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Panhandlers at Yale: A Case Study in the Limits of Law

BRANDT J. GOLDSTEIN*

Thursday night is good for the regular panhandlers who work York Street and Broadway, a small business district in the shadow of Yale University in New Haven, Connecticut. John repeats his sing-song chant, "Howyadoin! Howyadoin! Howyadoin!" and keeps time with his jangling cup of change. Down the street, Ricky sits on a short wall leading to Yale's Hall of Graduate Studies, asking passersby how their evening is going. Some pedestrians steer carefully around him, looking away. Others lean over, handing him a quarter. Now and then someone greets Ricky by name, talks to him for several minutes, and gives him a dollar or two, maybe more. A New Haven police officer on the beat walks up to Ricky and nods. Ricky nods back to the officer, smiles, and says hello. The officer asks if anyone has threatened Ricky that evening. Ricky says no, and adds that the new panhandler who had recently turned up seems to have left town. "Good thing, too," Ricky continues. "Didn't need him making all that noise, looking like a fool, chasing people off."

One can find panhandlers like Ricky in most every American city. Panhandling, it seems, is everywhere. But although the problems of homelessness and abject poverty have stood near the top of the national agenda for the last decade, little attention has been given to panhandling's role in the lives of the extremely poor. In recent years, a debate has raged among policy makers, academics, and the public over the number of the nation's homeless,¹ the causes of homelessness,² the possible

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1. See Thomas J. Main, *What We Know About the Homeless*, COMMENTARY, May 1988, at 26, 27. The Department of Housing and Urban Development ("HUD") released its own survey in 1984, which determined that the homeless numbered between 250,000 and 350,000 in that year. See *id.* The HUD figure, although widely attacked, was deemed roughly correct in a 1986 National Bureau of Economics Research Study. See Richard B. Freeman and Brian Hall, *Permanent Homeless in America?* (1986) (un-

responses to the myriad problems faced by the homeless and the extremely poor,³ and even the definition of "homeless."⁴ Despite this intense focus

published manuscript, National Bureau of Economic Research). Finally, the Bureau of the Census in April 1991, released its 1990 Shelter and Street Night ("S-Night") count that found roughly 230,000 people either in emergency homeless shelters or visible at pre-identified street locations. *Census Bureau Releases 1990 Decennial Counts for Persons Enumerated in Emergency Shelters and Observed on Streets*, U.S. Dep't of Commerce News Release, Apr. 12, 1991. The results of S-Night, census officials assert, will not be considered as a count of the homeless living in the United States, but are meant to "ensure the fullest possible count of America's population." *Id.* at 1.

Sociologist Peter Rossi has argued that homelessness should not be considered as a separate phenomenon; homelessness, he argues, "is more properly viewed as the most aggravated state of a more prevalent problem, *extreme poverty*." PETER H. ROSSI, *DOWN AND OUT IN AMERICA: THE ORIGINS OF HOMELESSNESS* 8 (1989) [hereinafter Rossi]. Rossi estimated in 1989 that there were between four and seven million people in the United States who were extremely poor, *id.* at 81,—“people with a precarious hold on the basic amenities of life that most of us take for granted.” *Id.* at 8. He defines the extremely poor as consisting of households (including single people) “whose annual incomes are three-quarters or less of the current official poverty line, or below \$4,000” in 1988. *Id.* at 13.

2. Among the causes of homelessness that commentators have pointed to are the lack of inexpensive housing for poor families and poor unattached persons, Rossi, *supra* note 1, at 181-82; the lack of demand for unskilled labor, which contributes to low employment and earnings among the extremely poor, *id.* at 186; the large-scale release of the mentally ill from institutions in the 1960s and early 1970s, Ellen L. Bassuk et al., *Is Homelessness a Mental Health Problem?*, 141 AM. J. PSYCHIATRY 1546, 1549 (Dec. 1984); the decrease in the real value of public welfare benefits, Rossi *supra* note 1, at 190-94; and substance abuse and the lack of services for substance abusers. UNITED STATES CONFERENCE OF MAYORS, A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES 42 (1989).

3. Rossi has advanced a battery of suggestions, distinguishing between “short-term remedies” and “long-term policy recommendations.” Rossi, *supra* note 1, at 195. Short-term remedies he suggests include creating “[a]n aggressive outreach program” to enroll eligible individuals in existing welfare programs, moving the severely mentally ill into “total-care institutions,” and increasing financial support for existing homeless shelters. *Id.* at 196-200. Among the long-term policy recommendations he advances: improving the labor market for younger workers, subsidizing housing for “younger unattached persons,” particularly through increasing the number of single-room occupancy units, increasing welfare support for the chronically mental ill, and establishing a federal “Aid for Families with Dependent Adults” program that enables poor families to supply housing, food, and other necessities to adult family members unable to support themselves. *Id.* at 200-09.

Others have forwarded simpler—and probably simplistic—solutions. Robert Hayes, a longtime advocate of the homeless, made famous a “three-part” policy solution for homelessness: “housing, housing, housing.” Robert C. Ellickson, *The Homelessness Mud-dle*, 99 PUB. INTEREST 45, 59 (Spring 1990). Ellickson maintains that Hayes’s view is flawed because “homelessness is not mainly attributable to breakdowns on the supply side of the housing market Instead, homelessness [generally results] from the demand side of the market—that is, from the condition of homeless people themselves.” *Id.* Ellickson suggests specialized housing vouchers for those suffering from serious mental problems (designed to get the mentally ill into small-scale “board-and-care facilities”),

on homelessness,⁵ however, the activity of panhandling, generally associated with homelessness and extreme poverty, remains relatively unexplored. For instance, Peter Rossi's recent study, *Down and Out in America: The Origins of Homelessness*, an empirically authoritative work on the conditions of homelessness and extreme poverty, devotes a mere six lines to panhandling.⁶ Similarly, the *1990 Annual Report of the Interagency Council on the Homeless* discusses panhandling in one sentence.⁷

Law reviews have not completely ignored the issue of panhandling, but their treatment of that issue reflects legal myopia. The legal scholarship on panhandling rests comfortably on the rarified plane of constitutional law, arguing that the First Amendment protects panhandling as a matter of free speech.⁸ The authors advancing these First Amendment arguments generally assume that courts and legislatures must be persuaded that panhandling is constitutional. The authors apparently believe that without constitutional protection, panhandlers will be silenced under a

programs that encourage homeless singles capable of working to gain employment, and (for the sake of affected children) direct rent payments from the government to the landlords of those heads of homeless families who have proven themselves unable to "manage an independent household." *Id.* at 56-57.

4. Rossi defines homelessness as "not having customary and regular access to a conventional dwelling." Rossi, *supra* note 1, at 10. Ellickson has pointed out that this "bundled" definition, which includes both those who sleep in places "not designated as residences" (for example, shelters) and those who "obtain temporary housing," "leads to the paradoxical result that greater governmental spending on shelter programs increases the reported number of homeless people." Ellickson, *supra* note 3, at 45.

5. There is some evidence that national concern for the issue of homelessness is decreasing. See, e.g., Jason DeParle, *Homeless Advocates Debate How to Advance the Battle*, N.Y. TIMES, July 8, 1990, at A14 ("Recent months have brought signs of what advocacy groups have begun to call a backlash against the homeless, including cuts in municipal aid to them around the country, evictions from public places and increasing public anger at begging and street encampments."). Mitch Snyder, perhaps the nation's best-known advocate for the homeless before he committed suicide in July, 1990, said weeks before his death, in reference to homelessness, "we're stagnating. The issue is in recession." *Id.* Further, a well-known liberal syndicated columnist wrote not long ago of her own "compassion fatigue." Ellen Goodman, *Swarms of Beggars Cause 'Compassion Fatigue'*, NEW HAVEN REG., Aug. 4, 1989, at 9.

6. See Rossi, *supra* note 1, at 108, 110.

7. INTERAGENCY COUNCIL ON THE HOMELESS, 1990 ANNUAL REPORT 31 (1991).

8. See, e.g., Helen Hershkoff & Adam S. Cohen, *Begging to Differ: The First Amendment and the Right to Beg*, 104 HARV. L. REV. 896 (1991) (panhandling is fully protected speech that fits within Supreme Court precedent upholding right to solicit charitable contributions); Charles F. Knapp, Note, *Statutory Restriction of Panhandling in Light of Young v. New York City Transit: Are States Begging Out of First Amendment Proscriptions?*, 76 IOWA L. REV. 405 (1991) (panhandling constitutes expressive conduct protected by the First Amendment); Anthony J. Rose, Note, *The Beggar's Free Speech Claim*, 65 IND. L.J. 191 (1989) (similar); Stephanie M. Kaufman, Note, *The Speech/Conduct Distinction and First Amendment Protection of Begging in Subways*, 79 GEO. L.J. 1803 (1991) (similar).

crush of anti-begging legislation. Consider, for example, this reaction to the Second Circuit's recent decision in *Young v. New York City Transit Authority*,⁹ upholding the constitutionality of a panhandling prohibition in the New York City subway:

The *Young* decision dealt a crippling blow to panhandlers everywhere. Because *Young* asserted that the first amendment does not protect begging, states are free to regulate or prohibit begging as they see fit. The only recourse left to beggars, at least in the Second Circuit, is to appeal to elected representatives.¹⁰

Advocates such as the writer just quoted also appear to believe that if panhandling is constitutionally protected, then panhandlers shall remain undisturbed in their day-to-day requests for handouts: as the Constitution goes, so goes panhandling. But is the constitutional status of panhandling really that important as a practical matter?

Perhaps not. In fact, the reality of panhandling often has little to do with the narrow issue of free speech. A thorough understanding of the control of this complex social and economic phenomenon is not to be had from the law reporters. By focusing on the rare legal challenges to anti-panhandling legislation, we in the legal community ignore the vast majority of panhandling activity that does *not* become the object of litigation, and thus we fail to see the limited influence of the formal legal structure on this pervasive phenomenon. On the streets of New Haven, Ricky and his peers find that the law books control their panhandling far less than do the relationships and informal norms that exist among panhandlers, police officers, pedestrians, and area businesses. In turn, the contours of those relationships and norms are closely linked to the dynamics of panhandling itself: how the panhandlers solicit donations. The control and dynamics of panhandling, moreover, cannot be fully grasped without knowing who the panhandlers are and why they panhandle. In short, even to understand the regulation of panhandling (let alone recommend how to modify regulation) requires less research in a law library, and far more time on the street.

To reach beyond the narrow question of panhandling's constitutionality and identify a broader set of legal and policy concerns relating to panhandling, this Article investigates in detail the panhandling in New

9. 903 F.2d 146, 153-54 (2d Cir.) (holding that panhandling is not protected speech but rather "expressive conduct" that does not "convey a 'particularized message'" and is thus undeserving of constitutional protection), *cert. denied*, 111 S. Ct. 516 (1990).

10. Aaron Johnson, Comment, *The Second Circuit Refuses to Extend Beggars a Helping Hand: Young v. New York City Transit Authority*, 69 WASH. U. L.Q. 969, 979 (1991).

Haven's York Street/Broadway business district ("the York district"). The Article seeks to answer four empirical questions about panhandling in the York district: (1) Who panhandles in this area? (2) Why do they panhandle? (3) What are the strategic components of panhandling? and, most important, (4) How is panhandling regulated, and by whom? To answer these questions, the Article draws on extensive interviews the author conducted in 1991 and 1992 with panhandlers, police officers, business owners and employees, staff from various state agencies, prosecutors and, more informally, charity workers and pedestrians. The Article thus offers less of a traditional legal analysis than an extended "reality check": an empirical polemic, confronting the legal and policy communities with a detailed picture of previously unidentified and unexamined problems associated with panhandling and its regulation.

The Article proceeds in four parts. Part I examines demographic and other background characteristics of the panhandlers in the York district. Part II discusses how the panhandlers obtain basic necessities and attempts to determine why they panhandle. Part III explores the strategic elements of panhandling—those factors that determine a panhandler's success in receiving donations. Part IV discusses the regulation of panhandling, focusing not on formal legal rules, but on the informal norms and relationships among panhandlers, York district businesses, and the New Haven and Yale University police. The conclusion discusses, in broader terms, the relationship between law and other forms of social control, and focuses on the research and practical implications of the fact that—as is the case with panhandling in certain environments—law may often have little influence in controlling human behavior.

I. WHO PANHANDLES IN THE YORK DISTRICT?

Part I describes basic characteristics of the panhandlers in the York district: age, sex, race, education, family relationships, employment and criminal records, and chemical dependencies. This Part intends to provide both a detailed account of the panhandlers' backgrounds and, in combination with Part II, to provide information that will help elucidate the dynamics of panhandling, examined in Part III.

The York district included a group of twelve regular panhandlers, or "regulars," and, on average, two to four "transients."¹¹ The infor-

11. The term "regular" here means those panhandlers who, according to their own accounts, and to those of area businesses and police, panhandled "regularly" in the York district, meaning at least three times a week, but usually much more. In less precise but perhaps more significant terms, "regulars" were those panhandlers who maintained continuing relationships, or at least contact, with the police, businesses, and pedestrians in the York district. See *infra* Part IV. Based both on the author's observations and on

mation in Parts I and II largely relates to the regular panhandlers,¹² many of whom were interviewed repeatedly, with much of the information on each panhandler corroborated by other panhandlers and many other individuals interviewed for the study. Transients are discussed more fully in Parts III and IV.

Generalizing, the regular panhandlers in the York district shared a number of characteristics, many of which reflect broader data on the extremely poor. The panhandlers were almost uniformly young to middle-aged African-American male adults. They were unmarried, but most maintained at least one close family relationship. The panhandlers were not well educated, and, excluding panhandling and workfare, they did not work. Many suffered from some degree of alcohol or drug abuse; two had significant psychological difficulties. Finally, although a number of panhandlers had a criminal record, at the time of the study they were more likely to be victims of crime than lawbreakers themselves.

A. Demographic Characteristics

Perhaps the most salient feature of the district's panhandlers was the uniformity of the race, sex, and age of its members. Eleven of the twelve interviewees were African-American men between the ages of twenty-five and forty-five; one was a white woman of about forty. Many of the panhandlers also had similar education levels and family backgrounds. Of the nine lucid panhandlers (all African-American men), at least seven had no father living with them during their childhood (two panhandlers would not discuss their families). Further, only two of the

the knowledge of the New Haven and Yale police and the panhandlers themselves, every "regular" panhandler in the York district during the spring of 1991 was interviewed.

The names (all pseudonyms) of the twelve regulars were: Chip, Ricky, John, Barry, Lou, James, Terry, Keith, Fred, Linda, Sandy, and Dave.

The term "transient" encompasses all those panhandlers other than regulars. "Transients" can be divided into at least two rough groups: (1) those panhandlers who were not "associated" with New Haven (neither domiciled nor homeless within the city of New Haven) and (2) those panhandlers who *were* "associated" with New Haven, and circulated within the system of shelters, halfway houses, drug and alcohol treatment centers, jails, and other institutions in and around the city, never panhandling within the York district more than a few times each month, and often much less. The study focuses less on transients than on regulars, although the study considers the relationship among the two groups in Parts III and IV.

For the methodology and structure of the study, see *infra* Appendix on Methodology.

12. The regular panhandlers will also be referred to as "regulars" or "interviewees." A further term, "lucid regular," refers to those nine regulars (of the twelve in all) who were generally intelligible and appeared mentally sound. Three regulars were not lucid: two suffered from significant mental illness, one was routinely severely drunk.

nine had graduated from high school, while a third had obtained his graduate equivalency diploma in his early twenties.

A majority of the interviewees had lived in New Haven all or nearly all of their lives. Of the nine lucid panhandlers, four were born and raised entirely in New Haven, while two more had moved to New Haven as young children. Three came to the city as adults. Two of these three had followed siblings who had chosen to live in New Haven because they believed the city offered generous welfare benefits; the third panhandler cited "employment and welfare possibilities." Further, one panhandler who had come to New Haven as a child said his mother had moved there because she thought government benefits were easily obtained in New Haven.¹³

Ten of the twelve panhandlers maintained close relationships with at least one person, often a family member. Eight remained in close contact with one or more members of their family, and five had a sibling or parent in New Haven or nearby Hamden. None of the twelve interviewees was married at the time of the study, although three of the men had a female companion. Four of the panhandlers had children. Two panhandlers, Dave and Linda, each had children in New Haven, and maintained some contact with them.¹⁴ Two others had children out of town. Ricky had children in South Carolina, and he spoke to them

13. The panhandlers provided this information in response to the general question, "Why did you come here?" rather than to a question specifically mentioning government benefits. This finding indicates, on a small scale, some consistency with recent empirical research that people take into account the relative availability of welfare benefits when deciding whether and where to move. See Paul E. Peterson & Mark Rom, *American Federalism, Welfare Policy, and Residential Choices*, 83 AM. POL. SCI. REV. 711, 725 (Sept. 1989) ("[L]ow income people are sensitive to interstate differences in welfare policy. This does not mean that large numbers of poor people rush from one state to another with every modest adjustment in state benefit levels. But the data do suggest that over time, as people make major decisions [about moving], they take into account the amount of welfare provision a state provides and the extent to which it is increasing."). See also *New Haven Ranks High in Poverty Because It Does So Much for Poor*, NEW HAVEN REG., Nov. 20, 1988, at B3 ("New Haven has such a high proportion of low-income families because we have been trying hard for more than 40 years to provide publicly constructed and subsidized housing, to make health services accessible to the poor . . . to build community support services for single mothers and their children, to create soup kitchens and shelters for the homeless.").

Although such services may attract those who seek them, the idea of a "welfare magnet" should not be overemphasized. As Amitai Etzioni and countless other critics have insisted, much social science, particularly economics, overestimates the prevalence of "rational" behavior among human beings. See generally AMITAI ETZIONI, *THE MORAL DIMENSION: TOWARD A NEW ECONOMICS* (1988).

14. Linda's son was a homeless adult in New Haven with whom she ate occasionally; Dave did not elaborate on his relationship with his children.

by phone occasionally. Lou had lost track of his wife and kids. Two panhandlers, Lou and Barry, told me they had no one they could "count on."¹⁵

The panhandlers also were friends with one another, and with various police officers, pedestrians, and, less often, employees of York district businesses.¹⁶ James and Terry, who panhandled near one another, were best friends; Ricky and John also had a warm relationship. Keith and Linda spent up to several days each week drinking together, while Sandy and Dave would chat briefly when they met on the street.

B. Employment

The panhandlers were almost uniformly unemployed during the year prior to being interviewed. Six of the panhandlers participated in a New Haven "workfare" program to "pay" their rent as tenants in city-subsidized apartments,¹⁷ although one, Sandy, said that he bribed a bookkeeper to record work hours that he never completed. Those on workfare spent up to thirteen and one-half hours per week performing a job in the program, such as sorting clothes at a Salvation Army store or serving food at a soup kitchen.¹⁸ One of those on workfare referred to it as "a complete joke"; another called workfare "ridiculous." Yet another panhandler observed that most individuals with workfare responsibility "do almost nothing—everyone's trying to see who can do the least." The Office Manager of the New Haven City Welfare Department described workfare jobs as "not meaningful" because they required no skill and offered "no training."¹⁹

Only one of the twelve panhandlers, Terry, had been formally employed in the past twelve months. Terry held a part-time job at a local fast-food restaurant for six weeks in the spring of 1991, after which he either quit or was fired. Terry would not elaborate, saying only that he did not agree with his supervisor's "specific way of getting things

15. This question, used in the Chicago Homeless Study, was borrowed from Rossi, *supra* note 1, at 173, 173 n.17. The question, "Do you have anyone you can count on?" seemed a reasonably effective way to identify "relationships that involve[] more than superficial acquaintance." *Id.* 173 n.17.

16. See *infra* Parts III.C., IV.B, IV.C.

17. For discussion of shelter, see *infra* notes 37-43 and accompanying text.

18. The number of hours worked depended on the rent that the city paid for an individual panhandler's apartment. The maximum amount of rent the city would pay each month through Connecticut's General Assistance program was \$325. The New Haven City Welfare Department valued one hour of workfare at six dollars. Thus, workfare hours were determined by dividing the rent amount by six to reach a monthly requirement; the monthly figure was then divided by four to determine the weekly requirement. Interview with Michael Randi, Office Manager, New Haven City Welfare Department, in New Haven (Mar. 19, 1992).

19. *Id.*

done.” Rounding out the picture, five of the twelve panhandlers had not worked at all—through workfare or otherwise—in the year prior to the study.²⁰

Matters had not always been so bleak for the interviewees. Indeed, eight of the nine lucid panhandlers had held steady jobs five years prior to the study. Three panhandlers once had work that required significant training—stonecutter, substitute schoolteacher, foundry worker—while five others had more menial positions.²¹ Although it is difficult to be certain why each panhandler lost his job, five panhandlers stated that they had been laid off for economic reasons. Two said they had lost their positions because of chemical dependencies, and one claimed to have become disabled and incapable of working.

At the time of their interviews, all nine lucid panhandlers said they were seeking work. Few attractive jobs seemed available to them, however, and the panhandlers generally indicated that they were uninterested in working at the minimum wage.²² Most claimed to check newspapers, as often as daily, for employment, and three of the panhandlers were apparently pursuing specific opportunities.²³ But the only jobs that the panhandlers knew were routinely available in the New Haven area were part-time positions at fast-food restaurants.²⁴ Entry-level work at the

20. Two of those five panhandlers said directly that they had not worked; the other interviewees were able to provide information on the three panhandlers who did not provide much useful information themselves. Ricky and John (two of the more senior regulars) observed that the perpetually drunk panhandler, Linda, and one of the two mentally disturbed individuals, Barry, had both wandered York and Broadway for over a year, and had not worked during that time. The other mentally disturbed panhandler, Chip, had panhandled in the York district since January 1991, when he was released from the Connecticut state penitentiary at Cheshire. Since his release, he, too, apparently had not worked.

21. In addition, three panhandlers were veterans, although none had served in the military in the previous ten years.

22. Eight stated that they would be willing to work for at least seven dollars per hour.

23. Terry, for example, mentioned an advertisement seeking a van driver for seven dollars per hour, if the applicant had a valid Connecticut driver's license. He did not, however, have a license.

24. Only two panhandlers mentioned the possibility of working at Yale University, New Haven's largest employer, as a custodian or maintenance worker, or in a similar capacity. James claimed that several months prior to being interviewed, he had applied for work at Yale, but that despite "things looking encouraging," the personnel office never contacted him. He did not return to the office to learn if any job had become available.

Custodial and maintenance work at Yale, was, in fact, relatively difficult to obtain. No full-time jobs (which included union membership) had been immediately available for several years. An applicant was required to apply first for "casual work," which meant spot jobs for a thirty-day trial period. The waiting list for "casual work" sometimes had

Burger King restaurant on Whalley Avenue, for example, began at \$4.25 per hour with no benefits. The number of hours a new employee could work were partly determined by the manager's appraisal of the employee, but a full work week was generally unavailable.²⁵ The regulars shunned this employment option, stating that the skimpy pay and short hours were not worth their time. Several panhandlers either said explicitly or implied that they were better off relying on panhandling and the welfare benefits they received²⁶ than they would be were they to take the low-paying jobs potentially available to them.²⁷

In addition to the economic issue of low earnings, five of the nine lucid panhandlers mentioned that they would only take a job that allowed them to keep their "dignity" or "self-respect," something they felt was impossible as a fast-food restaurant cashier, a leaflet distributor, and so forth. For example, although other factors may have affected Terry's departure after six weeks at a Wendy's restaurant, it appeared that he was deeply troubled about being thirty-five years old and working on the bottom rung of a hamburger restaurant staff. Dignity was also tied to the wage itself. Ricky explained: "I don't work for no petty change."

as many as seventy individuals on it, with a waiting period of three or four months for the *first* person on that list. Obtaining a "casual work" position was made still harder by an office policy requiring that spot jobs first be made available to union members seeking overtime. If a "casual work" position did open up, the new employee often found herself working for months, even a year, with no union membership, job security, and so on. The starting wage for "casual work" was approximately seven dollars per hour, about two dollars per hour below the lowest union wage. Telephone interview with Sara Williams (pseudonym), Administrative Assistant to the Placement Representative, Placement Office of Human Resources, Yale University (Mar. 30, 1992).

25. Moreover, full benefits were not available until an employee became a manager, which often took several years. Telephone interview with Ivan Osorio, Manager, Burger King restaurant, 169 Whalley Avenue, New Haven (Mar. 30, 1992). Osorio stated that he had worked at the Whalley Burger King for "about a number of years" and had "never" encountered a "homeless person" or a "beggar" who applied for a job there, although he was accustomed to "street-people types" coming into the restaurant to ask for food or money from the employees. *Id.* Similar job opportunities were available (although the number of openings varied significantly from month to month) at the McDonald's restaurant down the street. Telephone interview with Charles Ellison, Manager, McDonald's restaurant, 250 Whalley Avenue, New Haven (Mar. 30, 1992). Both Osorio and Ellison indicated that the job opportunities at their respective restaurants had remained about the same for the last two years.

26. See *infra* notes 46-49 and accompanying text.

27. Lou, an amiable, bright man who was once a chef and had been on the street several years, explained the economic calculations more rigorously than his peers. He said that in his last job, as a dishwasher, he was earning \$200 per week, before taxes. After taxes, \$85 per week rent at a local YMCA, \$30 per week in food, \$10 per week in transportation, and the child support payments he owed his former wife, he was often unable to break even. He was in "better shape now," he said, receiving \$58.90 in General Assistance benefits every two weeks and panhandling, than he would be if he were to hold two fast-food service jobs.

Ricky and his peers expressed particular interest in factory or construction work, although none knew of such opportunities. In short, given the perceived lack of attractive employment in New Haven, it appeared unlikely that any of the regular panhandlers would find steady work in the near future.²⁸

An apparent paradox in the panhandlers' approach to employment bears mention here. At first glance, it may seem contradictory for the panhandlers to emphasize the dignity of certain kinds of work at relatively high levels of pay. After all, panhandling is among the least dignified ways to make money. In a recent university survey in which 1,500 adults ranked the prestige of over 700 occupations, panhandling ranked dead last, below even prostitution and street-corner drug dealing.²⁹ Despite panhandling's stigma, however, those who panhandle do not answer to an employer, a point emphasized by three of the panhandlers. Moreover, it may be that by setting such ambitious objectives for their next jobs, some panhandlers avoided facing the challenges and anxieties of entering the workplace again—of maintaining a disciplined schedule, meeting others' expectations, and so forth. Extended conversations with certain of the panhandlers suggested that such factors might be at work.

C. Chemical Dependencies

Contributing to and compounding their other difficulties, most of the panhandlers had significant, longstanding problems with alcohol or drugs. Of the twelve interviewed, at least seven were dependent on one or the other. It remained uncertain whether any of the panhandlers were *not* chemically dependent. Four (Chip, Linda, Keith, and Terry) were alcoholics, and drank excessively. Chip and Linda appeared drunk whenever the author spoke with them, and both were routinely incoherent. Keith once unzipped an athletic bag he had with him, revealing three large bottles of cheap whiskey, all of which he planned to drink "as I get around to it." Three more of the panhandlers appeared to drink often, but were evasive about their consumption. A lieutenant from the Yale University Police Department, summing up the situation in the York district, stated: "Alcohol is the drug of choice. Most of [the regulars] drink a lot, some look like they're drinking nonstop."³⁰ Two

28. In fact, in March 1992, nearly one year after the initial set of interviews, ten of the twelve regulars were still panhandling in the York district.

29. See Pamela Mendels, *Workbook*, *Newsday*, Feb. 9, 1992, at 87 (summarizing study of occupational prestige conducted by researchers at University of Southern California and University of California at Irvine).

30. Interview with Nancy Warren (pseudonym), Lieutenant, Yale University Police, in New Haven (Mar. 28, 1992). While three New Haven police officers agreed with Warren's assessment, one New Haven officer believed that on the whole, the regulars consumed very little alcohol. Interview with Ron Oates (pseudonym), Sergeant, New Haven Police Department, in New Haven (Mar. 19, 1992).

interviewees (Sandy and Lou) who did not drink apparently were addicted to crack, and both stated that a third (Dave) was addicted, although the author could not confirm this assertion.³¹ According to several panhandlers, crack was readily accessible in New Haven. A "crack house" was as nearby as Lake Place, two blocks down Broadway, and others could be found throughout the poorer neighborhoods surrounding Yale.³² As one panhandler said, "It's all around you, all around you, everywhere."

D. Criminal Records

Completing the discouraging picture of the panhandlers' backgrounds, at least six of the twelve interviewees had a significant criminal record. Four of those six had served time in Connecticut state prisons for theft and similar crimes, while two had been imprisoned for violent crimes (Lou had assaulted his former wife, Ricky had "accidentally" stabbed a man). None, however, admitted to current involvement in criminal activity, other than possessing drugs. In fact, the interviewees were more often *victims* than perpetrators of crime. At least six of the twelve regulars said they had been mugged in the previous year, and three had been assaulted repeatedly.³³

E. Conclusion

The York district panhandlers were, in sum, a relatively uniform group of people. Single, unemployed, adult African-American males with little education and, often, significant alcohol or drug problems, or a criminal record, or both. Although the sample size of this study is small, many of these characteristics nevertheless reflect those of the extremely poor³⁴ in other areas of the nation.³⁵ More or less on the margin of

31. In addition, at least four panhandlers appeared to use marijuana on occasion.

32. See generally William Finnegan, *Out There*, THE NEW YORKER, Sept. 10, 1990, at 51, Sept. 17, 1990, at 60 (narrating the experiences of a black adolescent in New Haven, with anecdotal information about the city's crack market).

33. See *infra* notes 71-72 and accompanying text.

34. Rossi defines single individuals as "extremely poor" if they have an annual income of "three-quarters or less of the current official poverty line," which amounted to \$4,000 in 1988. Rossi, *supra* note 1, at 13. The category of extremely poor, which includes those who have housing, is chosen for these comparisons instead of the category of "homeless" because many of the panhandlers interviewed *were not homeless*. See *infra* notes 37-43 and accompanying text. Nevertheless, it should be noted that with panhandling income and welfare benefits, several of the panhandlers may have had more than \$4,000 in income during 1991. See *infra* notes 66-68 and accompanying text.

35. The racial composition of the interviewees echoes Rossi's determination, based on the 1987 Current Population Survey ("CPS"), that African-Americans are overrepre-

survival, it is perhaps not surprising that the individuals described here might end up panhandling. This leaves unexplained, however, the specific circumstances that led them to ask for handouts. Those circumstances are explored in the next Part.

II. OBTAINING NECESSITIES: WHY PANHANDLE?

This Part describes where and through what means the panhandlers found shelter, ate, and obtained medical care and other necessities. Despite the generally bleak circumstances described in Part I, a majority of the panhandlers were not homeless. Many received welfare benefits of some type, as well. Finally, most benefitted from New Haven's system of soup kitchens, free health clinics, and shelters. Given these circumstances, the regular panhandlers' decision to solicit donations, generally constituted a response to two distinct wants: (1) food, particularly of a greater variety and perceived quality than that available through institutional charity; and (2) alcohol or drugs.³⁶ This Part considers the role of panhandling income within the broader context of the other means the panhandlers relied on to obtain basic necessities.

A. Shelter

Among the most surprising findings was that the majority of panhandlers on York and Broadway were not homeless³⁷—surprising because

sented among the extremely poor. See Rossi, *supra* note 1, at 125. The age and gender of the regulars also reflect the findings of broader studies on the extremely poor. The 1987 CPS determined the average age of the extremely poor to be 37.4 years, *id.* at 121, Table 5.2.D., while a study of Chicago's domiciled extremely poor found that 68.4% of those dependent upon General Assistance were male. *Id.* at 118, Table 5.1.C. The regulars' marital status also approximated findings of broader studies. The 1987 CPS found that only 4% of the extremely poor were currently married and not separated. *Id.* at 129, Table 5.6.D. Finally, two of the twelve regulars clearly suffered from mental illness. Data on mental illness among the homeless is more widely available than similar data for the extremely poor; recent research suggests that approximately one-third of the homeless are mentally ill. See James D. Wright, *The Mentally Ill Homeless: What is Myth and What is Fact?*, 35 Soc. PROBS. 182 (Apr. 1988).

36. In addition to food and drugs, the panhandlers spent a small percentage of their income on several other items. Five mentioned purchasing "personal items" such as toothpaste and shampoo, and paying for washing clothes at area laundromats. Five, at least, also spent money on cigarettes. None of the panhandlers said that they saved any of the money they received. Most, particularly those who had been robbed, see *infra* text accompanying note 72, were concerned with immediately spending what they had brought in.

37. In connection with this finding, it bears noting that the director of the Community Soup Kitchen on Broadway in New Haven estimated in 1989 that only 25 percent of the clientele were homeless. Allison Heo, *Community Soup Kitchen Serves Hungry, Homeless of New Haven*, YALE DAILY NEWS, Jan. 30, 1989, at 1.

the image of a panhandler typifies, indeed helps to define, prevailing conceptions of the homeless.³⁸ As defined by Rossi, homelessness "means not having customary and regular access to a conventional dwelling."³⁹ Eight of the twelve interviewees were not homeless by this definition, and they did not use income from panhandling to maintain their living quarters. Six of these eight lived in apartments paid for entirely by Connecticut's General Assistance program, operated locally by the New Haven City Welfare Department.⁴⁰ The interviewees' rents varied from about \$300 to \$325 per month.⁴¹ The other two panhandlers who were not homeless lived with relatives. Chip, one of the mentally ill interviewees, lived with his mother in New Haven; Ricky split time living in New Haven with his sister (a part-time nurse's aid and mother of two, receiving Aid for Dependent Children benefits) and in Hamden with his brother (who was disabled and lived primarily on Supplemental Security Income benefits).

The other four panhandlers were homeless, and survived by relying on shelters, friends, and sleeping outdoors. All four used shelters in New Haven to some extent, particularly in the winter. Two, Lou and Barry (who was mentally ill), had spent from mid-October 1990 to April 1991 in various New Haven shelters, particularly the Crown Street shelter several blocks from the York district. Both apparently slept outside during the summer. Two more panhandlers, James and Terry, used shelters in the winter less regularly. James spent two or three nights each week at his girlfriend's apartment, while Terry paid fifteen dollars a night to sleep in a friend's apartment, when he could afford it.⁴² Terry

38. Indeed, the recent law review commentaries treating panhandling as a First Amendment issue routinely assume that panhandlers are usually homeless, and that the homeless are usually panhandlers, dual assumptions of dubious accuracy. See, e.g., Knapp, *supra* note 8, at 423 (suggesting that cities' interest in enforcing "antibegging statutes is to hide the problem of homelessness from the eyes of the public"); *id.* at 406 ("a common activity of most homeless persons is begging, or panhandling, for sustenance"); Rose, *supra* note 8, at 191-92 (presupposing that panhandlers are homeless); Johnson, *supra* note 10, at 978 (banning panhandling "may prevent many people from learning about the prevalence and plight of the homeless"). Empirical evidence from the Chicago Homeless Study suggests that only about one in three homeless persons panhandles. See Rossi, *supra* note 1, at 108, 110.

39. Rossi, *supra* note 1, at 10.

40. Three had apartments with kitchens, while three stated they had only single rooms with a common area and a bathroom.

41. At least five of the six in city-subsidized apartments fulfilled a workfare obligation to "pay" their rent. See *supra* notes 17-19 and accompanying text. Keith, the sixth, claimed that he was disabled and could not work, and therefore had no workfare obligation.

42. When Terry could not pay the nightly rent, he would sleep in a shelter or outdoors (perhaps twice a week).

was the only person who used panhandling income to obtain shelter. Terry and James, like Lou, also planned to sleep outside during some part of the summer. Those panhandlers who had spent significant time in a shelter before being interviewed were extremely negative about shelter life. They particularly disliked the lack of privacy, and generally feared for their personal safety. "Me and shelters," Terry declared, "do not get along."⁴³

B. Food

Every panhandler interviewed received either government or private institutional support (or both) to obtain food, and most of the panhandlers also spent the majority of their panhandling income on food. Indeed, eight of the panhandlers said that the fundamental reason they panhandled was to obtain "more food" or "better food."

All the regulars relied, to some extent, on meals served by soup kitchens and shelters.⁴⁴ Commenting on the wide availability of meals most days in the area, Ricky remarked, "Ain't nobody go hungry in New Haven." The panhandlers routinely complained that the food at certain (but not all) kitchens or shelters, particularly the Community Soup Kitchen on Broadway, was unpleasant to eat and gave them stomach problems.⁴⁵ Four received perhaps two dinners a week from kitchen staff at Davenport College, one of Yale's residential colleges. Finally, two panhandlers, Fred and John, relied on a local pantry once or twice a month, where they received crackers, cheese, and other simple foods.

Government assistance complemented this private aid. Seven of the twelve regulars⁴⁶ received General Assistance payments of \$58.90 every two weeks from the city of New Haven, and three of those seven also

43. Research indicates that the homeless generally have mixed feelings about shelter life. See, e.g., Rossi, *supra* note 1, at 101-02 (73% of homeless interviewed in 1986 Chicago survey considered shelters to be the "only places" where homeless "can get a decent night's sleep," but 47% of interviewees were "concerned [about] the lack of physical safety and the presence of theft").

Ricky, one of the panhandlers who was not homeless, said that he could not "understand fools not using a shelter for themselves like they got here in town. You get a meal, a bed, you watch t.v.—all you have to do is leave by seven [in the morning.] What's the problem?" Ricky had never slept in a shelter, which perhaps explained his view.

44. In any given week, kitchens and shelters provided three of the regular panhandlers with two or three meals, six of the panhandlers with four or five meals, and served three panhandlers up to about ten meals.

45. The author sampled a meal of chicken, broccoli, beans, and rice from the Community Soup Kitchen, and found it quite unappealing.

46. Six of these seven lived in city-subsidized apartments. See *supra* text accompanying note 40.

received between \$50 and \$75 per month in food stamps from Connecticut's Department of Income Maintenance.⁴⁷ Although the panhandlers mostly used their food stamps and General Assistance income (which was earmarked for food and other necessities⁴⁸) to purchase food at grocery and convenience stores and restaurants, at least four spent part of their General Assistance payments on alcohol or drugs, and one, Keith, sold almost all his food stamps at a discount for cash, to buy alcohol.⁴⁹

For most regulars, panhandling was primarily a supplement to the aid provided by soup kitchens, shelters, and government benefits. Eight of the twelve panhandlers said that the primary reason they panhandled was to obtain more food than they could afford on their welfare budgets and/or to obtain better food than that available in soup kitchens and shelters. The same eight stated that they spent more panhandling money on food than on any other item.⁵⁰ This finding is not surprising, given the routine complaints about several of the soup kitchens, the modest amount of welfare benefits received by some, and the fact that others apparently received none at all. All those who used their panhandling income primarily for food spent most of it in York district restaurants.⁵¹

C. *Drugs and Alcohol*

Whether alcohol or drugs constitute a "necessity" depends, it seems, upon who answers the question.⁵² As described above, at least four

47. It remained unclear why several of the panhandlers receiving General Assistance did not also receive food stamps, given that those who were eligible for the former were almost always eligible for the latter as well. Telephone interview with Peter Vaiuso, Intake Supervisor, Connecticut State Department of Income Maintenance, in New Haven (Mar. 30, 1992).

48. "Needs usually covered by General Assistance include . . . food, personal items, and household supplies." CONNECTICUT DEPARTMENT OF INCOME MAINTENANCE, QUESTIONS & ANSWERS ABOUT GENERAL ASSISTANCE IN CONNECTICUT 3 (Sept. 1987).

49. Several panhandlers indicated that selling food stamps at a cash discount was common. This assertion remains unverified.

50. Panhandling income levels are discussed in greater detail in Part III. *See infra* text accompanying notes 66-67. To summarize, the six panhandlers in the "middle" category raised between \$100 and \$250 per week; the four panhandlers in the "low" category brought in less than \$50 per week; and the two in the "high" category raised around \$300 per week.

51. Adding modestly to the panhandlers' sources of food were two other forms of individual charity. First, most of the panhandlers received a number of food donations from passersby. Further, five of the panhandlers received, on an individual basis, a modest amount of under-the-table handouts from particular restaurants. This second form of gift is discussed in greater detail in Part III. *See infra* notes 138-39 and accompanying text.

52. A nationally syndicated columnist recently wrote, in reference to the now

panhandlers were alcoholics, three more strongly desired alcohol, and at least two panhandlers suffered serious drug addictions. The regulars spent a significant amount of their panhandling income (as well as their government money) on alcohol and drugs.

Four regulars (two alcoholics, Keith and Linda, and the two confirmed crack addicts, Sandy and Lou) either said or implied that all or nearly all of their panhandling income went to support their addictions. Keith, for instance, explained that his biweekly \$58.90 in General Assistance aid, coupled with his money from panhandling,⁵³ bought him enough alcohol "to get by," which seemed to mean almost constant drinking. Similarly, Sandy stated that he bought crack with nearly all of the \$300 a week or more that he earned on the street.⁵⁴ Many other regulars used a significant portion of their panhandling income to buy alcohol. Terry and Chip apparently spent at least half of their income on liquor, while three other regulars spent at least one-quarter on alcohol (all by their own estimate).

D. Medical Care

Many of the panhandlers received medical care, although its quality and frequency remained unclear.⁵⁵ Seven of the twelve relied on free medical assistance provided by a nearby clinic, Hill Health Center. Two, John and Lou, received medical attention at a Veteran's Hospital in West Haven, several miles away. Finally, three panhandlers said they had no access to medical assistance, although one of them, James, explained that he went to Yale-New Haven Hospital if he was really sick. Although he could not afford to pay for treatment, he said that

obsolete living arrangements known as "Skid Rows":

These neighborhoods didn't look nice, but they had many conveniences: low-cost diners, liquor stores . . . cheap [rooms]. So a wino could panhandle a few hours a day and then return to Skid Row and find *the basic necessities*: food, *drink* and housing.

Mike Royko, *Homeless Crusade is Do-Gooders' Flop*, CHI. TRIB., Dec. 27, 1990, § 1, at 3 (emphasis added).

53. Perhaps less than \$50 each week.

54. In an extraordinary display of (hopeless) self-paternalism, Sandy confided that he was desperate to find a person or institution to manage his money so that he would not waste it on crack. In the past, he had made agreements with an older woman in Hamden and with the manager of a New Haven nightclub to hold his money for him, but neither arrangement had lasted. When Sandy could wait no longer to buy crack, he had threatened to kill them if they did not give the money back to him.

55. Ten panhandlers appeared in reasonably good physical health when interviewed (one of the ten, Ricky, still had cuts and bruises suffered in a recent mugging). Chip and Linda both appeared weak; Linda, from years of heavy drinking, Chip, apparently from both drinking and drugs.

the hospital had cared for him on the several occasions when he had gone. Most recently, they had provided him outpatient care for influenza during the winter of 1990-91.

Treatment for chemical dependency was less satisfactory. At least four panhandlers had undergone short-term drug or alcohol rehabilitation in the last several years. This involved emergency three- to seven-day inpatient treatment programs paid for by the state of Connecticut.⁵⁶ Of the four, only one (Terry) had made progress battling his dependency, but he feared he could not continue "beating that drink." According to a psychiatric social worker at the Connecticut Mental Health Center in New Haven, addicted panhandlers faced a two-fold problem: first, they needed longer inpatient treatment, which was usually unavailable because of space and budget constraints; and second, the outpatient programs available to them usually were not sufficient to prevent recidivism, in part because after inpatient treatment, the panhandlers immediately returned to the environment in which they had been addicted.⁵⁷ The social worker failed to mention an additional factor: the welfare payments and panhandling incomes of these regulars, which enabled them to continue—or resume—financing their drug or alcohol use.⁵⁸

In sum, the panhandlers of the York district relied on various combinations of state and local government benefits, city shelters, soup kitchens, and free medical assistance to maintain a marginal existence. Panhandling income played an important role for the regulars, providing them food, alcohol, and drugs. Thus, it should not be surprising that most of them devoted significant effort to obtaining this income. These efforts are explored in the next Part.

III. THE STRATEGIC COMPONENTS OF PANHANDLING

For most of the twelve regulars who panhandled in the York district, soliciting pedestrians for handouts was not a haphazard activity. The

56. Telephone interview with Susan House, Psychiatric Social Worker, Alcohol Treatment Unit, Connecticut Mental Health Center, in New Haven (Apr. 2, 1992).

57. *Id.*

58. The study did not examine in any depth the treatment possibilities available to the mentally ill panhandlers. The Entry Crisis Division of the Connecticut Mental Health Center ("CMHC") provided free walk-in service to those who came in voluntarily for treatment. The Yale and New Haven police had authority to bring an individual to the Psychological Evaluation Unit at Yale-New Haven Hospital ("YNHH") if that person posed a bona fide threat of harm to himself or others. The Psychiatric Evaluation Unit of the Emergency Room at YNHH would evaluate the individual, and under certain circumstances, would send them to CMHC for treatment. A nearby shelter, Columbus House, which provided various services to the homeless, retained a mental health worker on its staff who occasionally referred individuals to CMHC. Telephone interview with Beryl Carr, Mobile Crisis Team Member, Connecticut Mental Health Center, State of Connecticut Department of Mental Health, in New Haven (Mar. 30, 1992).

lucid panhandlers adopted various forms of strategic behavior to increase their panhandling income.⁵⁹ In contrast, the mentally ill regulars (Chip and Barry) and the most severe alcoholic, Linda, did not panhandle with much care. The behavior of this latter group constitutes a sharply contradicting, offhand approach to panhandling that perhaps represents the stereotype of the frighteningly unpredictable street person.⁶⁰ This Part of the study focuses on the nine regulars of the York district who panhandled in a fairly "professional" manner, with some reference to the other panhandlers. After briefly discussing the area where the regulars panhandled, as well as their income and how long they had worked the street, this Part focuses on the various components of panhandling strategy, particularly the choices of location and time, and the approaches taken in interacting with pedestrians. The Part concludes with a brief analysis of those pedestrians that gave donations to the panhandlers.

A. The Setting

1. *The York District: People, Pizza, Police.*—The intersection of Broadway and York Streets in New Haven, where the panhandlers asked for handouts, has several distinctive features.⁶¹ First, and most important, the streets border the campus of Yale, a wealthy private university with a relatively liberal student body of over 10,000. The eastern side of York is dominated by dormitories and the main library of Yale. The students heavily patronized the roughly 30 businesses on Broadway and on York's western side, comprised largely of restaurants, convenience food stores, clothing stores, and other businesses targeted at the college community. Second, the York district had significant pedestrian and automobile traffic throughout the day, and a vibrant nightlife largely due to Toad's Place, a nightclub with live music, and Demery's, a popular bar. Several of the restaurants served large numbers of customers

59. It should be emphasized that this claim rests on empirical research, and is not deduced from the assumption that the panhandlers were rational, self-interested individuals, seeking to maximize either their income, or some broader utility function.

60. See, e.g., *infra* note 78.

61. York Street runs north-south, while Broadway runs west from York. Broadway becomes Elm on the east side of York Street. Parts III and IV refer by name to several businesses, including, on York's western side (running from north to south), Toad's Place (a nightclub), Yorkside Pizza, The Game (a clothing store), Ashley's ice cream store, Demery's (a bar and restaurant), and, across Broadway, WaWa's convenience store, J. Press clothing store, and Davenport College, a Yale residential college. Located on the northern side of Broadway are, among other businesses, Subway sandwich shop, Store 24 convenience store, Cutler's Records, Quality Wine Shop, B. & H. Raphael Jewelers, Broadway Pizza, York Square Cinema, and the Yale Co-Op bookstore.

after 11:00 p.m., mostly Yale students and bar patrons. Third, New Haven and Yale police patrolled the area heavily, on foot and by car. The New Haven police had an officer on foot patrol twenty-four hours each day in an area that included the York district, with additional support from a patrol car.⁶² The Yale police had similar arrangements.⁶³

2. *The Regulars*.—Although the York district had transient panhandlers who appeared for several days and then moved on,⁶⁴ the regulars seemed to have established themselves semi-permanently in the area. Nine of the twelve regulars had worked the York district for at least one year, the minimum period being three months (Chip), and the maximum being nearly seven years (Keith). Only three regulars, however, said they had panhandled on York and Broadway for more than two years. As discussed, most of the regulars claimed to be looking for work, but there was little indication that they were prepared to cease their routine on York and Broadway in the foreseeable future.⁶⁵ Only one of the twelve regulars, Terry, had left the area in the six months prior to the study's interviews, and he had returned after only six weeks.

The regulars may be categorized according to three income levels: high, middle, and low. The high-income category included Sandy and Dave, who had both panhandled in the past, but had started selling roses as an alternative. They earned between \$30 and \$80 a day, regularly exceeding \$300 a week.⁶⁶ The middle category, the largest, had six members. These six regulars—Ricky, John, Terry, James, Fred, and Lou—generally fit the traditional image of a panhandler sitting or standing on the street asking for change. They earned between \$20 and \$50 each day they panhandled, sometimes more, and between \$100 and \$250 per week.⁶⁷ The low-income group included four regulars. Three of them,

62. Interview with Ron Oates, Sergeant, New Haven Police Department, *supra* note 30.

63. *Id.*

64. Transient panhandlers arrived in and departed the York district at the rate of perhaps two or three a week. This figure derives from estimates by police and by several regulars. This Part almost exclusively examines the panhandling of the regulars; Part IV explores the interaction between regulars and transients.

65. When a later draft of this Article was completed in March 1992 (nearly a year after the initial interviews with the panhandlers), ten of the twelve regulars were still panhandling in the York district.

66. Their activity resembled panhandling closely enough that they remained in the study. See *infra* notes 89-92 and accompanying text.

67. Anecdotal evidence from other sources finds similar or higher levels of panhandling income. See Douglas Platt, *Pass New York Panhandlers By*, N.Y. TIMES, July 30, 1988, at A25 (executive director of "drop-in center" for extremely poor and homeless in New York City reports that several clients made "\$70 a day" and notes information about another panhandler "whose artful pleas have raked in over \$200 in one day");

Barry and Chip (who were mentally ill) and Linda (who was always drunk) earned little, averaging from \$1 to \$10 a day, and generally less than \$50 a week. They had far less contact with pedestrians than did the middle-income group, spending hours at a time on the street disconnected from reality or asleep. Keith, the fourth member of the low group, only panhandled two to three times a week.⁶⁸

B. Panhandling Strategies

1. *Why the York District?*—Although there are several business areas in downtown New Haven, the regulars favored panhandling in the York district for two interlinked reasons: (1) the number and type of people who frequented the district; and (2) the security for both pedestrian and panhandler.⁶⁹ The regulars explained that they were primarily attracted to the York district because of the large number of pedestrians. Pedestrian traffic was relatively heavy from noon until six in the evening, and then increased significantly during the evening hours, often until nearly two in the morning, when the bars closed. Moreover, nearly every regular favorably mentioned the high percentage of Yale students who patronized the York district businesses. "These students—very generous, very generous," said Fred. "They'll give you everything." Several regular panhandlers added that beyond attracting pedestrians to the York district,

Howard W. French, *At Penn Station, an Oasis for the Homeless*, N.Y. TIMES, Mar. 30, 1988, at A1 (reporting crack addict who claims "he is able to take in \$100 a day, or enough to satisfy his crack habit and have enough left over to eat").

68. Keith relied on soup kitchens and shelters for most of his meals, and used nearly all of his General Assistance benefits to drink. When he ran out of money to buy liquor (usually the few days before his next check), he either panhandled for short periods, or collected returnable bottles and cans.

69. "Comparison panhandling," which Terry did on Chapel Street and then on Broadway before choosing the latter, may well be common. See, e.g., Joseph Berger, *About New York: All of New York's Tumult Jammed into a Terminal*, N.Y. TIMES, Dec. 28, 1991, at A23 (describing individual who had done "comparison panhandling at Grand Central [Station] and Port Authority Bus Terminal, [and had] determined that 'the East Side [Grand Central] is more compassionate than the West Side [Port Authority]'"').

Several of the panhandlers stated that there was little panhandling in the poorer areas of New Haven. This assertion remains unverified. Interestingly enough, some evidence suggests that those less well off are more generous in their giving. See, e.g., Linda R. Gibbs, *Begging: To Give or Not to Give*, TIME, Sept. 5, 1988, at 68, 73 ("[M]any panhandlers find that the poor are more generous than the rich."); see also Eloise Salholz, *The Empathy Factor*, NEWSWEEK, Jan. 13, 1992, at 23, 23 ("Curiously, those who have the least give the most."). Virginia Hodgkinson, vice president for research at the Independent Sector, reports research findings indicating "that the very wealthy are the most likely to stop contributing during economic hard times, where as 'people with less participate more, because they are much closer to knowing what it feels like to lose a home or job.'" *Id.*

the many businesses enhanced the amount of giving because so many shoppers left stores or restaurants with change in hand when the panhandler greeted them. The restaurants proved advantageous for another reason: some pedestrians either went in to buy food for the regulars, or gave them leftovers from a meal, such as a slice of pizza.

The York district panhandlers also favored the area because of the security it offered to both the pedestrians *and* the panhandlers themselves. The regulars had found that people felt safe in the district, relatively speaking,⁷⁰ because the area was so heavily traveled by shoppers and patrolled by police. Most people, the panhandlers observed, did not seem to feel threatened when asked for money, even past midnight. Lou, keenly aware of how his appearance and request might be threatening in other contexts, pointed out the York district's appeal with a contrast: "How [would] you feel if me, some shabby dude, walked up to you and asked for money in a dark alley? [For me to do that] would be stupid!"

The panhandlers, too, felt more secure in the York district than in many other parts of New Haven because of the pedestrian traffic and the police presence.⁷¹ Many of the panhandlers had been victims of violent crime in the past, and feared being attacked again. In fact, although they considered themselves safe while panhandling in the York district, many panhandlers faced safety problems when they wanted to go home. Nearly all the regulars who were not homeless lived in dangerous areas of New Haven, where the sound of gunshots was commonplace, and walking at night was hazardous. Ricky, for instance, had suffered a beating by five youths with a baseball bat late one evening in January 1991. He had spent three days in Yale-New Haven Hospital, and still owed the medical bills when he was interviewed. Several of the panhandlers attributed such misfortunes to being a well-known panhandler. Ricky and John explained that groups of younger kids expected them to be carrying money at night.⁷² Fear of being assaulted had led two regulars to stop panhandling late at night, and one of the most successful regulars, Sandy, sometimes took a cab back to his apartment past midnight.

2. Clock and Calendar.—Panhandling income varied significantly among the regulars, particularly the medium group, according to several

70. New Haven is a particularly unsafe place to live. Despite a population of only about 130,000, there were over 30 murders in New Haven in 1991, and Yale University has spent millions of dollars in recent years on security. See Joshua P. Galper, *Security Measures Improved, But Yalies Remain Insecure*, YALE DAILY NEWS, Mar. 2, 1992, at 3.

71. The panhandlers' complex relationship with the police is primarily discussed in Part IV, but will be mentioned when relevant in this Part.

72. Police officers corroborated this assessment. Interview with Nancy Warren, Lieutenant, Yale University Police, *supra* note 30.

factors. Income depended greatly on the time of day and the number of hours a regular panhandled. The average of the nine regulars (in the middle and high groups) was approximately five hours a day, four days a week; individual efforts varied from four hours a day, two or three times a week to seven or eight hours a day, six days a week. Most panhandlers followed routine schedules, such as from 6 to 11 p.m., Wednesday through Sunday. Their schedules seemed to be influenced by several variables, including personal habit, soup-kitchen dining hours, workfare responsibilities, and social commitments.⁷³ Only one member of the middle and high groups, Lou (who was homeless and a drug addict), said that his hours were dictated solely by when he needed money (which generally went to buy crack).

Perhaps the most critical factor determining a regular's schedule was the ebb and flow of donations over the course of the day and the week. Panhandling was most profitable at three times of the day. First, from about 3 to 5 p.m., when many students tended to run errands; second, from about 6:30 to 8:30 p.m., when restaurant-goers finished dinner, and students came to buy food and drinks for evening studying; and finally, from 10 p.m., when the bar crowds began to congregate, often outside on warm nights, until perhaps 2 a.m., when bars and late restaurants closed, and most pedestrians left for the night.⁷⁴ The late hours were particularly lucrative because the largest number of people were on the street then, and (after spending the evening out, often drinking) they were generally friendlier and more likely to give than shoppers during the day. Several panhandlers remarked that passersby who had drunk a lot were often generous. According to Lou, a pedestrian who might have given him a quarter earlier in the evening would give him two or three dollars after drinking, while a person who gave nothing during the day might offer a dollar. The late night boost in donations thus presented each regular with a dilemma: whether to leave the York district earlier and face a reduced "take" for the evening, or stay on the street and risk possible attack on the way home.

A panhandler's success also varied by the day of the week. Handouts on Wednesday through Saturday were greater than during the rest of the week, partly because Toad's Place and Demery's attracted large crowds, usually on those nights, with events such as live concerts. The cycle of the academic year was important as well, because when Yale

73. Ricky, for instance, often had dinner with his brother or sister at home around 6 or 7 p.m.; John usually ate dinner with his live-in female companion around the same time.

74. Noting that many of the regulars began panhandling near dinner time, one business owner observed that "as soon as the sun goes down, they come out." Interview with Chuck Caldwell, Owner, The Game, in New Haven (Apr. 1, 1992).

students left for the summer, the middle- and high-income groups suffered up to a fifty percent decrease in earnings (for example, a Thursday evening might fall from fifty-five dollars to twenty dollars). "The summer?" James asked. "Forget it. I'm lucky to bring in about half of what I usually get." The panhandlers were thus acutely conscious of Yale's academic calendar. Several referred to September as "the beginning of the year," and others even knew the dates of Yale's exam and reading periods.

As might be expected, certain holidays yielded great income increases. Those pedestrians who usually gave to the panhandlers gave much more, and those who rarely gave often became generous. Thanksgiving, and especially Christmas, were the most important holidays. James, who stood near the Store 24 convenience shop on Broadway, saw his daily earnings increase nearly 300%, from about \$40 to upwards of \$120, in the two weeks leading up to Christmas. He found himself, he said, "with a ton of cash." He made sure to panhandle every day during that period, as did Fred, who was deluged with hot chocolate and candy canes from students shopping at the WaWa convenience store three doors down from where he sat. Others echoed James's comments, saying they usually received at least double their intake in late December. Ricky put it this way: "Ahhh, Christmas. Christmas is *good*."

Two additional factors affecting the regulars' panhandling schedules were welfare benefits and pride. First, those panhandlers who received General Assistance benefits or food stamps often stopped panhandling for several days when they obtained their benefits (food stamps were issued at the beginning of the month; General Assistance checks, the first and fifteenth days of each month). One Yale police officer noted that a sudden increase in alcohol consumption among certain panhandlers, and a concomitant decrease in panhandling efforts, occurred "almost like clockwork" with the issuing of benefit checks. "We always know who just got his check," she said.⁷⁵ Another reason for interruptions in panhandling routines was less material. Ricky, Lou, Fred, and especially Terry, all of the middle-income group, pointed to feelings of pride as a reason for cutting back their hours at various times. Lou explained that at times he could only panhandle when his "hunger" (here, meaning for drugs) exceeded his pride.⁷⁶ Terry, having just begun to panhandle again after temporarily being employed for six weeks, was

75. Interview with Nancy Warren, Lieutenant, Yale University Police, *supra* note 30. This cycle was repeated in soup kitchens as well. See Heo, *supra* note 37, at 1 ("[M]ore people visit [the Community Soup Kitchen on Broadway] toward the end of the month, when they have used up their welfare or Social Security checks.").

76. Lou's analysis of many of his experiences was quite sophisticated. He often spoke much like a neoclassical economist, as this last point suggests.

particularly affected. He remarked several times, "It's that *pride* feeling."

3. "*Same Face, Same Place*": *Marketing Strategies*.—Sociologists have found that panhandlers rely on strategic behaviors to increase donations.⁷⁷ The York district panhandlers were no different in this regard, and the regulars had evolved a distinct way of doing "business" with pedestrians. Members of the middle-income group all relied on a basic approach to panhandling, with some variation, of (1) expressing deference and gratitude to passersby while (2) remaining stationary in a specific piece of territory within the York district.

The lucid regulars uniformly agreed that successful panhandling depended, first and foremost, on conveying strong messages of respect for, and gratitude to, pedestrians.⁷⁸ Seven of the nine regulars specifically and repeatedly used the word "respect" in describing their dealings with passersby. Ricky, who elaborated on his panhandling philosophy at length, started with the fundamental point that "they're not asking you, you're asking them." He greeted every person who passed with a polite question, such as "How are you doing today, sir (ma'am)?" He considered it both unnecessary and rude to ask for a handout. "They know why you're sitting here," he said. "You don't need to say anything about money." Ricky was always cheerful when he panhandled, and he worked to make eye contact with people. When a person gave him something, no matter how small, he thanked them very politely. Moreover, if people ignored him or, on rare occasion, were abusive toward him, he still would say, "Have a good day," without a hint of malice or sarcasm. Ricky's efforts at remaining friendly and polite were echoed by all the middle-income panhandlers: John, James, Terry, Fred, and Lou. For example, James and Terry, who typically asked "Could you

77. See, e.g., George Gmelch & Sharon B. Gmelch, *Begging in Dublin*, 6 *URB. LIFE* 439, 443 (1978) ("The most elementary strategy in begging is to maximize the sympathy felt by prospective almsgivers through 'impression management' . . .; that is, beggars manipulate their appearance and manner in order to dramatically convey poverty and need.") (citation omitted); Horacio Fabrega, Jr., *Begging in a Southeastern Mexican City*, 30 *HUM. ORG.* 277, 285 (1971) (describing how panhandlers "manifestly display and use their disability in order to elicit support").

78. The regulars' tremendous concern with not offending or frightening pedestrians sharply contrasts with the flood of news and magazine articles that describe, often in vivid detail, a perceived increase in aggressive panhandling. See, e.g., Priscilla Painton, *American Scene*, *TIME*, Apr. 16, 1990, at 14, 14:

At 5 p.m. the rush-hour ticket line at New York City's Port Authority Bus Terminal wove through the customary wretched carnival of mendicants. One beggar whirled like a crazed ballerina from commuter to commuter, caressing people's shoulders and prodding their bellies with a beseeching hand. Another rolled his wheelchair up against the commuters' feet and tugged at their sleeves. A third stretched across a counter in a weirdly feline gesture, trying to intercept the change coming back to [a commuter].

spare some change please?" both said "God bless you anyway" when their requests were rejected.⁷⁹

Conveying respect and gratitude appeared to yield a number of advantages for the panhandlers. First, several regulars reported that some pedestrians who ignored their initial request for a donation would decide to give if, even after being rejected, the panhandler remained polite and friendly. For instance, the author witnessed Lou ask an older, well-dressed woman for a quarter. Though initially she had appeared frightened, and had walked by quickly, she turned around and gave him a dollar after he warmly said, "Thank you anyway." Second, several panhandlers pointed out that their relationship with the community on York and Broadway was long-term.⁸⁰ They stated that they were building a reputation with many different people, some of whom would only give after seeing them on the street for several weeks. The panhandlers' respect represented an investment with these people, who might later become relatively frequent givers, or even "patrons."⁸¹

The regular panhandlers relied on a variety of subordinate strategies that revolved around the basic concept of respect. Most of the regulars stressed the importance of not touching pedestrians, especially women. Physical contact, they repeatedly stated, severely upset people. The panhandlers also tried to sound as upbeat as possible when they spoke to passersby, believing, in John's words, that "no one wants to be dragged down." Several thought that they should appear as presentable as possible. Ricky and Fred said they tried to maintain a clean appearance when they panhandled, Fred advising that passersby "didn't want to deal with dirty human beings."⁸² He and Ricky also shunned a cup to

79. References to God were found to be pervasive in a study of panhandling in Dublin, and also "appear[] to be common among beggars in other cultures." Gmelch & Gmelch, *supra* note 77, at 445.

80. This observation suggests that the panhandlers did not expect to change their circumstances in the immediate future.

81. "Patron" refers to a particularly generous repeat giver. See *infra* notes 97-100 and accompanying text.

82. This emphasis on appearing conventionally presentable runs counter to the strategy one might expect of attempting to appear forlorn and in need, an approach researchers have found in other communities. See, e.g., Gmelch & Gmelch, *supra* note 77, at 444 (discussing panhandling strategy in Ireland of "don[ning] a begging uniform of soiled and tattered clothing").

It further bears noting that the regulars generally criticized faking an injury or disability. Keith pointed out that "people aren't that stupid"; Lou agreed, saying "they know what you're doing." Henry Mayhew memorialized this panhandling strategy among many, many others in his exhaustive, even mind-numbing, typology of panhandlers and the extremely poor. See 4 HENRY MAYHEW, LONDON LABOUR AND THE LONDON POOR 24 (Dover ed., Dover Publications 1968) (1880) (referring to those "[h]aving . . . pretended sores").

collect money, which they considered demeaning to them and offensive to pedestrians. Each opted merely to hold out his hand, but only after someone had offered a donation. Finally, similar to Ricky, several of the regulars never directly asked for money, instead merely greeting passersby.⁸³

The second element of strategy, almost as prevalent among the panhandlers as showing respect toward pedestrians, was the possession of territory. All of the middle-income regulars, with the exception of Lou, panhandled in relatively clearly demarcated "spots"⁸⁴ adjacent to one or more of the particularly successful businesses in the York district.⁸⁵ Several benefits flowed from possessing a spot. The panhandler in a particular spot was usually the first to greet customers leaving the nearest store with change in hand. James and Terry, for instance, shared an indentation in the wall next to the Store 24 entrance that provided immediate access to all who went to the convenience store, as well as shelter from wind and precipitation. In addition, holding a spot ensured that a panhandler's "patrons"—those who regularly and generously gave to him⁸⁶—knew where to find him. Ricky explained, "When [patrons] want to stop by, they know where I am. Now you know, too. Same face, same place." Panhandling in a spot also helped to form patron relationships. Several regulars observed that pedestrians who had become generous givers over time grew to know the panhandler partly by as-

83. One variation practiced only by John bears special mention. In February of 1991, he began to bounce his cup up and down, chanting "Howyadoin?" in rhythm with the cup's jangle. He soon became the best-known panhandler in the area, and for a period in the spring of 1991, whole groups of students could be seen sitting next to him on warm nights in front of Demery's, chanting "Howyadoin?" in a long line, crossing their legs back and forth in time with his chant. John reported that his average intake had increased tremendously, from perhaps \$30 to \$60 a day, since beginning "my little number."

John's attempt to distinguish himself from the other regulars by using entertainment and humor appears to be a common tactic elsewhere. See, e.g., *In Chill of the Night, the Homeless Change Habits*, N.Y. TIMES, Jan. 21, 1992, at B3 (describing panhandler "who calls himself Gumby the Frame Man—his usual panhandling trick is to stand with a picture frame around his face and say, 'I've been framed'"); Ian Fisher, *Enterprise of Being Homeless*, N.Y. TIMES, Dec. 24, 1991, at B1 (story of panhandler "saluting at car windows and incanting the almost-rhyme: 'Merry Christmas. Nickel, dime to give us?')").

84. The regulars all used this term.

85. Ricky sat on a low wall bordering Yale's Hall of Graduate Studies, near Toad's Place; John sat between Ashley's ice cream and an empty storefront next to Demery's bar; James and Terry alternated between a niche in the wall next to the Store 24 convenience store and a driveway between the Quality Wine Shop and York Square Cinema; Fred sat on a low wall two doors down from the WaWa convenience store.

The actual dynamics of acquiring a "spot," while somewhat unclear, appeared to involve returning to the same place (one not already occupied) to panhandle on a routine basis (at least several days a week) for perhaps a month or more.

86. See *infra* notes 97-100 and accompanying text.

sociating him with a particular spot.⁸⁷ Finally, holding a spot gave a panhandler a sense of "place" with familiar surroundings, fulfilling a need similar to that expressed by individuals returning to the same seats in group meetings and in classrooms. Referring to the idea of familiarity, John simply said: "This is just where I am. This is the right place."⁸⁸

4. *Other Sources of Street Income.*—Although the large majority (nine) of the regulars relied solely on traditional panhandling for their street income, three panhandlers had found other ways to raise money.⁸⁹ Dave and Sandy began selling roses several months before being interviewed, because it proved considerably more profitable, and they disliked simply asking for handouts. Nevertheless, like the traditional panhandlers, their small-time enterprising depended significantly on the generosity of others: the local florists who sold them roses, often at great discounts,⁹⁰ and the pedestrians who bought the flowers, which were sometimes in poor condition. Generally charging \$3 for one rose and \$5 for two, Dave and Sandy made significantly more than the other York district regulars. On a slow day, they might earn between \$20 and \$40; on a busy weekend night, up to \$100.⁹¹ Curiously, although the middle-income

87. John once described the surprise a patron expressed when finding him eating lunch outside of Broadway Pizza, nearly a block from his usual spot. The patron, he said, looked almost shocked, and asked, "Hey, what are you doing *here*?"

88. Lou and Keith placed less emphasis on territory than the other regulars, but both seemed to depend on it somewhat. Keith, although he panhandled less than others, almost always went a few blocks away to Naples Pizza when he did ask for money. This choice partly reflected his belief that the police officers would not let him panhandle in the York district. (For the relationships between panhandlers and police generally, see *infra* Part IV.C.) When asked why he went there, he merely said, "They know me around Naples." Lou claimed that territory was unimportant, and stated that he simply moved "wherever the people are." (Ricky, who held Lou in disdain, said he was "not about to go chasing after everyone to make money.") Yet Lou almost always stayed within the York district, venturing a block or two away at most. Even this level of mobility, however, seemed to have yielded him a lower number of patrons than the stationary regulars (although, of course, other factors may account for this difference). Lou mentioned only "a couple" of people as reliable givers, and seemed less attached than the other panhandlers to the community of students who frequented York and Broadway.

89. Anecdotal evidence suggests that selling goods (often of little value), although perhaps less pervasive than panhandling, is a common strategy among the extremely poor for earning money. See, e.g., Fisher, *supra* note 83, at B1 (describing homeless man's practice of retrieving discarded goods, such as "furniture and clothes," to "resell on the street").

90. The two bought roses from a flower stand on the corner of York and Broadway or a florist on nearby Howe Street, paying three or four dollars a dozen for wilted flowers, and half price or more if the roses were in good condition.

91. Sandy had recently concentrated much of his efforts near a nightclub on College Street, several blocks from the York district, and had convinced the owner to allow him inside the nightclub each Sunday night to sell his roses. Sandy routinely earned more than \$100 on Sundays.

individuals knew that selling roses was more lucrative than panhandling, most waved off the idea. In a typical comment, Ricky said, "Naw, that's Sandy's thing," sounding more intimidated about being an entrepreneur than fearful that he would intrude on Sandy's business.⁹²

C. Gifts and Givers

Much of the media's recent discussion of panhandling focuses on the view of the giver rather than the receiver. A recent *Time Magazine* cover story observes, "[i]t is left to individuals to decide . . . how they are going to confront the inevitable challenge to their daily routines when a beggar crosses their paths."⁹³ Indeed, even the title of the story reveals its orientation: "Begging: To Give or Not to Give."⁹⁴ Looking at the other side of the giver-receiver exchange, this section discusses the handouts received by York district regulars, as well as the regulars' perceptions of and relationships with the givers.

1. *The Gifts*.—Money was by far the most common gift of passersby, and every regular said that money comprised "nearly all" of the handouts received. Donations averaged between twenty-five and fifty cents (with a dollar being quite common⁹⁵), and ranged from a few cents up to five dollars, with an occasional gift of ten or twenty dollars. Other donations included food and clothing. The medium-income regulars estimated that they received offers of food two to five times a day, generally restaurant leftovers. During dinner hours, Ricky, Terry, and John, whose spots were adjacent to pizza restaurants, often received three or four slices of pizza from pedestrians, enough to constitute a

92. Another practice, which only Keith relied on, involved collecting returnable bottles and cans—not particularly lucrative in Connecticut, where a bottle or can is redeemable for only five cents. On a "good day," Thursday through Saturday, Keith could earn \$10 by rummaging through garbage cans and scanning the York district parking lots. Other regulars considered collecting "returnables" extremely inefficient. James explained: "It'd take me *all night* to find 100 cans, and I'd only get five bucks for that. In that time, I'll make a *lot* more money panhandling."

93. Gibbs, *supra* note 69, at 76. A raging debate exists over whether to give to panhandlers, and the debate is not always divided along ideological lines. Compare Platt, *supra* note 67, at A25 (executive director of homeless services center argues that "out-of-pocket donations only aggravate the problems they are meant to relieve" because they help support chemical dependencies and discourage working at the minimum wage) with Ed Abrahams, *I Give. I Don't Ask Why They Need the Money*, N.Y. TIMES, Aug. 10, 1988, at A26 (New York director of the Coalition for the Homeless contends that while Platt believes panhandling donations discourage panhandlers from seeking social services, "[m]any panhandlers have already sought these services, only to find them inadequate or unavailable").

94. Gibbs, *supra* note 69, at 68.

95. Perhaps eight to ten times a day for a panhandler in the medium-income group.

filling meal—and generally, far preferred to soup-kitchen food. Perhaps once a week, someone would offer to buy the panhandler a modest meal of their choice; gifts of coffee and hot chocolate were routine in the winter. Offers of clothing, not surprisingly, were most common in the winter months, and generally came from those who knew the panhandler well. Rounding out the donations were cigarettes, the occasional beer, and books and magazines.

2. *The Givers*.—Although estimates varied, the panhandlers generally thought that ten to twenty percent of the York district pedestrians gave something to them, citing Yale students in particular for their generosity. Several of the regulars estimated that perhaps half of the Yale students gave something, although this estimation is probably somewhat exaggerated. The panhandlers had varying views of the generosity of the townspeople, although most perceived them to be less generous than Yale students, both in the percentage of givers and in the amount of the average gift.⁹⁶

Certain pedestrians were especially notable for their generosity and concern. Eight of the panhandlers (including the rose sellers) mentioned that they benefitted greatly from repeat givers, or “patrons.”⁹⁷ Patrons (“my associates,” Fred called them) knew a particular panhandler by name, regularly talked with him on the street, gave him significant amounts of money (perhaps five dollars a week), and were also far more likely than other passersby to offer the panhandler clothing or food. A patron’s commitment could vary from a routine donation of a dollar and a warm greeting to long conversations that ended with gifts of new clothing. The Yale and New Haven police were well aware of these patron-panhandler relationships. One Yale police officer described in detail the various goods and services offered to a panhandler who died before this study began. In her words, “He had all these people trained to help him out.”⁹⁸

Patrons seemed more often than not to be Yale students, although they also included other New Haven residents, certain store employees, some bar regulars from surrounding towns, and, interestingly, a number

96. When asked how they could differentiate between Yale students and other pedestrians, most panhandlers laughed; in one instance, a regular asked if the interviewer was “an idiot.”

97. There is evidence that panhandlers in other societies enjoy similar relationships. See Gmelch & Gmelch, *supra* note 77, at 448-50 (“After begging in the same [Dublin] neighborhoods for a year or more, some beggars establish patroness-client relationships with certain housewives. . . . In patroness-client begging, . . . [a]t the very least, personal names are used and the most obvious begging strategies . . . are no longer necessary. In the more established relationships . . . [f]riendship and confidences are sometimes shared.”).

98. Interview with Nancy Warren, Lieutenant, Yale University Police, *supra* note 30.

of police officers.⁹⁹ The number and loyalty of a panhandler's patrons appeared to depend on two factors: how long a panhandler had been in the York district,¹⁰⁰ and how actively the panhandler cultivated relationships with pedestrians. Ricky and John, the two most amiable, outgoing panhandlers, each estimated that they had good relationships with more than twenty-five or thirty such patrons, probably the most among the York district regulars.

Not all the panhandlers had patrons. In fact, those who were perhaps most in need of such help received it the least. Building and sustaining long-term relationships with passersby appeared nearly impossible for Chip and Barry, the mentally ill panhandlers, and Linda, the combative drunk. Indeed, all three were more likely to alienate pedestrians than to befriend them.

3. *Mistreatment*.—On the other end of the spectrum from "patrons" were those pedestrians who ignored or even hassled the panhandlers. By far the most common slight the regulars faced was pedestrians refusing to acknowledge their existence, a reaction that, according to the media, appears to be on the rise.¹⁰¹ Less common were those who appeared frightened or disgusted by the panhandler. These pedestrians often left a wide berth between themselves and the panhandler. Several of the regulars expressed concern that those panhandlers who were excessively drunk or mentally ill frightened pedestrians into believing that every panhandler "was way lost of control, lost of control," as Ricky put it. "Makes it bad for all of us," he muttered.¹⁰²

99. See *infra* Part IV.C.

100. One regular, Terry, believed that a patron's giving declined over time. In his view, a patron would only give for a certain period of time, "because they're gonna expect that you get your act together." Terry nevertheless seemed to have a number of patrons. He said: "You know—they [the patrons] look out for you . . . you have an understanding with them . . . you don't even need to ask."

101. See, e.g., Peter Steinfelds, *Apathy is Seen Greeting Agony of the Homeless*, N.Y. TIMES, Jan. 20, 1992, at A1 ("A decade after homeless and destitute people began flooding city streets, religious leaders say they fear that Americans are beginning to turn away from the outstretched hands, numbed by the severity of the problem and confused about how to respond."). There is, apparently, an increasing desire among some Americans, particularly in large cities, to have the homeless and extremely poor out of sight and out of mind. See, e.g., Sara Rimer, *Doors Closing as Mood on Homeless Sours*, N.Y. TIMES, Nov. 18, 1989, at A1:

As New Yorkers become increasingly disturbed and exasperated by the overwhelming presence of homeless people, more and more public institutions are adopting policies intended to keep out the homeless. . . .

[An] official who oversees the outreach program for the homeless in the subway . . . said there had been a marked change . . . in letters from riders . . . "[T]hey've [recently] been saying: 'Just get them out. I don't care. Just get them out any way you can.'"

102. The lucid regulars themselves attempted, as best they could, to control the

Verbal abuse was uncommon, although all the regulars suffered occasional remarks such as "Get a real job!" or "Get the hell out of here!" from passersby. The relative freedom from verbal harassment seemed to arise from at least two factors. The first was peer pressure, especially within the Yale community,¹⁰³ which was generally sympathetic to the panhandlers' perceived plight. At least three panhandlers recalled recent incidents where one student in a group had insulted the panhandler, and others had immediately criticized that student. Second, if a pedestrian (usually drunk) leveled more severe verbal abuse at the panhandler, a Yale or New Haven police officer would, if nearby, generally intercede and protect the panhandler.¹⁰⁴ Such episodes were relatively rare, however.

In sum, the York district regulars generally sought to present themselves as friendly, appreciative, and anything but dangerous, drawing a sharp contrast to the view of panhandlers as aggressive and intimidating.¹⁰⁵ In the York district, at least, if any pedestrians felt harassed by the panhandlers, it was likely due to the rantings and unpredictable behavior of the area's three "loose cannons," Chip, Barry, and Linda, or by transients who might not, for various reasons, adhere to the strategies of the other regulars. Interestingly enough, to alleviate the problems caused by these more threatening players, the lucid regulars themselves attempted to control the activity of panhandling. The next Part, which considers the regulation of panhandling, thus begins with the pattern of control imposed by the panhandlers, and then explores their relationships with York district businesses and the police.

IV. REGULATING PANHANDLING

Panhandling was "regulated" in New Haven, but that regulation was structured less by formal legal rules than by the relationships and informal norms operating among three groups: the panhandlers themselves, business owners and employees, and the police. First, the panhandlers worked to maintain a modicum of order and stability among themselves, minimizing aggressive soliciting and other problems. Second, York district businesses attempted to regulate panhandling further, through modest "self-help" measures, but they also expressed concern for the

panhandlers that they felt intimidated pedestrians. See *infra* notes 108-15 and accompanying text.

103. New Haven Police Sergeant Arthur Alonzo observed, "You wouldn't believe how concerned all these students are about the street people." Interview with Arthur Alonzo (pseudonym), Sergeant, New Haven Police Department, in New Haven (Mar. 16, 1992).

104. See *infra* Part IV.C.

105. See, e.g., William Poole, *Beggars' Army*, N.Y. MAG., Aug. 29, 1988, at 31 (suggesting that aggressive begging has become a panhandler's only way to make money).

panhandlers, and their relationships with the regulars were a complex blend of annoyance and sympathy. Finally, although the New Haven and Yale police forces constituted the ultimate authority for maintaining order in the York district, their control of panhandling did not readily reflect the applicable law, and they seldom arrested panhandlers for criminal violations. Instead, customary understandings with the regular panhandlers, and even friendships with many of them, provided the foundation for police regulation of panhandling. This Part explores the dynamics of the relationships among panhandlers, shopkeepers, and police, to piece together how panhandling in the York district was regulated in practice.

A. Rules Among the Panhandlers

Although it would be an exaggeration to claim that the panhandlers truly "policed" themselves, the lucid regulars did attempt to enforce certain informal rules, or norms, among the panhandlers. These loosely followed norms served to increase panhandling income by ensuring peace and stability on the street, and thus a less hostile environment for pedestrians.¹⁰⁶ Ironically, then, the panhandlers that pedestrians and the media so often perceive as a threat to safety on the street can be a source of order. The norms examined here are closely related to the strategic components of panhandling discussed in Part III, but those strategic components were self-imposed, whereas the norms at issue here were community standards, "rules" the panhandlers sought to enforce on each other (sometimes with limited success).¹⁰⁷ Three norms in par-

106. For extended analysis of the hypothesis that members of "close-knit" groups will "develop and maintain norms whose content serves to maximize [their] aggregate welfare" in certain circumstances, see ROBERT C. ELICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* 167-83 (1991). No attempt is made here to apply this hypothesis rigorously to the York district panhandlers. Ellickson conditions the applicability of his hypothesis on the existence of several specific criteria, many of which may not be satisfied here. For example, the panhandlers may not fulfill the defining requirements of a "close-knit group," *id.* at 177-82, and Ellickson points out that the "informal-control system[s]" he analyzes "may not be effective if the social conditions within a group do not provide members with information about norms and violations and also the power and enforcement opportunities needed to establish norms." *Id.* at 177 (footnote deleted). The panhandlers had little real power over one another, making enforcement of the norms at issue a difficult task. It also may not be appropriate to lump all panhandlers into one "group," but rather, to separate out the lucid regulars as constituting one group that attempted to enforce *its* norms on those—newcomers and drunk or mentally ill regulars—who were not part of that group.

107. See *id.* at 126-32 (distinguishing among five types of rules of behavior including (1) "personal ethics" imposed by an individual upon herself, and (2) "norms" enforced by others, including those "not involved in the primary interaction").

ticular reflected the regulars' intense interest in preserving the favorable panhandling conditions in the York district: (1) respecting pedestrians, (2) maintaining minimum distances between panhandlers, and (3) honoring existing claims to territory.

The most important norm concerned the expectation that every panhandler treat pedestrians respectfully. While the regulars¹⁰⁸ could generally rely on one another to adhere to this strategy out of self-interest,¹⁰⁹ they sought to impose similar conduct on the "problem regulars"—Linda, Barry, and Chip—as well as on newcomers, whose behavior they could not always predict. According to several panhandlers, the core fear was that when one panhandler was aggressive or unpleasant, pedestrians attributed that behavior to "all of us on the street." "[The aggressor] makes us all look like nut cases, which we don't need," observed Fred.¹¹⁰ Worse yet, this intimidating behavior upset the delicate balance regulars like Sandy, Terry, and Lou believed they had achieved with the police. Terry elaborated: "Too much noise, [the officers] will start moving us along."¹¹¹

The regulars' attempts to control the problem regulars and others were not always successful. When Linda was drunk, she often yelled or growled at those who passed by her, while Chip spent a lot of time talking loudly to himself, dancing around unsteadily, or curled up in minor convulsions. Keith (himself often drunk) routinely tried to keep Linda quiet, and John and Ricky often talked to Chip, asking him to stop harassing passersby. "Always making a fool out of himself," Sandy remarked. Barry was most a concern when he tried to panhandle instead of keeping to himself; he was most frightening, Lou and Ricky complained, when his unsteady speech and actions were aimed directly at passersby.¹¹²

When transients appeared on the street, the regulars approached them to explain the importance of respecting pedestrians. Ricky strongly

108. Here, the term "regulars" refers to the nine lucid regulars.

109. On occasion, regulars would caution each other about being disrespectful. Ricky mentioned that on certain evenings, John might drink too much: "Then he start yappin' 'Howyadoin' right in everyone's face, right up next to them. Get some people *mad*, and then I'll catch him for a moment, [and] say 'John, slow up, slow up.'"

110. Newspaper and magazine articles often, it seems, choose to portray only the more aggressive and frightening panhandlers and street people, which may merely reinforce pedestrians' images of their own most unsettling experiences with panhandlers. See, e.g., Painton, *supra* note 78, at 14.

111. The panhandlers' relationships with the police are discussed *infra* Part IV.C.

112. If other panhandlers less familiar to the York district were drunk or appeared to be a "bugs bunny," as Ricky called the mentally ill, one of the regulars would try at least once to calm them down if they were causing a disturbance. James was particularly annoyed with one or two noisy intruders who sometimes floated through the York district after eating at the nearby Community Soup Kitchen on Broadway.

advised the stream of short-term panhandlers to "give everyone your respect." He appealed to their self-interest: "You benefit you, you benefit us," Ricky would say, "because you get yourself some money, and won't go scarin' away everyone who gives us money."¹¹³ James made a point of talking to every person he did not know on Broadway to "keep them in line."¹¹⁴ The regulars generally stated that the transient panhandlers adhered to the advice they gave them—except when, like the problem regulars, they were heavily affected by drugs or alcohol, or were mentally ill. In fact, the transients sometimes approached the established panhandlers first to ask if there was money to be made ("How is this place?" "How's it flow around here?"), and the regular, after answering, would then add his views on "how it works on this street."¹¹⁵

The second loosely enforced norm applied to the distance two panhandlers maintained between them when asking for handouts. The lucid regulars agreed that about twenty-five feet was the minimum reasonable space between two panhandlers, the concern being that if they were any closer together, pedestrians would find them too overbearing.¹¹⁶ James pointed this out, saying "no one'll give to us if we're on top of each other." The pieces of territory held by Fred, Terry, James, Ricky, and John readily adhered to this twenty-five-foot "rule"; James and Terry

113. Ricky expressed a sense of common purpose among the panhandlers, stating that he never wanted to see another panhandler doing badly. He saw newcomers less as competitors than as fellow people "who didn't get a break." His view was: "plenty here for everybody." Terry echoed Ricky, indicating that new panhandlers did not concern him nearly as much as new *loud* panhandlers. James and Lou, in contrast, worried that a saturation point might come.

114. Although it was rare, a fight between two panhandlers was a nightmare for the regulars. Fights frightened pedestrians, and usually brought police officers and arrests, straining the relationships the rest of the panhandlers had painstakingly built up with the police. See *infra* Part IV.C. If possible, a regular would try to resolve a dispute before the police appeared. Ricky, for instance, appealed to the combatants' self-interest, warning them that the police would arrest everyone involved, so no one could "win" the argument. Shaking his head, John said, "nobody wins, nobody wins, *we all lose* every time some idiot start it up." James agreed, asking "What's the logic? What's the logic?"

115. Regulars sometimes advised transients to stay away from certain businesses, knowing it would cause a problem if the panhandler stood there. Cutler's Records on Broadway, in particular, was forbidden territory. The owner "*hated*" panhandlers, Keith and Lou both said.

116. The 25-foot rule seemed not to hold on warm evenings when overflows from Demery's and Toad's Place brought large numbers of people onto the street. One store owner recalled counting six panhandlers within about 50 feet of one another outside of Toad's Place one evening. Interview with Chuck Caldwell, Owner, The Game, *supra* note 74. The rule's lack of application in such circumstances probably did little harm, because the policy behind it—not overwhelming pedestrians—was not furthered, given that the large number of pedestrians likely diluted the effects of so many panhandlers.

were the closest regular territory-holders, with perhaps seventy-five feet between them. Newcomers and the problem regulars did not always abide by the rule, but if one of them stood too near to an established panhandler, the latter would ask the intruder to move away. James, for instance, would say, "Hey! A little respect, my man?" The newcomer often heeded James's request, but if he proved unwilling, James would move over himself, or leave. He did not want even the most remote possibility of a fight.¹¹⁷ Lou, in contrast to the other medium-income group members, claimed that he was not as concerned about distance, but the author never saw Lou sitting near another panhandler.

The final norm involved recognition of territory. Compared to "distance violations," the regulars were far more annoyed if they found a problem regular or a transient sitting in their spot. Such "trespassing," which probably did not affect the York district environment as much as breaches of the other norms, nevertheless bothered Fred, Ricky, John, Terry, and James (those with spots) significantly. Not only did a trespasser disrupt their sense of routine, but having to panhandle *near*, rather than *in*, their spots often proved exceedingly difficult because most businesses adjacent to particular spots disliked having a panhandler within the actual boundary lines of the storefront.¹¹⁸

When a regular found his spot occupied, he had a number of options. Upon a request to move, transients often surrendered the territory; those who stayed on the block for several days, explained Ricky, would often, after the first day, move away before he even approached them. Sometimes, the trespasser asked for a brief grace period to earn some money, tacitly accepting the established panhandler's claim to the area. When the trespasser was recalcitrant, however, the "owner" occasionally enlisted the help of another regular. James, Terry, Ricky, John, and even Keith and Sandy, who did not themselves depend upon territory, had at one time or another intervened on behalf of another regular, telling a stranger to "show a little respect, and move on out," as Ricky put it. More commonly, though, if the trespasser proved hostile, the regular would move aside for the time being.

Ironically, the norms or "regulations" that prevailed among the lucid panhandlers approximated in certain ways the "model begging statute" set out in a recent Note.¹¹⁹ That proposed statute would prohibit panhandling that is "accompanied by harassment" and would limit "in-

117. Other regulars, too, said that they would restation themselves elsewhere or stop panhandling rather than risk an argument, but they always asked the other person to move first, indicating a sense of entitlement to their territory.

118. See *infra* notes 130-33 and accompanying text.

119. See Knapp, *supra* note 8, at 423.

trusions of privacy upon a captive audience.”¹²⁰ Given that panhandling of this sort was likely to reduce their income, most of the York district regulars already adhered to such regulations, and sought to impose them on other panhandlers in the area. Nevertheless, in the eyes of the district’s businesses, panhandling still presented a problem. The next section explores the attempts by these businesses to control panhandling.

B. Panhandlers and the York District Businesses

The businesses in the York district were interested in protecting their own profits—profits, some business owners believed, that were adversely affected by panhandling’s prevalence in the York district. For these owners, the desired regulation of panhandling was simple: prohibit it. However, not only was panhandling legal in Connecticut, but the police had made clear to many businesses their belief that the panhandling problem could not be solved simply by enforcing existing laws or enacting new ones. This left store owners and restaurateurs to rely on modest self-help measures to reduce the perceived negative effect that panhandling had on their businesses, with a rare call to the police when a panhandler posed a peculiarly difficult problem. But businesses’ relationships with panhandlers were far from uniformly negative. The sense that many of the panhandlers were decent human beings genuinely in need—a sense enhanced by the regulars’ attempts to be polite and respectful toward owners and employees—led the businesses to help the panhandlers as much as they hindered them.

1. *Owners: “If It’s Your Business, You Worry.”*—York district business owners could be divided into two categories: “owner-operators,” who worked on the premises of their business, and “absentee owners,” who relied on employees to run the business day to day. Employees who worked for absentee owners, and were usually paid a fixed wage, were less concerned about panhandlers than owner-operators.¹²¹ If panhandlers did in fact deter potential customers from shopping in the York district, it was the owner-operator or the absentee owner who suffered, not the employee.¹²² The owners of Yorkside Pizza, Demery’s bar, and the Quality Wine Shop, each of whom ran their business on-site, all described panhandling in the same, simple way: “It’s bad for business.”¹²³

120. *Id.*

121. Among the more prominent owner-operated businesses were Yorkside Pizza, Toad’s Place, Demery’s, Quality Wine Shop, and Broadway Pizza.

122. Although, of course, an employee might lose her job if the business closed or reduced its hours or workforce. The employees interviewed did not seem to consider this a realistic possibility, and their views of the panhandlers were largely positive. See *infra* notes 141-44 and accompanying text.

123. Interview with Tony Koutroumanis, Owner, Yorkside Pizza, in New Haven

Contrasting himself to a flat wage employee, the Yorkside owner added, "If it's *your* business, *you* worry."

Owner-operators feared they were losing customers of two sorts: those from nearby towns without bookstores, wine shops, and similar businesses of the caliber offered by the York district, and visitors to the Yale campus, looking for a souvenir or a meal. Neither type of customer, the owner-operators explained, realized that most of the regular panhandlers were not dangerous. These customers were the ones who usually complained to the businesses about being "approached, harassed, attacked, jumped," and so on, by panhandlers.¹²⁴ The owner of the Quality Wine Shop remarked: "A lot of people [who come to the York district] don't know that they're harmless—you just have to get to know them." Yale students, the owner-operators agreed, continued to patronize the York district despite the panhandling,¹²⁵ although the owners were distressed about the students' generosity toward the panhandlers: "they're

(Apr. 1, 1992); Interview with Raymond Pitkin (pseudonym), Owner, Demery's, in New Haven (Apr. 1, 1992); Interview with Thomas Stimson (pseudonym), Owner, Quality Wine Shop, in New Haven (Apr. 2, 1992). The owner-operator of The Game, a clothing store, stated that his profits were down over 20% since 1989, the year that both businesses and police generally dated as marking a significant increase in York district panhandling. Interview with Chuck Caldwell, Owner, the Game, *supra* note 74. (In the mid-1980s, apparently only two or three regulars and a few transients panhandled in the district.) The late 1980s also marked the beginning of a recession, leaving in doubt the comparative negative effects of panhandling, the recession, and other unidentified factors. Some owner-operators readily acknowledged that much of their profit drops could probably be attributed to the recession. Interview with Raymond Pitkin, Owner, Demery's, *supra*.

The owner-operators based their belief that panhandling harmed business on anecdotal evidence. The owner of The Game stated that on occasion, when a panhandler stood directly in front of his store, the number of customers would drop immediately. Interview with Chuck Caldwell, Owner, The Game, *supra* note 74. There were conflicting views from some employees and police, however. For example, one employee at Ashley's ice cream, two doors down from The Game on York, stated that the presence of panhandlers, even in the store, did not affect business. Interview with Michele Rosen (pseudonym), Employee, Ashley's, in New Haven (Apr. 2, 1992). Further, one New Haven police officer believed that the York district businesses were suffering largely because of the recession, and were using the panhandlers as scapegoats. Of the claim that panhandlers accounted for significant losses in business, the officer said: "It's not true. It's unfortunate [that the business owners think that way]." Interview with Ron Oates, Sergeant, New Haven Police Department, *supra* note 30.

Other metropolitan areas do have systematic evidence that panhandling may deter customers from shopping in a given area. In an April 1991 public opinion poll conducted by the San Francisco City Attorney's Office, 25% of Bay Area residents polled said that they shopped in San Francisco "less often" because they were "turned off by panhandlers." See James N. Baker, *Don't Sleep in the Subway*, NEWSWEEK, June 24, 1991, at 26.

124. Interview with Raymond Pitkin, Owner, Demery's, *supra* note 123.

125. Of course, this could be due as much to the relative lack of other businesses catering to student needs in the area as to any other factor.

the ones who give all the money and keep the beggars coming back for more."¹²⁶

Given their impression that panhandling reduced business profits, owner-operators wanted the police to drive panhandlers out of the York district. But panhandling was not illegal in Connecticut, and the New Haven and Yale police forces rarely enforced those criminal provisions that might apply to panhandling.¹²⁷ Worse still for the owners, the New Haven police had made it clear in several meetings with York district business leaders that a formal ordinance restricting panhandling would not prevent the activity: the police did not have the resources to enforce such an ordinance, nor would they especially *want* to enforce it.¹²⁸ Presented with this reality, the owner-operators generally adopted a two-tiered strategy to control panhandling.

The first tier, which constituted the large majority of the owner-operators' efforts at control, involved self-help, meaning "a [person's] efforts to administer sanctions in his own behalf."¹²⁹ The basic control mechanism the owner-operators used was simple, and usually effective: confront a panhandler standing in front of or near the owner's store and request—or demand—that he leave. Because the lucid regulars generally knew with considerable precision which businesses actively discouraged panhandling,¹³⁰ they posed owners less of a problem than did transients or the mentally ill or drunk regulars. The lucid regulars who held territory generally were a measured distance from any owner-operator's business; further, if those regulars who depended less on territory, such as Lou, Keith, or Dave (who sold roses) began panhandling too near an owner's store (they rarely panhandled directly in front of one), they quickly moved when confronted by an employee or the owner. The Yorkside Pizza owner observed that "the usual ones aren't as much

126. Interview with Thomas Stimson, Owner, Quality Wine Shop, *supra* note 123. Stimson discussed at length what he perceived as the panhandlers' strategy of soliciting Yale students in particular: "Trust me when I tell you, these guys know that [Yale students] give. I'm absolutely positive about that. That's where they get their money." On panhandling in general, he concluded: "to [the regulars], it's a job."

127. See *infra* Part IV.C.

128. See *id.*

129. ELLICKSON, *supra* note 106, at 131 n.21.

130. Terry, for instance, rattled off in succession an exhaustive list of businesses, indicating exactly where on Broadway's north side a panhandler could not sit: "Cutler's, Co-Op, Boola-Boola, Campus Clothing, Cobdens, Educated Burger, the stationery store. . ." and so forth. Fred, too, showed me just where his panhandling "rights" ended—at the fringe of the shoe store connected to J. Press clothing. The regulars' perception of owners' self-help measures matched the owners' descriptions. In the forbidden areas, the regulars said, a panhandler could expect someone to come out relatively quickly and order him to move. For those regulars with "spots," this knowledge was only necessary when they found their territory occupied.

of a problem. They're *predictable*. You ask them to go and they move over, they go."¹³¹ Of greater concern were the problem regulars and new panhandlers, who often stood in front of owner-operated businesses, and were not predictable.¹³² "It's nerve-racking," said one owner. "You don't know what the new ones will do [to passersby], or what they'll do when you tell them to move." Although lucid newcomers generally did leave, Barry and Chip, and other drunk, drugged, or mentally ill panhandlers did not always honor such requests. Moreover, the owners often observed a "creep" phenomenon—the panhandler would move away, then creep back to where he had been standing. This usually brought a more vociferous demand to leave from the owner.¹³³

As the second tier of control, owners sought police assistance, but only when a panhandler was behaving violently or proving *extremely* bothersome. The Quality Wine Shop owner observed that it was otherwise "a waste of police time," because in all other situations, the officer at most simply asked the panhandler to leave. Generally, the owner of The Game noted, "It doesn't do any good" to call the police. "The problem is so overwhelming that they don't even try to deal with it." One owner had called the Yale police after finding Chip dancing in circles outside of the store, howling and spitting pizza out of his mouth. Similarly, an employee from Store 24 (which had an absentee owner) had called the New Haven police when two transients began fighting over who could panhandle near the store's entrance.¹³⁴

When owners came in routine contact with the police (for example, when officers bought slices of pizza at Yorkside), the owner might express general annoyance about the panhandling situation; these comments appeared similar to everyday complaints about bad weather. In short, owner-operated businesses found police assistance a last resort, helpful in situations where a panhandler's behavior was considerably more disruptive than the routine behavior that characterized the regulars;

131. Interview with Tony Koutroumanis, Owner, Yorkside Pizza, *supra* note 123.

132. Interestingly enough, then, the owner-operators shared the regulars' concern about the appearance of newcomers and problem regulars for the same reason: for both panhandler and owner, these other panhandlers posed potential threats to pedestrians, increasing the possibility that less pedestrians would come to the York district—and revenues for both business owner and regular panhandler would suffer.

133. Threats to call the police usually proved a more effective deterrent, but because the owners could only rely on the police providing much assistance when a panhandler caused extraordinary trouble, such threats were generally reserved for cases where the owner believed the police would, in fact, forcibly move or arrest the panhandler.

134. Both were arrested, according to the employee. It is probably not a coincidence that James, who usually panhandles in the spot at issue, did not recall the incident. He was likely not there that day; had he been, the two panhandlers might never have had the opportunity to fight over the spot.

otherwise, the owners faced the problem alone as best they could.

2. *"I Was Always for the Little Guy": Charity for Regulars.*—The York district businesses did not always turn a cold shoulder to the panhandlers. In fact, interviews with owners consistently revealed sympathy for the regulars, whom they had come to know over time. Further, employees who worked for absentee owners generally had none of the negative feelings harbored by owner-operators; such employees even become friends with certain regulars. This section considers the more receptive attitudes expressed by district businesses, and the benefits that these businesses provided to the panhandlers.

The businesses' sympathy for the panhandlers seemed to derive from two factors. First (and of particular note for the owner-operators), the businesses over time had recognized that the lucid regulars caused little difficulty on the street. The worst they were guilty of, most owners and employees agreed, was offending those customers who were annoyed by any kind of panhandling, no matter how unaggressive. Owners may still not have cared for panhandling, but the regulars proved more or less responsive to their requests to move, and, as noted above, their behavior was predictable. Second, both owners and employees often believed the regulars were simply victims of a poor economy, bad luck, and so on. "A lot of them," one owner said, "would really like a job. But you're not going to find work too often today."¹³⁵ "I was always for the little guy," another added; "I know it's hard." Familiarity with a panhandler tended to increase this sympathy. Owners and employees often talked with regulars who came in to make a purchase. With the exception of Lou, who appeared to have alienated many businesses, the lucid panhandlers said that they tried to be especially polite during these exchanges. An owner on Broadway stated, "We don't dislike them as individuals. [John's] a likable guy; [Fred's] fine."¹³⁶ The owner of Toad's Place added, "I don't mind the decent ones, the nice [regulars]. I have no problem with them."¹³⁷

135. Another owner added that several regulars would ask now and then if he had a job available. He continued: "They know I'm going to say no—and I don't [have jobs available]—so then they ask me for money." Interview with Chuck Caldwell, Owner, The Game, *supra* note 74.

136. In contrast, certain owners distinguished between "hustlers" and panhandlers "who really deserve" help. These owners believed that work was available for most of the panhandlers: "all [they] got to do is put half the energy into finding a job that [they] do pestering my customers." Interview with Raymond Pitkin, Owner, Demery's, *supra* note 123. Pitkin had special contempt for John, the "Howyadoin" regular. He knew that John had an apartment, and he flatly stated that "John clears [a] *hundred bucks* near my business every night. No taxes. No responsibility. That's crap." The owner may have overstated John's earnings. See *supra* note 83.

137. Interview with Michael Spoerndle, Owner, Toad's Place, in New Haven (Apr. 2, 1992).

The sympathies of both owners and employees often translated into modest donations, usually food. The businesses gave only on an individual basis, and secretly, so as not to encourage other panhandlers to ask for handouts. In turn, the regulars jealously guarded these benefits. Some restaurants gave meals away, off and on, to a particular regular.¹³⁸ James, for instance, might order lunch at Demery's, intending to pay, and the cashier would wink and say, "this one's on the house." Similarly, Toad's Place occasionally admitted Ricky without charge on early Saturday evenings,¹³⁹ when the bar offered free pizza; the WaWa convenience store spared a hot dog for Fred now and then. In addition, a number of stores provided the valuable service of making change for the panhandlers, usually exchanging a ten-dollar bill for an unwieldy equivalent in small change.¹⁴⁰ Some panhandlers performed token chores to enhance their relationship with a particular business; such chores generally resulted in a cup of coffee or a dollar. The Quality Wine Shop owner noted, "I don't mind having Terry around sometimes because we have a dog that sits outside here if it's not cold. Terry watches the dog." Similarly, James took out trash for Store 24 every so often.

The regulars' closer relationships with employees at non-owner-operated businesses bears additional mention. Because these employees usually did not hold the ambivalent attitude of the owners, they established closer ties to the panhandlers.¹⁴¹ Their more lenient stand on panhandling usually meant that transients ended up panhandling closer to their businesses; and at least one regular's spot (James's), adjacent to Store 24, probably would have been "closed down" had the Store 24 owner worked on the premises.¹⁴² Not only did several employees

138. Davenport, one of Yale's residential colleges, also offered under-the-table donations, sometimes providing free dinners to a few panhandlers outside of its kitchen, which had a service entrance on York. Lou, Ricky, John, and Fred enjoyed this privilege, and were careful not to eat these meals in front of others.

139. Ricky later reported that the doormen at Toad's Place no longer allowed him in. He was extremely distraught over this reversal, and had no explanation for it.

140. Because he routinely provided this service for Terry, the Quality Wine Shop owner was able to corroborate Terry's estimate that he made between \$40 and \$50 each day he panhandled. Interview with Thomas Stimson, Owner, Quality Wine Shop, *supra* note 123.

141. In contrast to owner-operators, employees in absentee-owner businesses generally did not believe that the panhandlers were responsible for any decline in business in the York district. Interview with Michele Rosen, Employee, Ashley's, *supra* note 123; Interview with Jane Simon (pseudonym), Employee, Educated Burger, in New Haven (Mar. 30, 1992).

142. Similarly, although the owner of WaWa's had hired a security guard to maintain order in and around the store (which was a magnet for late night trouble), the guard allowed Fred to sit next to the store; had the owner worked there, it is doubtful that Fred would have enjoyed this privilege.

say that they enjoyed the company of certain of the regulars, but some indicated that particular regulars "looked out for them" in various ways, such as by accompanying them to their car if they finished work late at night.¹⁴³ The regulars who were closest to such employees understood that the employees earned only a modest income.¹⁴⁴ These regulars might accept a cup of coffee from an employee, but they considered it a matter of courtesy not to ask for handouts from them. In fact, James had once mistakenly solicited an employee he knew well; when he recognized her, he quickly apologized.

C. Panhandlers and Police

New Haven and Yale police served as the primary authority for maintaining order in the York district, working both to prevent panhandlers from becoming too aggressive toward pedestrians *and* to ensure the panhandlers' safety. The formal criminal provisions potentially applicable to the panhandling problems that arose in the York district did not constitute a central component of the officers' approach to regulating panhandling. Indeed, while Connecticut has no statute specifically prohibiting panhandling, the officers indicated that such a prohibition would not fundamentally alter their regulation strategy. The police considered panhandling at least as much a social and economic problem as a legal one, and, generally finding the blunt use of arrest neither effective nor desirable, they regulated panhandling largely by relying on their relationships with the panhandlers and on customary practices of control, not always in accord with the relevant legal rules. "We're not using law to deal with [panhandling]," said New Haven Sergeant Arthur Alonzo.¹⁴⁵

1. *A Law on the Books, not the Streets.*—Reference to the General Statutes of Connecticut or the Code of the City of New Haven would not inform a lawyer much about actual police regulation of panhandling in the York district. Certain laws on the books were not often enforced, while at times, other "laws" that did not exist *were* enforced. New Haven and Yale police officers rarely arrested¹⁴⁶ panhandlers under the

143. Interview with Samantha Parks (pseudonym), Employee, WaWa's, in New Haven (Mar. 31, 1992).

144. It can safely be said that those employees who worked at the minimum wage often made less in one day than the middle-income group regulars. See *supra* text accompanying note 67.

145. Interview with Arthur Alonzo, Sergeant, New Haven Police Department, *supra* note 103.

146. "[A]rrest may easily misrepresent the reality of routine police work." DONALD BLACK, *THE MANNERS AND CUSTOMS OF THE POLICE* 86 (1980). Black continues:

Connecticut statutory provisions against disorderly conduct¹⁴⁷ or breach of the peace.¹⁴⁸ This may not seem surprising, because many regulars were generally polite and respectful in their soliciting, and, given that neither Connecticut nor New Haven prohibits the mere activity of panhandling¹⁴⁹ or loitering,¹⁵⁰ the regulars apparently were not violating any legal provision.¹⁵¹ But the police generally did not arrest even those

Too often the [police] routine is equated with the exercise of the arrest power, not only by members of the general public but also by lawyers and even many police officers. In fact, however, the daily round of the patrol officer . . . infrequently involves arrest The most cursory observation of patrol officers on the job overturns the imagery of people who make their living parceling citizens into jail.

Id. (footnote omitted).

147. CONN. GEN. STAT. ANN. § 53a-182 (West 1991). That section provides: (a) A person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he: (1) Engages in fighting or in violent, tumultuous or threatening behavior; or (2) by offensive or disorderly conduct, annoys or interferes with another person; or (3) makes unreasonable noise; or (4) without lawful authority, disturbs any lawful assembly or meeting of persons; or (5) obstructs vehicular or pedestrian traffic; or (6) congregates with other persons in a public place and refuses to comply with a reasonable official request or order to disperse.

148. CONN. GEN. STAT. ANN. § 53a-181 (West 1991). That section provides: (a) A person is guilty of breach of the peace when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he: (1) Engages in fighting or in violent, tumultuous or threatening behavior in a public place; or (2) assaults or strikes another; or (3) threatens to commit any crime against another person or his property; or (4) publicly exhibits, distributes, posts up or advertises any offensive, indecent or abusive matter concerning any person; or (5) in a public place, uses abusive or obscene language or makes an obscene gesture; or (6) creates a public, hazardous or physically offensive condition by any act which he is not licensed or privileged to do.

149. Connecticut repealed an anti-panhandling statute in 1969. Former § 53-340, entitled "Vagrants and common drunkards," provided in part: "[A]ll beggars who go from door to door or beg in the highways . . . shall . . . be imprisoned." CONN. GEN. STAT. ANN. § 53-340 (repealed 1969). Former § 53-336, entitled "Tramps," provided in part: "All transient persons who rove about from place to place begging . . . shall be deemed tramps, and every tramp shall be punished by imprisonment for not more than one year." CONN. GEN. STAT. ANN. § 53-336 (repealed 1969).

150. Connecticut provides by statute that each municipality has the power to "[k]eep streets, sidewalks and public places free from undue noise and nuisances, and prohibit loitering thereon." CONN. GEN. STAT. ANN. § 7-148 (West 1991). However, New Haven has no anti-loitering ordinance. See NEW HAVEN, CONN., CODE OF GENERAL ORDINANCES (1991).

151. No Connecticut court has directly addressed the question of whether aggressive panhandling may constitute either disorderly conduct, CONN. GEN. STAT. ANN. § 53a-182, or breach of the peace, CONN. GEN. STAT. ANN. § 53a-181. Mere requests for money from passersby do not violate either provision. The Connecticut Supreme Court has held

individuals whose panhandling activity arguably *did* violate the disorderly conduct or breach of the peace provisions; instead, the officers attempted merely to get the troublemakers to leave.¹⁵² On the other hand, the police often ordered new panhandlers to leave the York district for violating a non-existent anti-panhandling "law."¹⁵³ Even the regulars suffered predictable, episodic enforcement of this anti-panhandling "law," with orders to stop panhandling, and even threats of arrest or (rarely) actual arrest, when they were not committing any crime.¹⁵⁴ This section seeks in part to explain these discrepant phenomena.

Police regulation of panhandling was largely determined by two sets of factors: (1) constraints on the legal system and the law's perceived ineffectiveness in solving the problem of panhandling; and (2) officers' ongoing relationships with the panhandlers.

The first set of factors begins with constraints on the resources of the criminal justice system. Even in its more harassing forms, panhandling was, as New Haven Sergeant Arthur Alonzo put it, "a minor problem, and we really don't have the time or resources to deal with panhandling complaints much. We've got murders, armed robberies, and drug dealing to face here."¹⁵⁵ Alonzo's views reflected those of his colleagues on both the New Haven and Yale police forces.¹⁵⁶ Echoing the police, prosecutors

that speech alone can only constitute disorderly conduct if it amounts to "fighting words," see *State v. Anonymous*, 389 A.2d 1270, 1272 (Conn. 1978), and the court has implied a similar limitation for breach of the peace charges, see *State v. Battista*, 523 A.2d 944, 945 (Conn. 1987). Further, mere persistence in requests for money probably would not violate the disorderly conduct provision. See *State v. Anonymous*, 363 A.2d 772, 774 (Conn. 1976) (defendant, attempting to sell newspaper to complainant, "persisted after [complainant] had expressed disinterest in his cause. That, however, without more, does not constitute criminal conduct.").

152. Thus, panhandlers who directed sharp streaks of violent profanity at pedestrians, or followed them, touching them and asking for money, were in many instances coaxed, ordered, or escorted away from the area, rather than arrested. *Cf.*, e.g., *Battista*, 523 A.2d at 945 (breach of peace conviction for repeatedly cursing complainant in loud voice in public place). This is not to say that arrests never occurred. See *infra* notes 195-205 and accompanying text.

153. There did not appear to be a clear legal basis for a police order to stop panhandling and leave the area when a panhandler was merely asking passersby for money. As stated, New Haven does not have a loitering ordinance, neither New Haven in particular nor Connecticut in general prohibits panhandling, and the statutory provisions relating to disorderly conduct and breach of the peace apparently do not apply to the activity of merely requesting money from passersby.

154. See *infra* notes 176-77 and accompanying text.

155. New Haven appears typical in this regard. See Gibbs, *supra* note 69, at 74 ("[I]n most cities the police are too busy to spend their time and manpower hustling panhandlers out of sight.").

156. "Prosecutors want to cut your legs off when you bring panhandlers in," warned one Yale officer. Interview with Nancy Warren, Lieutenant, Yale University Police, *supra* note 30.

at the Office of the State's Attorney said that they simply did not have the capacity to try aggressive panhandlers for disorderly conduct or breach of the peace violations. Prosecutor Robert Stillman advised: "You've got to allocate your resources wisely. The police don't arrest [panhandlers] and we don't prosecute [them]."¹⁵⁷

In addition, the police generally believed that arresting panhandlers would not "solve the problem" of panhandling, aggressive or not. Taking a broad view of panhandling as a social and economic problem, rather than as a narrow question of law enforcement, New Haven and Yale officers pointed out that arrests for disorderly conduct and breach of the peace did not address the root causes of panhandling. The officers believed that unemployment and lack of job training, dependency on drugs and alcohol, and deinstitutionalization of the mentally ill accounted for the panhandling in the York district, and several officers stated that arresting a panhandler usually amounted to "taking someone in 'cause they're penniless or drunk, and that's just inhumane."¹⁵⁸ "We are not going to abolish panhandling," Sergeant Alonzo declared, "by locking people up."

Moreover, the officers explained that the applicable legal provisions were not a significant deterrent, even to aggressive individuals, because the sanction was small: arrest followed by a decision not to prosecute. "The worst they'll get," Sergeant Alonzo observed, "is a night in jail and a hamburger while they're in there." Exaggerating only slightly, New Haven Sergeant Oates added, "It's pointless to go arresting these people. They're right back on the street in ten minutes."¹⁵⁹

The police officers' belief that arresting panhandlers was both an unconstructive and ineffective measure led to their uniform contention that a city ordinance restricting panhandling would change little if an-

157. Interview with Robert Stillman (pseudonym), Prosecutor, Office of the State's Attorney, in New Haven (Feb. 28, 1992). Stillman pointed out that violations of both disorderly conduct, CONN. GEN. STAT. ANN. § 53a-182, and breach of the peace, CONN. GEN. STAT. ANN. § 53a-181, had to be tried to a six-person jury, with both parties having the opportunity for individual voir dire. This requirement, coupled with the "overload" of "far more serious violations and things to worry about," rendered nonexistent the prosecution of panhandlers under either provision.

158. Interview with Ron Oates, Sergeant, New Haven Police Department, *supra* note 30. Oates's comment reflects the general trend against status crimes. See, e.g., CONN. GEN. STAT. ANN. § 53-340 (repealed 1969) (authorizing prison sentences of up to 360 days for being a "common drunkard").

159. Oates seems to have underestimated the effect of arrest. The regulars indicated that they intensely disliked being arrested, and their fear of arrest repeatedly surfaced in their discussions about their relationships with the police. Moreover, the power of arrest *did* play a role in the officers' actual regulation of panhandling. See *infra* notes 195-205 and accompanying text.

thing on the street. "So what are we going to do?" asked Sergeant Alonzo hypothetically. "Take in every single person who opens their mouth and asks for a dime? No. [Under a new ordinance] we would do pretty much the same thing—get the troublemakers out of there, let the others do their thing, and arrest the guy who really causes a racket."¹⁶⁰ The other officers echoed Alonzo's sentiments, wondering where the resources for enforcing such an ordinance would come from, and questioning the effectiveness of "one arrest after another" as a solution to "guys like [Ricky] and [John] trying to get themselves dinner."¹⁶¹ But resources and effectiveness were not the only matters at issue here: the officers also disliked the idea of an anti-panhandling ordinance because many of them cared a great deal about the regulars.

Indeed, a second set of factors—the ongoing relationships between the police and the panhandlers—strengthened the police decision generally not to rely on formal law enforcement, and also significantly shaped the way the police ultimately chose to regulate panhandling. Although the officers occasionally prevented panhandlers from engaging in apparently lawful conduct, they also showed great concern for the panhandlers. Given the propensity of recent law review articles on panhandling to focus on the criminal justice system as an organ of oppression directed against those asking for handouts on the street,¹⁶² it would be difficult to overemphasize the general warmth and concern expressed by both New Haven and Yale police officers for the York district regulars. One Yale lieutenant remarked: "Of course we know them! We know who's drunk, who just got [his General Assistance] check, who's in trouble. We build relationships with these people. We share their life. They share ours."¹⁶³ In turn, a New Haven sergeant said: "Most of them are not lawbreakers per se. They are humble, modest, polite, well-behaved. They're not involved in crime, usually not in drugs. They're friendly, they're really sincere. A credit to the way they conduct themselves."¹⁶⁴

160. Second interview with Arthur Alonzo, Sergeant, New Haven Police Department, in New Haven (Apr. 7, 1992).

161. Interview with Nancy Warren, Lieutenant, Yale University Police, *supra* note 30.

162. See, e.g., Hershkoff & Cohen, *supra* note 8, at 896 ("In the fall of 1989, Sharon Gilmore, a poor woman with serious medical problems, repeatedly faced arrest by New York City police. Her crime was telling passersby that she was hungry and asking them for money with which to buy food.").

163. Interview with Nancy Warren, Lieutenant, Yale University Police, *supra* note 30.

164. Interview with Ron Oates, Sergeant, New Haven Police Department, *supra* note 30. The jaded reader might conclude that the police were masking their real actions behind these words, but that possibility is unlikely. Not only were the officers genuinely and consistently enthusiastic about discussing this issue with the author, but the panhandlers

Finally, listen to James, one regular panhandler: "Officer [Davis], he *really* looks out for us. He's *really* nice. Gets cold, he buys us coffee, hot chocolate, maybe a candy bar. Makes sure no one hassles us. Sure, he keeps [the panhandlers] in line, but it ain't no big issue." Not every exchange between police officer and panhandler manifested this mutual respect and cooperation. Both panhandlers and officers varied in their assessments of one another. Encounters between officers and panhandlers unfamiliar with one another were less amicable, and the cause of several troubling issues discussed below. But the general relationship between the two groups was far from one of enmity.¹⁶⁵

From the two sets of factors identified, the actual police practice of regulating panhandling in the York district emerges. The next section attempts to coax the messy reality of that practice into an intelligible pattern. First, however, one of the limits of this part of the study needs to be addressed. Research on police practice was largely limited to interviews with higher-ranking officers who spent more time managing beat officers than policing the street. Some information was obtained informally from beat officers of both police forces, but formal interviews were impossible because each force wished to "speak with one voice," according to Sergeant Alonzo of the New Haven police (Yale's policy was similar). For example, the information on the significant differences between the behavior of new and veteran beat officers described below (and about which the interviewed officers were not particularly clear) derives almost entirely from interviews with the panhandlers. A more thorough understanding of police regulation of panhandling would include in-depth interviews with beat officers.

2. *Actual Police Practice.*—Police regulation of panhandling consisted of a three-part system of control (categorized by the character of the "encounter"¹⁶⁶ between panhandler and officer) with only the third part involving traditional law enforcement. Each part of this system was powerfully affected by the existing relationship, if any, between officer and panhandler. The first part, here termed "routine encounters," constituted the large majority of interaction between regular panhandlers

themselves (as well as some store owners) shared similar views of the panhandler-police relationship.

165. This description provided by police and panhandlers in the York district contrasts with the facts in several of the modern cases challenging the constitutionality of statutes restricting or prohibiting panhandling, which generally involve multiple arrests or police harassment. *See, e.g., Blair v. Shanahan*, 775 F. Supp. 1315 (N.D. Cal. 1991) (plaintiff arrested five times in eight months for violating statute prohibiting panhandling).

166. The term "encounter" here means any type of interaction between panhandler and officer that held the possibility of mutual conveyance of information. Eye contact constitutes an encounter; a panhandler seeing a police patrol car drive by, with no assurance that the officers riding in it notice him, does not.

and veteran beat officers.¹⁶⁷ Many routine encounters were friendly, and even included donations to the panhandlers. The tenor of routine encounters differed significantly when officer and panhandler were unfamiliar with each other, however, and not uncommonly resulted in police orders to stop panhandling—apparently without a legal basis.¹⁶⁸ The second part, “exit assistance,” involved encouraging the panhandler to leave the district when the officer believed it was in the panhandler’s interest to go. “Exit assistance” encompassed perhaps one in ten encounters (possibly far less). The third part, “arrests,” probably accounted for considerably less than one percent of all encounters. With rare exception, arrests involved encounters between panhandlers and officers who did not know each other well. The following sections consider the contours of each part of this system of regulation,¹⁶⁹ with particular attention paid to the way the relationships between panhandlers and police helped to structure the system.

a. Routine Encounters

Routine encounters were the most common type of contact between police and panhandlers, and were deeply influenced by relationships between regulars and the New Haven and Yale beat officers who patrolled the York district.¹⁷⁰ In most instances, the beat officers did not interfere with the regulars when they panhandled, even when the officers received pedestrian complaints.¹⁷¹ In fact, many regulars said that at least several

167. The police did not describe their regulation of panhandling according to this tripartite scheme, making it difficult to estimate the percentage of police-panhandler encounters that fell into the three categories. As a rough estimate, routine encounters constituted about 90% of the encounters; exits, perhaps 10%; and arrests, less than 1%.

168. See *supra* note 153.

169. The police did not use either the term “routine encounter” or the term “exit assistance.”

170. Both New Haven and Yale officers patrolled the York district 24 hours every day. See *supra* text accompanying notes 62-63. The panhandlers had a uniform perception of the police as “always being around somewhere or another.” They estimated that they saw (but did not necessarily “encounter,” as that term is used in this Article) a Yale or New Haven officer in a patrol car several times each hour, and on foot once each hour or so.

171. This was especially so if those complaints amounted to vague charges, for example, of being “threatened” for money. In these instances, the officers generally gave the benefit of the doubt to the regular panhandler. Not only were the officers disinclined to arrest the panhandler on such a routine complaint, for reasons already mentioned, but the officers knew from past experience that it was highly unlikely that the regular at whom the complaint was targeted had done anything more than politely, or at worst assertively, asked for a handout. (The police also generally knew, after even cursory descriptions, if the complainant was referring to a particular regular. For instance, “a

times a week, they could expect a donation—usually food rather than money—from the officer(s) they knew best. Beat officers numbered among the most valued “patrons” of several regulars.¹⁷² On some occasions, officers would ask a regular to “move on for a little while” (Terry’s words), although this did not appear to be the norm. The reason for these occasional requests remains unclear, although it is possible that some officers meant, for any number of reasons, to emphasize the power imbalance in their relationships with the panhandlers.

The regulars did not take the officers’ non-interference and charity for granted. In fact, *most of the regulars believed that panhandling was illegal*,¹⁷³ and that the police had the legal authority to arrest them for the mere act of panhandling. The regulars (excluding Barry, Chip, and Linda) therefore put tremendous emphasis on meeting and staying on good terms with the officers, showing them respect, and, as Ricky said, continually demonstrating that “we don’t cause any trouble here, [we’re] just getting by.” For instance, James greeted every officer he knew by name, and asked them how their day was going. John, in turn, understood that a certain New Haven officer did not like to see him hold out a cup, and he ritualistically withdrew it from sight each time the officer passed.¹⁷⁴

The regulars’ belief that panhandling was illegal apparently derived from the difficulties they experienced when new officers took the York district beat, at least partially disrupting the equilibrium the regulars had built up over time with other officers.¹⁷⁵ New beat officers, the

big black guy with a round face and a beard near Store 24” meant James. Knowledge of all the regulars’ typical behavior was a further guide as to whether the police should investigate a complaint. Interview with David Marcus (pseudonym), Lieutenant, Yale University Police, in New Haven (Mar. 26, 1992)).

172. This was particularly so when the officers were off duty. James recalled receiving \$10 or an entire pizza at a time from one officer. John observed that officers bought him hot chocolate or coffee in the winter while on duty, but he, too, agreed that they were most generous when not on the job.

173. All nine lucid regulars believed that panhandling was prohibited by law. This finding is in accord with a considerable body of sociological research discussed by Robert Ellickson: “[M]ost people know little [about] . . . law and are not much bothered by their ignorance. Their experience tells them that the basic rules that govern ordinary interpersonal affairs are not in the law books anyway.” ELLICKSON, *supra* note 106, at 146-47.

174. It appeared that some officers made it difficult for Keith to panhandle (which he did less often than the other regulars). Keith explained that “most of ‘em don’t let me do it on Broadway.” The author was unable to determine the accuracy of Keith’s assessment. Police officers who knew Keith denied that he was singled out for harsh treatment. It seemed possible that a bad relationship had developed between Keith and several New Haven beat officers, perhaps because of his heavy drinking.

175. Yale assigned several new officers to the York district beat every few months;

regulars explained, might force them to stop panhandling several days in a row, or order them "not to show up here for a week."¹⁷⁶ For instance, during perhaps the first ten days of a new period of beat assignments, James and Terry had been "pushed around" by two Yale officers they called "the Sunglass Brothers." The Sunglass Brothers had ordered James and Terry to stop panhandling every time they encountered them, and, after a week, they had even arrested the two¹⁷⁷ (although with little surprise in the outcome: no charges were brought). Over time, however, the regulars were able to develop relationships with the new officers, thus reestablishing the practice of general non-interference.¹⁷⁸ The return to non-interference usually involved a combination of two events: not only would individual regulars slowly build up a "way to work things out" (Lou's words) with the officer, but veteran officers would explain to rookies that "the regulars here, us, we can stay" (as Ricky put it).¹⁷⁹ This shift in a new officer's behavior was routine and predictable, according to James. He explained that one officer whom he had come to see as a genuine friend had been "[as] tough as nails when she first got out here." "Now," he said, "she's got a good understanding."

Another variation in routine encounters involved the inverse situation: a veteran officer and a new panhandler. It appeared that officers ordered transients to "move on" far more often than regulars, although just how much more often was unclear.¹⁸⁰ The officers' routine encounters

the New Haven police assignments to the area remained more constant. Interview with Ron Oates, Sergeant, New Haven Police Department, *supra* note 30.

176. It was not the case that every new officer disrupted the panhandlers' routines. Estimates varied among the regulars, but all believed that somewhat less than half of the new officers allowed the panhandlers to solicit without interference from the time of their initial encounter.

177. Four of the regulars had been arrested between one and three times during the 1990-91 academic year, and apparently every arrest involved either a new officer, or one that the regulars otherwise did not know.

178. Several employees of York district businesses confirmed the pattern of new Yale officers initially being more intolerant of panhandling, and then "mellowing" over time.

179. The panhandlers' belief that the veterans explained their relationships with the panhandlers to the rookies was supported by much experience. John and Lou, for instance, both recalled veteran officers coming to the York district for food or a drink, and pointing out various regulars to the new officers on the street. Ricky usually tried to avoid the disruption of a hostile new cop by introducing himself and explaining that the other officers allowed him "to sit here." If the new officer told Ricky to move anyway, Ricky would leave, confident that the officer's colleagues would explain that "Ricky's okay."

180. Terry and James told an intriguing story of apparent police favoritism that occurred at least twice. In these instances, the two regulars had found themselves crowded out from panhandling on Broadway by a spate of transients. They had stood together

with transients were, as might be expected, more perfunctory. The officers' basic concern¹⁸¹ was that new individuals were unpredictable—which made the task of policing them more difficult—and the officers thus preferred to discourage them from "setting up shop" in the area. Given the problem of unpredictability (was the individual drunk? combative?), an officer often did not approach a newcomer without first learning if a regular knew something about him. Officers relied mostly on Ricky, John, Fred, James, and Terry, the territory holders in the district, for this information.¹⁸²

Officers also occasionally relied on regulars for information about other criminal activity in the York district, such as descriptions of those who had started street fights, stolen cars or bikes, or shoplifted. Yale Lieutenant Nancy Warren explained: "They see things we don't see. One of our officers will drop by, ask [regulars] if they could describe someone—like someone who just ran off from the 24 Store." Ricky, in particular, cast himself in the role of a security guard; he sometimes referred to himself as "the blockwatcher crimestopper." Most regulars estimated the police asked them about particular crimes or problems several times each month. The questioning was always discrete. "We don't want them getting blamed and hurt," said Sergeant Alonzo.¹⁸³ Not only was this information often useful to the police, but it appeared to heighten the credibility of many regulars who claimed that they were "not causing trouble."

The final element of routine encounters involved police *protection* of the panhandlers, particularly the regulars. Panhandlers generally suffered two sorts of injury, harassment and muggings (where the panhandler was beaten and robbed), and officers now and then asked the regulars if they had experienced any problems. The muggings, of course, were more serious. The regulars rightly feared for their personal safety: six stated they had been attacked at least once in the year prior to being interviewed. Yale Lieutenant Warren, who had found John badly beaten once, corroborated the panhandlers' stories: "So many people just don't realize it. They're victimized. We see them bloody and harmed more

at the edge of the sidewalk, not panhandling. Two officers who knew them had looked over the situation and declared "Hey, there's no room for you guys here. What's going on?" The officers had then ordered the "trespassers" to "move on," leaving the regulars to their usual spots.

181. This information is at least partly based on inference, drawn from brief exchanges with beat officers, as well as from other interviews.

182. Terry appeared amazed that "everyone out here" (referring to the Yale community) did not know that the regulars were a "basic source" of information about a new panhandler for the police.

183. James added, "If something's [been] going down, we tell [the officers] incognito-like; we're quiet about knowin' it."

than we see them do any damage. They're part of [a broader group that includes] . . . street people and homeless types, who some kids in New Haven like to beat up for fun and others want to take whatever they might have [money, liquor] on them." James said that he had been mugged late one night on Broadway, and two police officers had chased after and arrested the assailant, and returned James's money to him (ironically, he said, he had just exchanged a pile of change, which would have been difficult to steal, for a twenty-dollar bill).

The officers also intervened on the rare occasion when they observed a passerby verbally abusing a panhandler. Ricky mentioned that two Yale officers told him regularly that if he was being abused, they would be sure "to look into it." The panhandlers rarely told the officers about their difficulties, however, preferring to solve their problems alone if at all possible. Despite the regulars' often good rapport with the officers, Lou expressed a common sentiment when he said, "the less police, the better."

b. Exit Assistance

The second component of the police regulation of panhandling, "exit assistance," encompassed both informal practices and formal police policy for encouraging the panhandler to leave the York district voluntarily—simply for the day or the evening—because the police believed it was in the panhandler's best interest to go. Exit assistance accounted for possibly ten percent of encounters between panhandlers and police, perhaps less.¹⁸⁴ The forms of exit assistance fell into three categories: formal, informal, and special situations. Unlike routine encounters, exit assistance did not encompass sanctions; in all its forms, the purpose of exit assistance was to help the panhandler.

The primary form of formal exit assistance, implemented when the overnight temperature fell below freezing, was the "Homeless Persons Winter Policy," shared by the Yale and New Haven forces.¹⁸⁵ This policy required an officer who "bec[a]me[] aware" of a homeless individual on the street to ask if the person was willing to go to a shelter.¹⁸⁶ If the person was, the officer arranged transportation either by city-operated

184. This estimate is particularly rough because the formal form of exit assistance described here (the "Homeless Persons Winter Policy") was implemented after most of the interviews with the panhandlers were completed.

185. New Haven Police Department, Homeless Persons Winter Policy (1991) (on file with the *Indiana Law Review*).

186. The officer must first determine if the person "obvious[ly] need[s]" medical treatment, and if so, the officer is to "follow the routine procedures for requesting medical assistance." *Id.* at 1.

van or by police vehicle,¹⁸⁷ or if the person wished, the officer merely provided directions to a shelter. The police had not begun this policy when the panhandlers were interviewed,¹⁸⁸ and therefore, the study has no information about the policy from the panhandlers themselves. Interviews with police officers suggested that several homeless panhandlers in the York district had relied on the service.¹⁸⁹

Informal exit assistance involved officers helping panhandlers, usually regulars, to return home or to a shelter, generally when the panhandler was too drunk or drugged to function. Significantly, these encounters included instances where the regular's behavior may have constituted disorderly conduct or breach of the peace, but the officers generally did not consider arrest a "productive" option.¹⁹⁰ When John was out very late and got very drunk, one officer noted, he would tell him "you gotta go now, fella." It was better, the officer said, to help steer John toward home than to allow him to risk being seriously hurt by wandering around "til all hours" (once the officer had even hailed John a cab, and paid for it). Yale Lieutenant Marcus added, "there are times when you just say to those [regulars] who've got family,¹⁹¹ 'It's time to go.' You try to help them call their family, get them home." (In addition, at least one owner-operator, the owner of Toad's Place, had on occasion provided rides to the hospital for certain panhandlers when they were very drunk, and he seriously feared for their health.)¹⁹²

The final form of exit assistance, "special situations," was based entirely upon the panhandler-beat officer relationships. "Special situations" included police requests (or commands) to leave the York district for certain extraordinary events; these incidents of exit assistance could actually be seen as coercive, and grounded less in concern for the regulars' welfare than for maintaining order in the York district. Two such situations came to light. The first involved what appeared to be occasional "sweeps" of the York district to clear it of panhandlers, during which the police usually forced all those on the street to leave, sometimes making several arrests.¹⁹³ Several of the regulars, Ricky, James, John,

187. *Id.* at 1-2. The van was available from December 1 to April 30. *Id.* at 1.

188. *See infra* Appendix on Methodology.

189. Interview with Arthur Alonzo, Sergeant, New Haven Police Department, *supra* note 103. Both police forces also helped homeless individuals and others on the street to obtain emergency medical help, including, in some situations, treatment for alcohol or drug abuse. *Id.* The study did not obtain much information on these events.

190. *Id.*

191. Interview with David Marcus, Lieutenant, Yale University Police, *supra* note 171. Marcus meant "family" in the looser, broader sense here, of any relative or friend in the area.

192. Interview with Mike Spoerndle, Owner, Toad's Place, *supra* note 137.

193. The circumstances under which these sweeps occurred remained unclear; interviews with the police did not yield much information on the subject.

and Terry among them, reported that certain officers would warn them in advance that a sweep was planned, and that they should not come to the York district. James explained that an officer might say to him, "We don't want you to get caught up in all of this business." But although these regulars perceived the police to be "looking out for us," it may be that the officers knew they could rely on a simple request or command to clear the streets of many of the regulars. Second, certain officers insisted that the regulars leave the York district when a "rap" band played at Toad's Place, in the apparent belief that the audience attracted by the band might physically harm the panhandlers. Given the regulars' ready agreement that it would be wise for them to leave,¹⁹⁴ these incidents may have reflected, more than the "sweeps," a purer concern for their welfare—although here again, "sending 'em home" (as one beat officer put it) may simply have eased the officers' task of maintaining order.

c. Arrests

The third part of the police regulation of panhandling, "arrests," included perhaps less than one percent of all encounters. Despite general non-reliance on traditional law enforcement in panhandling matters, the officers did, on rare occasion, arrest panhandlers. Except for run-ins with new beat officers, regulars were almost never arrested.¹⁹⁵ Although the author was unable to obtain either the arrest records of the panhandlers or authoritative data on York district instances of disorderly conduct¹⁹⁶ and breach of the peace¹⁹⁷ (the two Connecticut statutory provisions usually cited when an officer arrested a panhandler), arrests apparently occurred no more than three to five times a month, perhaps a little more, in the York district.¹⁹⁸

194. Usually, the panhandlers did not need any encouragement in such situations, and would leave of their own accord. Lou refused to analyze the apparently negative relations between the panhandlers and some New Haven youths; he merely stated, in vivid terms: "You don't sit at the top of the mountain when a hurricane comin', now do you?"

195. Linda, however, occasionally was arrested. According to Keith, this occurred when she was excessively drunk and especially combative when an officer asked her to leave the area. He could recall "a few" instances when this had occurred, but was unhelpful in providing any more detail. Sergeant Ron Oates implied that Linda could, sometimes, become "so ornery" that officers would simply lose their patience with her, and arrest her out of frustration.

196. CONN. GEN. STAT. ANN. § 53a-182.

197. CONN. GEN. STAT. ANN. § 53a-181.

198. This estimate is a "rough and ready" calculation arrived at through conversations with police, prosecutors, businesses, and the panhandlers themselves.

Most arrests appeared to follow a particular pattern, usually involving a combination of especially disruptive or threatening behavior¹⁹⁹ and repeated unresponsiveness to a series of police encounters, often fueled by alcohol or drugs. The arrests usually served one purpose, according to one of the officers: "to get them off the street for a moment, while they're at their worst."²⁰⁰ The regulars and the officers described the pattern in similar terms. Generally, both Ricky and John explained, when a transient panhandler or neighborhood drunk began to harass passersby, an officer would approach the person within an hour (sometimes first talking to a regular about the person if the officer did not recognize him²⁰¹). Officers would usually warn the offender to "calm down" and tell him to "move on." Arrests followed in two circumstances. Either the panhandler would leave and then return, and a cycle of warnings followed by departures and returns would ensue; or, more rarely, the panhandler would challenge the officer and refuse to stop "whatever his little thing was" (John's words). If, after repeated warnings and discussion, the officer could not convince the individual to leave, the officer would arrest him. Ricky emphasized the concept of fair notice, saying, "they get told, they get told, they get told again—get outta Dodge, boy—mostly, takes a while before they run 'em in." Most arrests, New Haven Sergeant Alonzo observed, came later at night, and the panhandler would spend the night in jail. The next morning, as usual, the prosecutor would decide not to press charges, and the panhandler would walk out.

No player in the York district panhandling drama, with the exception of some owner-operators, seemed to favor arrests. It goes without saying that most panhandlers did not enjoy being arrested.²⁰² Moreover, an arrest absorbed police time, with little if any perceived long-term gain;²⁰³ it annoyed prosecutors, who, as stated, simply had no time for most disorderly conduct or breach of the peace charges;²⁰⁴ troubled the regulars,

199. Ricky cited two examples of behavior he had seen lead to arrest: one man was poking and yelling at passersby, another was following particular people and holding on to them, shouting "give me some money NOW, give me some money NOW." Ricky added that despite repeated requests by the police, neither individual had left the York district, and this refusal had apparently led to their arrest.

200. Interview with Nancy Warren, Lieutenant, Yale University Police, *supra* note 30.

201. See *supra* text accompanying note 182.

202. The study included no interviews with transients who had been arrested in New Haven, although the regulars uniformly described arrest as an unpleasant experience.

203. See *supra* notes 155-59 and accompanying text. New beat officers, who made most of the arrests of panhandlers, presumably did not perceive arrests as negatively as did veterans.

204. See *supra* note 157 and accompanying text.

because it both reminded them of the officers' power (which some continually feared might be turned against them²⁰⁵) and it reflected the presence of "some clown, some idiot" (Fred's words) who had been disturbing the pedestrians; and finally, it angered many Yale students, who, according to one Yale officer, "stand and watch, get all concerned because they're afraid you're hurting someone. It doesn't make us look good." Then she added, "Except I guess some Yale-types like it when they think we're getting tough. And you see some stores [the owners of which are] happy."

In sum, the regulation of panhandling in the York district had a distinct structure and a complex set of rules—but the structure and rules were only marginally related to the formal legal provisions that might have been assumed to govern panhandling in the area. Indeed, reference to the relevant statutory prohibitions against breach of the peace and disorderly conduct were all but irrelevant to the way panhandling was controlled. Ongoing relationships and a constellation of understandings among panhandlers, police, and York district businesses were the important sources of control. Those relationships and understandings provided an exceedingly "thick" regulatory regime, extending, for example, from the broad, overarching agreement that veteran officers generally would not interfere with the regulars' panhandling, all the way down to the intimate details of the panhandling enterprise, such as John withdrawing his cup in the presence of a particular officer.

This description of panhandling calls for a reassessment of the relevant questions for the legal community to address when attempting both to understand panhandling and to bring about effective change in its regulation. Rather than focusing on the nuances of the ostensibly applicable legal doctrine, two more pragmatic questions present themselves: (1) when can a lawyer expect to encounter an environment or activity that is primarily governed not by law, but by other, less formal social controls? and (2) where less formal social controls hold sway, what role can the lawyer play in bringing about meaningful change? The conclusion considers these two questions.

V. CONCLUSION

The primary purpose of this Article had been to demonstrate, on the micro level, that the formal legal structure designed to regulate panhandling in Connecticut had only a marginal impact on the actual

205. Indicating a belief (which evidently clashed with the officers' view) that the police could, practically speaking, entirely prohibit panhandling whenever they wished, Lou said: "Yeah, they can arrest me, I guess. It's not happening too much, but it could, it could."

regulation of that activity in the York district. As noted earlier in the Article,²⁰⁶ the law's potentially limited influence on panhandling seems generally to have been lost on much of the legal community. The law review articles that treat panhandling operate on the core assumption that the relevant legal rules have a powerful effect on the street. These articles therefore devote countless pages to tinkering with First Amendment doctrine in order to defend panhandler's rights. This myopic approach reflects "legal centralism,"²⁰⁷ that is, "the belief that governments are the chief source of rules and enforcement efforts."²⁰⁸ The experience of the York district panhandlers indicates that a wider view of social control—a view that encompasses more than merely the formal legal scheme—is necessary if lawyers and legal scholars are adequately to understand the regulation of panhandling in a community such as the York district. This conclusion therefore considers the broader relationship between law and other forms of social control, and then explores the role of the lawyer when law has little influence.

A. *When Does Law Matter? Of Police Practice and Other Issues*

Perhaps the most important question raised by this study flows from the Article's fundamental point that law's impact on human affairs is sometimes quite limited. Specifically, when does law matter, and when does it not? In more precise terms, what variables determine whether law or other, less formal types of social control will be the primary controllers of human behavior in a particular environment? Currently, there is no satisfactory answer to this question. As Robert Ellickson notes, "[l]aw-and-society scholars would be the first to admit . . . that they are a long way from having a general theory of social control."²⁰⁹ Nevertheless, the law and society movement has made some progress toward developing such a theory,²¹⁰ and law and society scholars have identified at least some of the key factors that account for whether human transactions will be governed primarily by formal legal rules or by more informal means.²¹¹

206. See *supra* notes 8-10 and accompanying text.

207. Oliver E. Williamson, *Credible Commitments: Using Hostages to Support Exchange*, 73 AM. ECON. REV. 519, 520 (1983).

208. ELLICKSON, *supra* note 106, at 138. On the pervasiveness of legal centralism in American legal thought, see *id.* at 138-39.

209. *Id.* at 149.

210. See, e.g., TOWARD A GENERAL THEORY OF SOCIAL CONTROL (Donald Black ed. 1984).

211. See ELLICKSON, *supra* note 106, at 283 ("[D]isputants are likely to turn to legal rules when the social distance between them increases, when the magnitude of what is at stake rises, and when the legal system provides an opportunity for the disputants to externalize costs to third parties.").

This Article sheds some light on one such factor—social distance. Today, law and society scholars generally embrace the principle that the greater the amount of social interaction among the parties to a dispute or transaction, the less likely it is that the formal legal scheme will govern that dispute or transaction.²¹² This “social distance” principle has been examined largely in the context of transactions solely involving private parties, such as contractual relationships between businesses in Wisconsin.²¹³ But the social distance principle has remained relatively untested in those situations where the interactions at issue arise between private parties (here, the York district panhandlers) and agents of the state charged with enforcing the state’s laws (here, the Yale and New Haven police). When police officers and private citizens have an ongoing relationship, does this relationship (that is, lack of social distance) influence whether the police go “by the book” and apply the law straightforwardly in their dealings with those citizens?

The findings presented here suggest that the social distance principle is indeed relevant to police officers’ decisions about enforcing the law (through arrest or an order to leave the area). As discussed, the ongoing relationships among the police and the regular York district panhandlers appeared to be one of the principal factors accounting for the police officers’ reluctance to rely on law to control panhandling.²¹⁴ In fact, those relationships may have been the single most important factor accounting for that reluctance. To be sure, it appears that both the costs and the apparent pointlessness of enforcing Connecticut’s disorderly conduct and breach of the peace statutes also affected the officers’ decisions generally not to rely on formal legal rules.²¹⁵ But these two additional factors were equally applicable to enforcement of the statutes against either regular *or* transient panhandlers, and yet the transients—whom the officers did not know—were arrested far more often than the regulars. Moreover, officers newly assigned to the York district were far more likely than veteran officers to arrest a regular for disorderly conduct or breach of the peace, and such arrests and demands to leave the York district by new officers declined almost to nil as the new officers became acquainted with the regular panhandlers on their beat.²¹⁶

In turn, the regular panhandlers did not even contemplate resorting to the legal process when they had a complaint about a police officer’s behavior. Thus, for example, James and Terry simply absorbed the abuse

212. See DONALD BLACK, *THE BEHAVIOR OF LAW* 40-46 (1976).

213. See Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 AM. SOC. REV. 55 (1963).

214. See *supra* Part IV.C.

215. See *id.*

216. See *id.*

that the "Sunglass Brothers" gave them until the two officers began to tolerate their panhandling.²¹⁷ Similarly, Ricky redoubled his efforts to become friends with those officers who did not let him panhandle when they were first assigned to the York district. The panhandlers' failure to seek legal help when the officers disregarded their (legal) right to panhandle might, of course, be traced in part to the panhandlers' not knowing that panhandling was legal.²¹⁸ But even when the author informed several of the regulars that the officers did not have the authority to prohibit panhandling, the regulars rejected outright the notion of pursuing legal action, fearing that they would jeopardize their generally good relationships with most officers.

The conclusion that the social distance principle may extend to relationships between police and private citizens serves to strengthen that principle as a building block in the overall development of a general theory of social control; it also poses additional research issues. For instance, what is the significance of social distance as an explanatory factor, relative to other factors, in determining whether legal rules or more informal norms provide the primary source of control in police regulation of a particular environment or activity? Although close relationships between police and citizens emerged as paramount in this study, one researcher has already found that police refusal to operate "by the book" may exist independently of ongoing relationships between police and the regulated group. In a large study involving police in Boston, Chicago, Washington, D.C., and other cities, Donald Black found that the police generally did not rely on law to settle disputes—but in Black's study, in contrast to this one, the police did not know the citizens whose disputes they were resolving.²¹⁹ The varied conclusions of this Article and Black's study indicates that much work remains to be done in researching police-citizen relationships before there can be a fully satisfactory assessment of the role of those relationships in determining whether the police go "by the book."

Beyond the specific question of police-panhandler relationships, this Article raises numerous other issues regarding both law's limited applicability to human affairs and the influence of other forms of social control. For example, in those contexts where human transactions are governed by informal norms as well as (or more than) by law, is it possible to predict the content of those norms? Specifically, was it predictable that the panhandlers in the York district would work out

217. *See id.*

218. *See id.*

219. *See* BLACK, *supra* note 146, at 186.

certain rules among themselves that served to increase their panhandling income?²²⁰

Recent theoretical work suggests that the existence of such rules might have been predicted. Robert Ellickson recently pointed out that "[m]ost law-and-society scholars shy away from all theories of the content of norms."²²¹ In an attempt to break ground in this area, Ellickson hypothesizes that "members of a close-knit group will develop and maintain norms whose content serves to maximize [their] aggregate welfare" in certain circumstances.²²² Although it was suggested earlier in the Article that the group of regulars in the York district did not meet the conditions under which Ellickson's hypothesis is most likely to apply,²²³ it seems that the rules the regulars adhered to at least approximated the type of norms that Ellickson's work might have predicted. This finding provides modest support for the suggestion that Ellickson's hypothesis might apply in some modified form even when the precise conditions he sets out do not obtain.²²⁴ Thus, among the more important research questions in this area is whether Ellickson's hypothesis can indeed predict the substance of informal norms for a broader range of human affairs than he initially suggested.

In pressing the point that formal legal rules may not always have much real-world influence, this Article also poses a somewhat unsettling question for the practicing lawyer. The last section addresses that question.

B. When Law Does Not Matter: The Role of the Lawyer

When law does not have much impact on human affairs, and more informal forms of social control hold sway, the law and society scholar is presented with rich opportunities to describe, explain, and predict the effects of those other forms of social control. For the lawyer, the recognition that law may have minimal influence presents more troubling implications. In some circumstances, a lawyer's work might be more or less irrelevant. In some circumstances, a lawyer might not—at least through the legal process—be able to bring about meaningful, real-world change:

220. See *supra* Part IV.A.

221. ELICKSON, *supra* note 106, at 154.

222. *Id.* at 167 (emphasis omitted).

223. See *supra* note 106. These conditions include, for example, that members of a group have considerable power over one another, and opportunities to exercise that power to enforce the norms at issue. See *id.*

224. Ellickson remains "agnostic" about whether welfare-maximizing informal norms will arise in settings other than those involving "close-knit groups." ELICKSON, *supra* note 106, at 154.

The proposition that legal rules may lack bite is of particular importance to the legislators, lawyers, policy analysts, and others who aspire to be social engineers. These legal activists have been especially prone to exaggerate what the Leviathan can accomplish. For a wide variety of reasons, legal interventions can flop. To avoid the frustration of trying to influence what is beyond their reach, legal instrumentalists would be wise to deepen their understanding of the nonlegal components of the system of social control.²²⁵

Indeed, whether a lawyer seeks to protect the rights of panhandlers in the York district (for example, by preventing new beat officers from interfering with the regulars) or wishes to draft a city ordinance restricting panhandling, she may find that her attempts at "social engineering" will change little, if anything, on the street. The panhandlers' advocate might not even be able to find a regular willing to challenge the actions of the more unsympathetic officers, given the aversion several of the panhandlers expressed toward trying to settle their problems with the police in court. Similarly, the would-be drafter of a city ordinance would discover that the police officers familiar with the York district would be highly reluctant about enforcing such a restriction, and that in any event, the officers believed they lacked the resources to enforce it. In short, regardless of the desired end in attempting to change the law applicable to panhandling in the York district, those attempts at change could well "flop."

That said, the lawyer's challenge in such a setting is probably to recognize what the law cannot do, and to seek alternative, non-legal measures to address the concerns raised by the various York district constituencies. For example, to the extent that aggressive panhandling was a problem in the York district, such panhandling might be reduced through the adoption of a voucher program similar to the one recently launched in Berkeley, California.²²⁶ Under this program, pedestrians may buy and then give to panhandlers coupons that are redeemable at participating stores only for food, public transportation, and so on. A voucher program might reduce aggressive panhandling in two ways. First, alcoholics and drug addicts (generally the most aggressive panhandlers in the York district) may over time be discouraged from panhandling in an area where they know that much of their panhandling income is likely to come in the form of vouchers that will not provide them with

225. *Id.* at 281-82 (footnote omitted).

226. See Max Boot, *Voucher Program Launched in Berkeley to Care for Homeless*, L.A. TIMES, May 7, 1991, at A3; Katherine Bishop, *Plan Aims to Insure That Beggars Don't Put Cash in Wrong Pockets*, N.Y. TIMES, July 26, 1991, at A10.

alcohol or drugs. Second, by limiting a panhandler's ability to purchase alcohol or drugs, the panhandler may be drunk or on drugs less often than he otherwise would. Given that certain regulars in the York district became aggressive in their panhandling only when chemically impaired,²²⁷ reduced access to alcohol and drugs could produce fewer incidents of confrontational panhandling.

A voucher program is not a panacea.²²⁸ In the York district, it might lead some panhandlers simply to use all their General Assistance benefits to buy liquor or drugs, and to rely on the vouchers they received from pedestrians to buy food and other necessities. It is also conceivable that a resale market in the coupons could arise, enabling one panhandler to sell coupons at a discount to another panhandler for cash, which the seller could then use to purchase those goods that the voucher system meant to make less available.²²⁹ Despite these possible drawbacks, however, such a program is at least not dependent on enforcement of legal rules, and may offer some hope of bringing about positive, measurable change in the York district environment. (Moreover, this creative approach to enhancing social order imposes no constraints on a panhandler's individual liberty. Although it has been contended that "we" have no business making choices about whether the extremely poor should be allowed to face reality drunk, drugged, or otherwise,²³⁰ there is nothing in a voucher program to prevent a panhandler from receiving a cash handout—which he could use to buy, say, alcohol—from a pedestrian who chooses to give cash rather than a voucher.)

Suggesting that lawyers seek non-legal means to accomplish particular objectives in certain circumstances is not at all to deny that social change may be effected through resort to courts and legislatures. Rather, it is a pragmatic response to the recognition that law's impact is not always as wide or as deep as we in the legal profession are often tempted to believe. When lawyers and legal scholars focus only on the significance of formal legal arrangements, they may fail to understand, and thus fail to have any impact on, and the complex and varied set of controls that actually operate in the messy reality of human affairs. Just ask Ricky, on any Thursday night in New Haven, whether his right to

227. See, e.g., *supra* note 109.

228. Ten months after the Berkeley voucher program was introduced, a Berkeley city official stated that he believed drinking and drug use were down among the city's panhandlers. Telephone interview with Eric Landes-Brennan, Homelessness Coordinator for the City of Berkeley, California (Mar. 26, 1992). Landes-Brennan had only anecdotal evidence to support this belief.

229. As noted, some panhandlers reported a resale market for food stamps. See *supra* note 49.

230. See Abrahams, *supra* note 93, at A26.

panhandle depends more on the First Amendment or on the police officers he knows.

APPENDIX ON METHODOLOGY

Information for this study was gathered in face-to-face interviews with panhandlers, and face-to-face and telephone interviews with police officers, owners and employees of York district businesses, executive branch employees at both the state and local levels, prosecutors, and more informally, volunteers at soup kitchens and pedestrians that the panhandlers knew well.²³¹ This Appendix briefly discusses the way the panhandlers were interviewed. While the author spoke with eighteen panhandlers in total, only twelve were interviewed at length.²³² As an incentive to be interviewed, each panhandler was offered a choice of ten dollars or a meal at a local restaurant. Before approaching the first few panhandlers, the author usually observed them, from a distance, for up to thirty minutes. This period generally allowed a rough determination of whether the individual was lucid, and, based on his apparent disposition, how the author might best introduce himself and the study. The author approached the first several panhandlers with no previous information on them, those initial interviews provided significant background on the rest of the panhandling community. From then on, a considerable amount was known about each panhandler before meeting him.

An extensive outline of questions formed the basis of each interview. The author generally diverged from the outline, however, seeking the

231. Interviews with panhandlers were conducted from February through May of 1991. After a preliminary draft of this Article was prepared in the summer of 1991, the author decided to extend the study. Discussions with police, business owners, and others were conducted informally during November 1991, with more formal interviews in March 1992. Because of the lapse of time, several of the regular panhandlers were reinterviewed during this period, largely to corroborate statements made by other interviewees, particularly police officers. (Ten of the twelve regulars in the York district in May 1991 were still on the street in March 1992, although there were a number of new panhandlers in the district, as well.)

232. The other six were not interviewed for different reasons. Two refused to be interviewed, apparently because the offer of ten dollars or a free meal was insufficient. These two panhandlers were probably transients, for the author never saw them again, and the other regulars could not identify them when provided with descriptions. Two more simply failed to meet the author at the agreed time; the author never saw these two again, either, nor were others able to identify them. Finally, two of those approached appeared to be so mentally ill that the author was unable to conduct a productive interview with them. These two were present at least two or three times a month in the York district, and, after initially seeing them attempt to panhandle when beginning the study, the author never witnessed either one panhandle again.

topic each particular panhandler found least intrusive or threatening (for example, the relative merits of various local soup kitchens) before covering more sensitive areas (how the panhandler had lost his last job, whether he drank). Almost all of the interviewees, after shedding their initial suspicion and inhibitions, were candid about their experiences. Several of the most insightful and articulate panhandlers were interviewed several times, and the author continued to maintain contact with many of the regulars through the summer of 1992. This ongoing contact was absolutely crucial to the study, for it enabled numerous gaps from interviews to be filled, and equally important, allowed corroboration of much of the information obtained from other panhandlers. The author was thus often able to determine, through questioning previous interviewees, when someone had exaggerated or completely falsified important information.²³³ Two of the panhandlers who had worked the York and Broadway neighborhood for a long time, Ricky and John, were particularly helpful in this regard.

233. This is not to say that the study does not suffer from certain panhandlers' misrepresentations, or, for that matter, from the author's misunderstandings. While some information believed to be false has been omitted, at least some misrepresentation probably has infected the study. Many of the panhandlers, at various points in their interviews, appeared ashamed of their circumstances, and may have been less than forthright in their accounts. However, the misrepresentations and omissions may relate more to the events that led to each panhandler's current situation than to the details of that situation itself. This is because the panhandlers seemed to feel far more uncomfortable about explaining how they had ended up in their present circumstances; they were rarely reticent when discussing their current experiences.

