four workers and serious injury to the surviving seven. *Id.* The crewleader in this instance was not registered and the vans used to transport workers were not insured or registered. *Id.*

110. Since crewleaders are usually paid by the number of workers they recruit and transport to the farm, it is not uncommon for them to lie to workers in order to ensure that they have their crew in time for the harvest. This is one of the reasons that written disclosure at the time of recruitment is so important.

farmer told the women laborers that there would never be work for them because he did not hire women field workers.¹¹¹ As a result, the workers were stranded with no employment, food, or resources to return home.

One of the women found our toll-free number from an outreach visit we had made the previous year and contacted us for help. Eleven of these workers ultimately retained our office to represent them in an AWPAs action against the employer and his crewleader,¹¹² but only after they had found other employment. That the workers were not willing to assert their rights under AWPAs while they were still at the farm is not surprising. After speaking with us, the few who remained at the farm were subjected to violent threats by the crewleader who has a history of physically abusing workers.¹¹³

C. Juvenile Delinquency

A significant percentage of Covenant House New York's clients, especially foster children, are repeat runaways. Some are young people who return home only to find that the same problems exist which prompted the initial incidence of running behavior. Others are running from placements in juvenile detention centers or runaway shelters. Whatever it is they are trying to escape, their

111. Migrant women farmworkers are subject to discrimination in hiring, are often given unequal terms and conditions of employment and are vulnerable to sexual harassment at the labor camps. GOVERNOR'S TASK FORCE ON SEXUAL HARASSMENT, SEXUAL HARASSMENT: BUILDING A CONSENSUS FOR CHANGE 122 (Dec. 1993). This additional layer of discrimination is illustrated by a farmworker who testified that she was raped as a child by a crewleader and how, years later, she and other women workers were used as sexual prizes given by a crewleader to the worker who had picked the most in a week. HELSINKI ACCORDS, *supra* note 22, at 116-22.

112. The women laborers will also have a sex discrimination claim under N.Y. EXEC. LAW § 296(1)(a)-(6) (McKinney 1993). As is almost always the case in New York, the farm is too small for Title VII jurisdiction.

113. This example illustrates the need for a broad reading of AWPAs to incorporate the protections of other Federal and state anti-discrimination statutes. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e is the Federal statute that protects against discrimination in employment. However, in order to come within the jurisdiction of Title VII, the employer must employ at least fifteen workers for twenty weeks. See § 701(b) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (1989). Most of the farms in New York are too small to meet this jurisdictional requirement. *Id.* While farmworkers who suffer discrimination at small farms in New York do have a state remedy under the Human Rights Law, access to federal courts is essential in farmworker cases because of the hostility toward farmworkers in small state courts in the farmer's community. A broad reading of AWPAs to include the anti-discrimination provisions of state law will allow the farmworker access to federal court where s/he is more likely to have an impartial judge or jury.

needs are often not addressed by the systems they encounter when they run.

Unfortunately, in some states major legal problems can develop for these children once they have run repeatedly. Running away from home is a "status offense," an act of noncriminal misbehavior committed by a person under the age of majority.¹¹⁴ Status offenders would not be subject to penalty or supervision if they were adults, since their actions, namely truancy, running away and filial disobedience, are permissible for adults.¹¹⁵ Subject as they are, however, runaways in many states are referred to the juvenile justice system by police officers who encounter them and place them in custody.¹¹⁶

Under the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP), the "secure detention" of status offenders prior to adjudication is prohibited.¹¹⁷ However, if a court determines that the status offender has violated an existing court order, the JJDP does allow secure detention in adult facilities under certain conditions.¹¹⁸ In some states, though not in New York, a child could violate an existing court order by missing school or committing some other minor offense.¹¹⁹ Law enforcement officials and legislators justify such detention by claiming that adequate alternatives, such

114. MARGARET C. JASPER, *JUVENILE JUSTICE AND CHILDREN'S LAW* 11 (1994); MARK SOLER ET AL., *REPRESENTING THE CHILD CLIENT*, § 5.03[1] (1990).

115. See SOL RUBIN, *JUVENILE OFFENDERS AND THE JUVENILE JUSTICE SYSTEM* 28 (1986).

Juvenile statutes in 41 states provide for jurisdiction over truant behavior. Ungovernability or incorrigibility is a basis in 42 states. Twenty-eight states include runaway conduct within juvenile court jurisdiction. Seven states include conduct which "endangers" the juvenile or equivalent language. Curfew violations are included in three states.

Id.

116. Approximately 135,000 runaways were arrested in 1991. CENSUS, *supra* note 49, at 199.

117. 42 U.S.C. §§ 5601-5785 (1988).

118. 42 U.S.C. § 5633(12)(A) (1988). See INSTITUTE OF JUDICIAL ADMINISTRATION, AMERICAN BAR ASSOCIATION, *STANDARDS RELATING TO JUVENILE DELINQUENCY AND SANCTIONS*, Part IV (1980)

A juvenile adjudicated delinquent for the violation of even a minor local criminal ordinance is commonly subject to incarceration in a state institution. The violation of any state, federal or local law by a juvenile is, in this traditional scheme, seen as a symptom of present or incipient social deviance that if so diagnosed by a juvenile court judge, might require the imposition of serious and lengthy sanctions 'in the best interests of the child'.

See e.g., CALIF. WELF. & INST. CODE § 628(a)(6) (West 1994).

119. See *infra* note 122. See also RUBIN, *supra* note 115, at 25.

"Delinquency" includes the commission of status offenses — acts such as truance, running away and incorrigibility . . . in seven states: Arizona, Connecticut, Georgia, Minnesota, Tennessee [and] West Virginia.

Id.

as juvenile group homes, are nonexistent or full, or by claiming that confinement is in the children's best interest because adults will know where they are and will be able to protect them from harm.¹²⁰

If runaway children are not placed in secure detention facilities right away, some run away from court-ordered placements in homes, shelters, or non-secure detention facilities. This amounts to the violation of an existing court order and in several states results in the youth's placement in a secure facility when she is again apprehended.¹²¹ The real danger is the possibility that a series of minor status offenses will be bootstrapped into more serious charges of juvenile delinquency, which can mean harsh consequences for the chronic runaway.¹²² Repeat runaways could be charged with violation of a valid court order, contempt of court, or criminal es-

120. See, e.g. CALIF. WELF. & INST. CODE § 628(a)(6) (West 1994). See, e.g., J. Julian Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909).

Why is it not the duty of the state, instead of asking merely whether a boy or a girl has committed a specific offense, to find out what he is, physically, mentally, morally, and then if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen.

Id. at 107. But see ANTHONY PLATT, *THE CHILD SAVERS* (1969) (criticizing the founding of the juvenile court system).

121. As to the duration of confinement that may be imposed pursuant to an adjudication of delinquency, the large majority of states provide that such sentences shall be of an indeterminate length, subject to release either by order of the juvenile court following a hearing on the motion of an interested party, or by order of the director of the facility in which the child is confined. See, e.g. ILL. ANN. STAT. ch. 37, para. 802-27 (Smith-Hurd 1990); OHIO REV. CODE ANN. § 2151.38 (1990); TEX. FAM. CODE ANN. § 54.04(d)(2) (West 1986). A small number of states and the District of Columbia, however, limit the effect of dispositional orders. See e.g., N.J. STAT. ANN. § 2A: 4A-47 (West 1987) (terminating when youth reaches 18 years of age); N.Y. FAM. CT. ACT § 353.3 (McKinney Supp. 1990) (limiting the length of placement to 12 months for a misdemeanor and 18 months for a felony, although permitting extensions of placements under § 355.3). In Connecticut, for example, commitment of delinquent children is for an indeterminate period not to exceed two years, subject to recommitment for an additional two years upon a finding that such extension would be in the best interest of the child. CONN. GEN. STATS. ANN. tit. 46, ch. 815t § 46b-141 (West 1986 and Supp. 1994). Pennsylvania law limits confinement to a period no longer than four years, or a period no longer than the maximum sentence for an adult convicted of the same offense, whichever is less. PA. CONS. STAT. ANN. tit. 42, ch. 63 § 6353 (a) (Purdon 1994).

No child shall initially be committed to an institution for a period longer than four years or a period longer than he could have been sentenced by the court if he had been convicted of the same offense as an adult, whichever is less.

122. See *In re J.S.* 629 A.2D 1371 (N.J. S. Ct. 1993) (upholding contempt against status offenders since the child had been previously advised that to purposely or knowingly disobey a court order in a family crisis intervention would result in contempt). But see *L.A.M. v. State*, 547 P.2d 827 (Alaska 1976) (Boochever, J., concurring) ("Recent studies indicate that status offenders (such as runaways) are not a source of general harm to others as contrasted with children who have committed offenses which, if perpetrated by adults, would be crimes.").

cape. Such delinquency offenses carry far stiffer penalties. Wisely, many states have prohibited bootstrapping by judicial decree.¹²³ Others have limited its application, while still others have provided more therapeutic remedies for repeat runaway behavior.¹²⁴

In 1978, New York enacted its Runaway and Homeless Youth Act, establishing a detailed process for the handling of youth runaways which emphasized shelter, counseling and social services over punishment.¹²⁵ While not dismantling the state's juvenile delinquency scheme, the law gives approved service centers, like Covenant House New York, the authority to offer runaway youth alternative shelter.¹²⁶ The law allows minors a crucial, seventy-two hour cooling-off period without fear that their filial disobedience will result in detention.¹²⁷ The police are required to inform runaways that, if they elect not to return home, police officers will immediately transport young people to a runaway shelter where they can be assessed and served for up to three days.¹²⁸ The legislation addresses what its sponsors called "a new class of youth - described as urban nomads" who could easily "fall prey to criminals and violence."¹²⁹ That observation, seventeen years later, summarizes the stakes for most clients at Covenant House.

III. Access To Legal Services; Navigating Through Legal, Emotional and Philosophical Obstacles

Migrant farmworkers and runaway and homeless youth encounter many of the same legal issues as other impoverished populations. What is unique and is shared by both groups, however, is their transience. In the instance of migrant farmworkers, this is intensified by the fact that they are only in New York during the

123. See, e.g., *In re Mary D.*, 156 Cal. Rptr. 829 (Cal. Ct. App. 1979); *In re Darlene C.*, 301 S.E.2d 136 (S.C. 1983); *In re DLD*, 327 N.W.2d 682 (Wis. 1983).

124. New Jersey, for example, amended its code in 1983 to limit dispositions of status offenders to order a child's family to attend crisis intervention counseling, or, as a last resort, removal to a non-secure family-like setting in the community. N.J. STAT. ANN. §§ 2A:4A-87-90 (West 1994).

125. N.Y. EXEC. LAW § 532 (McKinney 1994).

126. *Id.* at § 532-b.

127. *Id.* at § 532-c.

128. *Id.* at § 532.

Facility staff are to provide services and make arrangements for the youth's return home, except where there is neglect or abuse or where the youth refuses to return home or where the parent refuses to accept the youth home. Where any of these events occur, either an alternative residential placement can be provided, the child can petition the court for emancipation or, in some instances where the child is under 16, a PINS [Person In Need of Supervision] petition can be filed.

N.Y. STATE ASSEMBLY, MEMORANDUM IN SUPPORT OF LEGISLATION (July 25, 1978).

129. N.Y. STATE ASSEMBLY, *supra* note 128, at 2.

harvest season. For runaway and homeless youth, they may remain in the state, but move frequently from place to place. For migrant farmworkers, the biggest barriers to access may be their physical isolation on labor camps and fear of retaliation by farmers, if they assert their rights. In contrast, the biggest obstacles for runaway and homeless youth may be their mistrust of lawyers based on prior negative experiences. To represent clients in either population, the poverty lawyer faces a challenge: to overcome these obstacles and reach prospective clients.

A. Access to Migrant Farmworkers

Many of the legal issues which arise for farmworkers emanate from, and are intensified by, the extreme isolation in which they live. As the court stated in the landmark case of *State v. Shack*,¹³⁰ "[t]he migrant farmworkers are a community within but apart from the local scene. They are rootless and isolated. Although the need for their labors is evident, they are unorganized and without economic or political power."¹³¹

To a farmworker attorney the ability to enter the labor camps and speak freely with workers is paramount in order to provide effective representation. For precisely this reason, a migrant worker's right to receive visitors at a labor camp without interference from the grower remains a fiercely contested issue between farmworker advocates and growers.

There have been many theories advanced by farmworker advocates in the on-going struggle to gain unhindered access to migrant labor camps. Litigation in this area has focused on the First Amendment, state constitutional provisions, state landlord-tenant law and the policy argument that a farmworker's need for public services outweighs a farmer's property rights.¹³² Other challenges to the denial of access, and as a defense to a criminal trespass charge, have involved the federal anti-conspiracy statute,¹³³ the federally protected right to make and enforce contracts,¹³⁴ the implied federal right to access in various federal statutes,¹³⁵ state

130. 277 A.2d 369 (N.J. 1971).

131. *Id.* at 372.

132. For an in-depth discussion of litigation involving access to migrant labor camps, see MIGRANT LEGAL ACTION PROGRAM, FARMWORKER LAW, ACCESS TO MIGRANT LABOR CAMPS AND EMPLOYMENT AREAS (Jan. 1993) [hereinafter MIGRANT LEGAL ACTION].

133. 42 U.S.C. § 1985 (1988).

134. 42 U.S.C. § 1981 (1988).

135. See, e.g., 42 U.S.C. §§ 2996, 2996f(a)(2)(c) (1988) (the Legal Services Corporation Act); 29 U.S.C. § 49b (1988) (the Wagner-Peyser Act); 42 U.S.C. § 254b (1988)

claims of tortious interference with the right to contract.¹³⁶ As a result of pressure by farmworker advocates, some states have enacted or amended statutes which guarantee access to the labor camps.¹³⁷ While an in-depth discussion of these various bases for a right of access to migrant labor camps is beyond the scope of this article, a brief overview of the more common approaches is useful.

In evaluating any of these strategies, it is essential to remember that there is no standard "migrant labor camp." Migrant labor camps differ greatly in character and, as a practical matter, this will directly affect the decision on how to gain access.

In a "stream state" such as New York, migrant farmworkers are generally housed in labor camps owned and operated by the farmer. In general, these labor camps are small family operated camps. These small camps might be comprised of one storage building with farmworkers housed on the bottom level, or in one or two trailers hidden behind a tall stack of crates, or in one cement building. The few larger camps in New York use a combination of trailers, bungalow-style housing, and cement block buildings. In contrast, in "base states" such as Florida, which is home to many of those workers who migrate North to New York for the corn harvest, farmworkers live in tenement-style apartments for which they pay rent. Old schoolbuses pull out of town every morning packed with workers heading off to the surrounding sugar cane fields. Clearly, the legal basis for arguing for a right to access will depend upon the type of housing at issue.

For example, to argue that a grower's denial of unrestricted access to labor camps violates the farmworkers' First Amendment right to free association requires a showing of state action.¹³⁸ This will only be viable, therefore, in the context of the very large labor

(the Migrant Health Act). For further discussion, see *MIGRANT LEGAL ACTION*, *supra* note 132.

136. Reliance upon Federal statutes can be asserted as a defense to the crime of trespass in state court. Therefore, a farmworker advocate charged with trespass can assert that s/he was on the farm property to effectuate Congressional purposes to make social services available to farmworkers, as expressed in the statutes detailed. *Infra* note 137.

137. See e.g., 43 PA. CONS. STAT. ANN. §§ 1301.401-403 (1991); WIS. STAT. ANN. § 943.13(5) (West 1982); OR. REV. STAT. § 659.280 (1989); FLA. STAT. ANN. § 381 (West 1993).

138. While the First Amendment guarantees the right to free association and free speech, it is only applicable to the States through the Fourteenth Amendment, which protects against actions under color of state law. Civil Rights Cases, 109 U.S. 3 (1883). Therefore, in order to prevail in a First Amendment claim against a private grower, one would need to demonstrate that the grower's actions are attributable to the state. See *MIGRANT LEGAL ACTION*, *supra* note 132.

camp which resembles the "company town."¹³⁹ Whether migrant labor camps are sufficiently analogous to the "company town" to make out a First Amendment claim has been the source of substantial litigation.¹⁴⁰ In *Petersen v. Talisman Sugar Corp.*,¹⁴¹ the court held that a migrant labor camp which provided various municipal services to 1,000 laborers was a "company town" for First Amendment purposes, and therefore the owner could not deny access to union organizers and religious workers.¹⁴² The camp in *Petersen* contained residential areas, streets, a store, eating facilities, a post office and a chapel.¹⁴³ Talisman Sugar Corporation also provided municipal services such as fire protection, sewage, and garbage collection.¹⁴⁴ While farmworker advocates have argued that the state's role in inspecting and licensing migrant labor camps meets the "state action" requirement, this has been rejected by the Supreme Court.¹⁴⁵

In states such as New York, landlord-tenant law is helpful in guaranteeing the right to access. Former New York Attorney General, Robert Abrams, issued an advisory opinion on the right of access to migrant labor camps,¹⁴⁶ stating that migrant farmworkers are entitled to the same rights as any other tenants under New York law.¹⁴⁷ As such, they are entitled to receive visitors during nonworking hours without any interference from the growers.

A still different approach used by courts to ensure a right of access to migrant labor camps involves limiting the property rights of the grower, balancing those rights with the public policy concerns facing migrant workers living in extreme isolation. The best example of the court's willingness to place human values above the right to own and control housing was articulated in *State v. Shack*.¹⁴⁸ As stated so eloquently by the court, "[p]roperty rights serve human values. They are recognized to that end, and are limited by it. Title

139. See e.g., *Marsh v. Alabama*, 326 U.S. 501 (1946), for a description of the quintessential "company town" which gives rise to First Amendment protections.

140. MIGRANT LEGAL ACTION, *supra* note 132.

141. 478 F.2d 73, 82 (5th Cir. 1973).

142. *Id.* at 81-82.

143. *Id.* at 82.

144. *Id.* See also *Asociacion de Trabajadores Agricolas v. Green Giant Co.*, 518 F.2d 130 (3rd Cir. 1975) (stating that camp presented "features akin to the company town in *Marsh*," but did not rise to the level necessary to meet the *Marsh* test and thus the camp was not open to the public).

145. Cf. *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974).

146. 91-F7 Op. Att'y Gen 23 (Nov. 25, 1991).

147. *Id.*

148. 277 A.2d 369 (N.J. 1971).

to real property cannot include dominion over the destiny of persons the owner permits to come upon the premises.”¹⁴⁹

In practice, access continues to be an issue for legal services providers, union organizers, health care providers, religious workers and others, whose mission necessarily involves reaching the farmworkers at the labor camps. In New York, farmworker advocates have been threatened with physical harm, threatened with arrest for criminal trespass on private property, and physically blocked from entering the labor camps. Our approach has been to attempt to gain access by showing the grower the Attorney General's Opinion and returning with “reinforcements” from our office. On rare occasions when these steps have not been sufficient, we have enlisted state trooper escorts onto the camps after reviewing the Attorney General's Opinion with them. While this approach has been successful in gaining physical access, workers may be too intimidated to speak with us when we enter the camp following an argument with the grower and/or in the presence of police officers. Many of the workers are undocumented and especially fearful of the police. Thus, one can physically gain entrance onto the camps, but the chilling effect of the process impedes, and sometimes defeats, the immediate purpose of our visit: to engage in an open and honest dialogue with the workers about their legal rights as farmworkers.¹⁵⁰

Even without the involvement of the police or overt battles with growers, the labor camp is still often too intimidating an environment for workers to speak freely. For this reason, physically gaining access to the labor camps is only the first step in what can be a lengthy process of building trust so that farmworkers will speak openly about their living and working conditions. For example, it is common for workers to insist that there are no problems, even in the face of obvious violations of the AWPAs, because of the fear of retaliation by the farmer. I recall speaking with a worker who was housed in a tiny shack hidden from the road by stacks of crates, a chain and a “No Trespassing” sign. Although we were standing next to an outdoor hose, a bottle of shampoo and bar of soap, this worker assured us that the housing was fine and had running water indoors. We also hear stories of the farms where work-

149. *Id.* at 372.

150. However, even when the workers are too fearful to speak with us at the camp, we believe that a long-term goal is advanced by standing up to the growers and showing workers that we cannot be denied access to the farm by the grower's acts of intimidation. As was illustrated in the example at the corn farm where a worker saved our phone number from a visit the prior year, gaining access and speaking with workers is essential, even if not immediately effective.

ers are rewarded with beer for not speaking with us when we enter the camps. Perhaps the best illustration of both the myriad of barriers and the types of strategies which may be necessary to "reach" a client is the story of Maria.

Maria's Story: Navigating Around The Obstacles to Provide Legal Services

As the following story illustrates, the real challenge of public interest lawyering is that many issues, including access barriers and statutory exclusions of the poor, intersect in any given case and require innovative strategies to succeed. When I met Maria, she was living with her twelve year-old son Felix in a small labor camp in New York. She had contacted our office during the winter when the grower was not providing heat and was attempting an unlawful eviction. We stopped the eviction, got the grower to provide heat and did not hear from Maria again that winter.

In the spring, I happened to see Maria while doing outreach at a neighboring farm. A friend of Maria's, who was also a client of mine, prodded Maria to tell me more about her problems at the farm. Very reluctantly, Maria told me that the grower and his father had been sexually harassing her since the winter. The father had grabbed her on many occasions and the son had been demanding oral sex from her regularly. Through her tears, and with the encouragement of her friend, Maria began to tell me at least part of the story.

As my relationship with Maria deepened, the story developed more fully. While Maria had rejected the grower's demands at first, she was ultimately coerced into complying because she had no place else to go with her son. Maria had worked as a migrant farmworker all her life but she always returned to her "base state" for the winter. This winter she had decided to stay in New York because the grower had offered her steady work and a private apartment to share with her son. Hoping to give her son some stability and a better chance at succeeding at school, Maria accepted the job. However, when she arrived at the farm with her son she found that her housing consisted of a small room under a dilapidated warehouse which she and her son had to share with four unrelated men. Maria was never given the apartment she had been promised.¹⁵¹ Maria and Felix were ultimately evicted from the housing in retaliation for speaking with Legal Services and were left homeless.

151. She was offered the promised apartment months after her employment began, but only upon the condition that she allow the farmer to visit her in the evenings for sex. When she refused these terms, she was not given the apartment.

We represented Maria in a federal court action against her employer/landlord for violations of AWPAs and the New York Human Rights Law.¹⁵² Notwithstanding the lack of any witnesses and the fact that the growers were represented by a large law firm, we were able to obtain a very favorable settlement for Maria and her son. Perhaps even more important than the money involved is that the process ultimately proved to be empowering for Maria. However, to get to that point there were countless obstacles around which I would need to navigate.

After Maria and Felix were evicted from the first farm, Maria had a series of short-lived jobs which meant that she moved without notice quite frequently. The pattern was that Maria would contact me from one farm, I would rush to the farm to meet her, we would speak once at that location and the following week she would disappear again. I would then begin asking around for her. Eventually, I would find Maria and Felix again, re-establish contact with Maria and inch her case forward.

There were many times when Maria disappeared and I thought that I had wasted all my time and would never hear from her again. But, while not on my schedule, she would always reappear. Each time that she reappeared, our bond would be stronger and her commitment to face what would be a very difficult lawsuit seemed strengthened. Perhaps the most difficult period in this case came when I found out that she was working and living at what is reputed to be the most dangerous farm in New York. In addition to the atrocious conditions at this farm, the growers have a history of violence, both toward workers and their attorneys. Speaking with workers at this farm not only places their jobs in jeopardy, but their physical well-being as well.

To establish contact with Maria at the farm, I had to enter the camp with three co-workers and the state troopers under the guise of a general outreach visit. As I went door to door, speaking to workers in Spanish and handing out our educational pamphlets, I handed Maria a pamphlet with a note slipped inside of it. The note

152. N.Y. EXEC. LAW § 296 *et seq.* (McKinney 1993). We felt that federal court offered the best chance for a fair trial. Proceeding in state court would mean being on the grower's "home turf" where he has influential family and friends and where there is considerable sympathy towards farmers and hostility towards migrant farmworkers who sue them. However, the difficulty was that the farm was too small for Title VII jurisdiction, and while AWPAs is a Federal statute, 29 U.S.C. § 1822(c) (1989), it contains no language regarding sexual harassment. We responded to this dilemma by fashioning a novel claim that sexual harassment violated the AWPAs. We argued that the farmer's demands for sex in exchange for the promised housing, which is a term of employment for farmworkers, violated AWPAs's protection against unilateral unjustified changes in the work agreement.

instructed her to leave the camp at 7:00 the following evening and begin walking up the road. The note informed her that I would be driving down the road at 7:15 and would pick her up in my car so that we could drive to a place where it would be safe for us to speak freely about her case. This gambit worked the first time we tried it. Maria then provided me with a post office box address where I would send her letters advising her of our next road-side meeting.¹⁵³ Sometimes this strategy was successful, at other times it was not. This was frustrating since a visit to the distant farm was always extremely time-consuming.¹⁵⁴

Maria ultimately left this farm and headed back to her "base-state" where she stayed in telephone contact with me as the case proceeded. We flew her to New York for depositions and her strength and conviction in standing up for herself continued to grow. She was ultimately so empowered by the process of fighting back for the first time, that she prevailed not only in this case¹⁵⁵ but in her ultimate goal of getting out of farmwork. She is now committed to helping other farmworkers and is returning to school.

B. Outreach to Runaway and Homeless Youth

A number of Covenant House New York's clients endure legal problems caused or exacerbated by their homelessness. This connection between the law and poverty can both comfort and confound. On the one hand, attorneys at Covenant House New York work mainly at a residential, social services agency that satisfies many of the client's immediate needs, among them shelter, food, medical and psychiatric attention, educational and vocational training, and day care.¹⁵⁶ When street life prompts or aggravates a young person's legal difficulties, we are in a good position to attack the causative agents. The client whose ex-boyfriend assaults her can see a doctor for her bruises, a counselor for her emotional distress, and a lawyer for an order of protection all within the same agency.

What most confounds, however, is the cyclical nature of the problem. Youth and homelessness beget legal problems which

153. During the course of Maria's case, I also met with her in diners, in parked cars, at a food market, at a friend's apartment, and on a rare occasion, at my office.

154. On one occasion I was driving down the road at the designated meeting time when the farmer, who was driving toward me, turned around and followed me. Ironically, it was fortunate that this was one of the occasions when Maria did not appear; otherwise the farmer would have spotted her.

155. Days before we were scheduled to select our jury and begin the trial, we reached a very favorable settlement.

156. Our only non-residential clients are former residents enrolled in aftercare services and, of course, the clients of outreach centers in the Bronx and Brooklyn.

drain resources, both financial and psychological, which further obstruct the young person's struggle to achieve a stable, independent household. To provide comprehensive legal services to a population of homeless and runaway adolescents, creativity is key. Although the legal need is plentiful, the populace does not readily avail itself of legal services and processes. In that way, these young people are similar to most low-income persons nationwide. A recent study commissioned by the American Bar Association determined that forty-seven percent of low-income households faced at least one civil, legal issue during 1992.¹⁵⁷ Their most frequent course of action was to try to deal with the matter independently.¹⁵⁸ Thirty-eight percent of the respondents took no action at all, and only twenty-nine percent ultimately turned to the civil justice system.¹⁵⁹ Asked to explain their avoidance of attorneys and legal processes, low-income persons mainly expressed a sense of futility and concerns over cost.¹⁶⁰ Here, many young people part company from poor adults. Because of their age, runaway and homeless youth are ineligible for most government-funded civil legal services.¹⁶¹ Their opportunities for access to the legal system are radically diminished. In New York City, for example, which is a mecca for push-out, throw-away, and runaway young people, there are only three, free legal centers that offer general, civil legal services to adolescents.¹⁶² Incidentally, all three were staffed in whole or in part by a Skadden Fellow during the 1993-1994 term.

The alienation of young people from legal services is not entirely a systematic failure. At Covenant House, where access opportunities do exist, other reasons for client reticence become apparent; chief among them is mistrust. Some young people have had bad experiences with the legal system in the past and believe lawyers are players in a corrupt system. Even among adolescents who believe some benefit may inure to them should they consult an

157. 12 ALBERT CANTRIL, *KEY FINDINGS FROM THE COMPREHENSIVE LEGAL NEEDS STUDY*, ABA CTR. FOR PRO BONO EXCHANGE 2 (1994).

158. *Id.*

159. *Id.* at 3.

160. *Id.* at 4.

161. Telephone interview with Barbara Finkelstein, Assistant Project Director, Queens Legal Services (Feb. 6, 1995); Telephone interview with John Gray, Project Director, Brooklyn Legal Services (Feb. 6, 1995); Telephone interview with Beth Harrow, Director of Family Preservation Unit, Brooklyn Legal Services (Feb. 6, 1995); Telephone interview with Steven Bogazz, Chairman, Committee on Juvenile Justice, New York (Feb. 6, 1995).

162. In addition to Covenant House, free legal services for poor young people are available at The Door-A Center for Alternatives. In addition, Peter Cicchino at the Legal Action Center for the Homeless runs a series of legal clinics that serve gay and lesbian youth.

attorney, many conclude the transaction costs are too high. According to this calculus, the investment of time and self in a relationship with a presumptively untrustworthy adult in order to navigate an unfriendly system outweighs whatever modest benefit they might ultimately obtain. The result all too often is a self-imposed exile from lawyers and legal processes. Conversely, however, when the stakes are high enough to tip the scales in favor of the proposed benefit, the client appears.

The average stay for a resident at Covenant House New York's main crisis shelter is seven days, barely enough time to assess a legal need amidst the schedule of other, more urgent services. Many of these young people lead transient, unsettled lives. It is not uncommon for street youth to pool their resources, rent a group apartment or room for a brief period and later disband when money runs out. Because most of Covenant House New York's clients are in transition, they sometimes cannot forge the type of lasting relationship necessary for legal representation. Last June, we lost contact with eighteen of fifty-nine clients before we could resolve their legal issues.

To break down the barriers that keep transient populations alienated from legal services, creative outreach is essential. For instance, our lawyers and law student interns regularly provide seminars and training to residents on a variety of issues. These meetings serve two functions. First, they provide legal information to clients, fulfilling a broad community education mandate. Second, and more importantly, they remind clients and staff members that attorneys are available to assist with civil and legal needs. Covenant House New York lawyers visit the outreach centers weekly and advertise services in creative ways. My colleagues James Payne and Patricia Piraquive frequently appear on television programs and on Spanish-language radio broadcasts, respectively. Our newest staff attorney, Sister Mary Ellen Burns, reaches out to poor families who have been denied representation in housing court by the overburdened local offices of the Legal Services Corporation. I have toured some of Manhattan's Amtrak tunnels, where homeless young people reside, and have spoken with several about our program and services. One's goal should be to reach people where they congregate. The lawyer creates access most effectively when the lawyer reaches out to clients, instead of waiting for them to appear.

Patience and respect do much to reduce client mistrust and anxiety.¹⁶³ It is important to schedule enough time for clients to become comfortable and relaxed during initial interviews. When I have failed to do so or allowed myself to appear hurried and easily distracted, most clients have remained distant and uncommunicative. I now begin client meetings by identifying myself as an attorney and emphasizing the confidentiality of our conversations. I take my time whenever possible. I try to listen a lot at first.

Outreach can be very fruitful, as has been my experience in client workshops on family law issues. Many runaway and homeless youth come from tumultuous domestic environments, replete with incidences of alcoholism and addiction, mental illness, paternal abandonment, sexual and physical abuse, and neglect.¹⁶⁴ These experiences, particularly the absence of role models, inhibit the young person's understanding of what it takes to be a good parent and contribute to conflict with a legal system that ostensibly requires accountability. I have met many adolescent fathers who, at best, treat their children more like favorite nieces and nephews than daughters and sons. Financial support is rare;¹⁶⁵ visitation only slightly less so. Partly because of their negligible financial resources, many homeless young fathers seek an advocate to navigate them through a process that can have long-term financial consequences. They are eager for representation and some have responded to our training by approaching fatherhood more responsibly.

Most of the young mothers I serve do not readily neglect the responsibilities of parenthood. But their homelessness complicates. At times, the stigma prompts concerned grandparents to seek legal custody and, once obtained, to block visitation. The specter of maternal homelessness hovers over many custody cases. All too often, young mothers are pushed out of their parents' homes, and not al-

163. Trust can be earned by one's manner and bolstered by one's environment. Though many public interest attorneys favor an informal attire, I now opt for a tie, some days even a suit, having tried a less formal look for one year. Most of my clients expect an attorney to appear professional and reasonably well dressed. Deviations have raised questions rather than bridged distances. My degree hangs on the wall. It reassures clients that I am qualified to represent them. Some of the pictures and posters which adorn my walls feature role models commonly admired by most of the clients and me: Rosa Parks, Shirley Chisholm and Niara Sudarkasa. The room, I hope, reassures and welcomes.

164. HOMELESSNESS, *supra* note 42, at 23-24; SHAFFER & CATON, *supra* note 49.

165. The current child support system is ineffectual. In 1990, 40.5% of female-headed households had not been awarded a support order. Of the remainder, more than one-quarter received partial or no payment at all. BUDGET OF THE UNITED STATES GOVERNMENT FISCAL YEAR 1991 at 197 (Jan. 29, 1990). See also Census, *supra* note 49, at 385.

lowed to take their infant children with them. When the mother and I proceed to court, requesting an immediate temporary order of custody, my experience has been that judges are likely to deny the request and order that all parties, including the grandparents, return for a final decision. In the interim, the status quo survives, in spite of contrary law. Indeed the state's statutory scheme vests presumptive custodial rights in single mothers, where paternity is unestablished, absent a showing of unfitness.¹⁶⁶ The constant in these cases, and an increasingly plausible explanation for the prevalence of preliminary, adverse adjudications, is the homelessness of the mother.

This past summer, Covenant House New York represented twenty year-old Keshia, a victim of paternal incest. She had been thrown out of her father's home and not permitted to take her young son with her. The trauma of her father's numerous attacks had left her deeply ashamed. When she sought our assistance to regain custody of the baby, Keshia had urged us not to mention her victimization in open court. Indeed, it should not have been necessary for us to do so, since her father had no legal right to retain custody of the baby. Nonetheless, our request for an order of custody was denied. We were forced to serve papers on Keshia's father and return to court one week later. There, Keshia was prepared to defend herself against accusations of parental unfitness from the same man who had raped her repeatedly since early adolescence. Fortunately, he capitulated as the parties' names were called by the court officer.

Many of our clients engage in survival crimes to maintain a meager street-bound existence. Because runaways are less likely to be employed than other persons their age,¹⁶⁷ many are further victimized by engaging in sex for cash. One study found that two-thirds of all female prostitutes were runaways.¹⁶⁸ Others, especially children running away from foster care, buy and sell illegal drugs.¹⁶⁹ This segment of the population interacts with the police extensively. The arrest rate for hard-core street youth in New York

166. In New York State, unmarried fathers have no legal rights (visitation) or responsibilities (support) to their children until the family court enters an Order of Filiation. N.Y. FAM. CT. ACT §§ 542, 545, 549 (McKinney Supp. 1994).

167. Gary Yates et al. *A Risk Profile Comparison of Runaway and Non-runaway Youth*, 78 AM. J. PUB. HEALTH 820, 820-21 (1988). In a sample of 12-24 year olds, 29.9% of non-runaways have jobs versus 25.5% of runaways who have jobs. *Id.*

168. Mimi Silbert & Yala Pines, *Entrance Into Prostitution*, 13 YOUTH & Soc'y 471, 485 (1982).

169. DOROTHY MILLER ET AL., RUNAWAYS-ILLEGAL ALIENS IN THEIR OWN LAND 56-57 (1980). The NASW study showed that 23% of runaway youth abused drugs. NAT'L ASS'N SOC. WORKERS, *supra* note 49.

City was estimated to be seventy-five percent in 1987.¹⁷⁰ Many of these young people are hard to reach and the agency does not offer legal representation in criminal matters. Covenant House New York staff members drive every night of the year in an outreach van that travels through sex-for-cash districts of the City. Offering food, blankets and a ride to shelter, van workers try to provide young people with an alternative to the dehumanizing culture of exploitation that attracts impoverished runaways.

C. *Client Sanctification: Are We Imposing Barriers?*

Public interest lawyers must examine what, if any, role we play in perpetuating barriers to legal services. The temptation to "sanctify" the poor and cast their material deprivations in romantic and heroic terms entails "counter-stigmatization" replete with false preconceptions and behavioral expectations of prospective clients. Our migratory client populations provide two examples. It is easy to think of homeless and runaway adolescents and migrant farmworkers as oppressed, particularly when one visits the street corners and squalid sheds where many live. And indeed, disenfranchisement ranks high among the root causes of their poverty. The danger, however, in "sanctifying" the poor, is that we may strip them of their humanity and expect, instead, the stoicism of the survivor and the innocence of the victim.

Over these first two years of practice, we have both been confronted with situations where clients failed to fit this moral and political mold. Consider, for example, the earlier stories of Maria, Franky and Tonya. In Maria's case, other migrant service providers who knew her had made a moral judgment about her fitness for representation in a sexual harassment case, given a personal history that did not meet their subjective criteria of worthiness. Likewise, social workers familiar with Tonya's history of sexual abuse criticized Covenant House New York for representing Franky because they believed she should have prevented harm to her child. To hold these women to a yardstick of subjective moral and political suitability might have denied them the representation necessary to vindicate their rights, perpetuating the role of attorney as gatekeeper.¹⁷¹ As public interest attorneys, we may not and should

170. VICTIM SERVICES AGENCY, *supra* note 55, at 4. This percentage was obtained from a sample of 98 juveniles, considered a "core" group with whom the agency maintained regular contact. *Id.*

171. See e.g., Anthony V. Alfieri, *Impoverished Practices; Symposium: Critical Legal Theories and Legal Ethics*, 81 GEO. L.J. 2567 (1992). Professor Alfieri addresses the question of what role the lawyer's political and moral judgment should play in poverty law practice. He states that "[w]ithout a coherent theoretic of prac-

never deny representation to clients based on personal assumptions of the qualities that a model client possesses.

A second danger that emanates from client sanctification is the attorney's failure to individuate. To romanticize poor persons involves the attribution of positive traits to a group based on their same economic deprivation. This essentially suggests a collective imagination, a way of thinking about people that negates their individuality. Operative, then, is not the lawyer's commitment to social justice for a particular client, but rather a fondness for a class of clients.¹⁷²

This orientation may contort the attorney-client power relationship. Viewing poor clients as pitiful, helpless victims of social oppression invites the attorney to see himself as a rescuer, rather than a servant. Believing society has neglected the education of the poor, the attorney may discount the client's intelligence, assume control of the relationship and impart too little discretion to the client.¹⁷³ Just as likely, the lawyer's conception of the client as an innocent victim may lead to protective and patronizing behaviors

tice, poverty law advocacy degenerates into a discretionary practice of lawyer moral and political judgment. This gatekeeping practice is incompatible with a vision of poverty law advocacy as a form of and forum for community education, organization and mobilization." *Id.* at 2568.

172. For an example of a situation where the client is left feeling that her needs were subordinated to those of a larger class of women, see *Of Roe, Dreams And Choices*, N.Y. TIMES, July 28, 1994, at C1 (containing an interview with Norma McCorvey, a.k.a. Jane Roe in *Roe v. Wade*). McCorvey explains her "rocky" relationship with one of the attorneys who represented her in *Roe v. Wade*:

Sarah sat right across the table from me at Columbo's pizza parlor, and I didn't know until two years ago that she had had an abortion herself. When I told her then how desperately I needed one, she could have told me where to go for it. But she wouldn't because she needed me to be pregnant for her case. I set Sarah Weddington up on a pedestal like a rose petal. But when it came to my turn, well, Sarah saw these cuts on my wrists, my swollen eyes from crying, the miserable person sitting across from her, and she knew she had a patsy. She knew I wouldn't go outside of the realm of her and Linda. I was too scared. It was one of the most hideous times of my life.

Id. at C9.

173. See, e.g., Howard Lesnick, *Infinity In A Grain Of Sand: The World Of Law And Lawyering As Portrayed In The Clinical Teaching Implicit In The Law School*, 37 UCLA L. REV. 1157 (1990). In critiquing the assumptions implicit in traditional lawyering in a poverty law context, Professor Lesnick addresses the potential for an attorney to redefine the client's goals. He states that:

The lawyer who defines the questions of his or her client's values, with respect to objectives, as 'getting something rather than nothing' is making a decision by seeing no decision to be made. We should not assume that a client participating in a legal proceeding wants to 'win' the legal proceeding no matter how limited a victory is open to realistic hope, or no matter what 'transaction costs' may have to be paid (by the client, not the lawyer). That may not be true at all.

Id. at 1173.

that obfuscate integrity and autonomy. Of course, people living in poverty respond to their circumstances with the full range of individual, human emotions. As poverty lawyers committed to provide effective zealous advocacy for our clients, we must avoid romanticized notions of marginalized groups, including runaways and farmworkers, and strive for an individual consciousness.

Conclusion

Our brief tenure as Skadden Fellows suggests not just the value of grassroots advocacy for migratory communities, but the need for systematic inclusion. The alienation of migrant farmworkers and homeless and runaway youth has created a disempowered underclass, largely unaware of their rights and reticent to seek legal representation. Their problems will not go away tomorrow. That, of course, is an invitation for action, not a cause for despair.

