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A Man Who Fought Homelessness and Won (Sort Of)

Steven Banks was the most effective social-services director in New York City history — and when he left office, there were still 45,000 people sleeping in shelters. Is that a success?

By ALEX CARP

A little past midnight one June evening two years ago, Steven Banks, then the commissioner of New York City's Department of Social Services, arrived at the Coney Island-Stillwell Avenue subway station, in South Brooklyn, to help see passengers off the trains. For the past seven weeks, the subway system had been closing for four hours each night — the first planned overnight shutdown in more than a century. Transit officials had explained the shutdown as a chance for a "deep cleaning" in the face of the pandemic, but at a news conference, Gov. Andrew Cuomo admitted that the decision would deny homeless New Yorkers a place to sleep. Banks's department had received four days' notice, and it was all hands on deck.

A train arrived on the far side of the tracks. Stillwell is the last station on the F line, known to homeless-outreach workers as one of the more popular lines for people sleeping on the trains overnight. Many people stepping onto the platform walked right past workers asking, or trying to ask, if they had somewhere to go. Banks joined a pair of outreach workers from the Bowery Residents' Committee, one of the organizations that regularly work with his department. They had stopped to speak with a middle-aged man who stepped off the train a few moments earlier. His head was shaved clean, and he wore a striped dress shirt, open to the chest, and a wood-bead necklace.

The man explained that he was staying at a shelter in Harlem with a work-training program, but when he missed his curfew, the shelter had filled his bed for the night. In one hand, he held a plastic clamshell filled with lettuce and ranch dressing.

"So you need a place to stay?" Banks asked.

"Just tonight, that's it," he said. He dipped a finger in the dressing. "They're picking me up there at 7 for my program."

Banks turned to Gabriel Pagano, then an overnight coordinator at the B.R.C. "You have something you can give him?"

"We're calling for it right now," Pagano said.

Banks directed New York City's homelessness strategy from 2016 through the end of the de Blasio administration. But for 33 years before joining city government, Banks was a staff lawyer and ultimately attorney in chief at the Legal Aid Society, where he regularly sued the city on behalf of homeless people. His most famous case lasted 25 years. The litigation he led at Legal Aid hammered together, from the outside, much of the shelter-and-services system New York has today. It also made him one of the city government's most notorious adversaries. As he stood alongside Bill de Blasio at the news conference to announce he'd joined the administration, the mayor was asked if he hired Banks in part to keep him from being able to sue.

Banks made homeless outreach a priority throughout his time as commissioner, and under his watch the number of outreach workers tripled, to more than 600. Department staff members noted that he sometimes broke up workdays by conducting impromptu outreach alone along the half mile in Lower Manhattan between the main offices of the Department of Homeless Services and the Human Resources Administration, the two city agencies under the D.S.S. umbrella. "There's a part of him that almost feels responsible that he hasn't solved the problem," Pat Bath, a longtime colleague of Banks's at Legal Aid, said.

Physically, Banks, 64, can make himself inconspicuous. He is 5 feet 7 inches tall, with small, round eyeglasses and a beard that he keeps just a touch thinner than the hair around the sides of his head. On the platform, he wore jeans and a pull-over with a D.S.S. logo, and no one coming off the trains seemed to notice the word "Commissioner" embroidered on the chest in small, white script.

On the mezzanine at Stillwell, a man wearing flip-flops and a floral bathing suit stopped next to Banks. "You good?" Banks asked.

"I need somewhere to stay," the man said. "I don't have nowhere to stay." He started to repeat himself, then trailed off.

"OK, we can get you a place to stay," Banks said. D.S.S. has a database of New Yorkers who are living on the street, and outreach teams can view their case details — past conversations with outreach workers, the last shelter where they stayed — through an app on their phones. ("Nobody wants to keep answering the same questions over and over again," Banks says.)

"Where were you last night?" Banks asked.

"Um, last night I stayed — where did I sleep last night?" the man said. "Oh, I was on the train! I had got off, and I started walking. When I came back, there wasn't anybody at the station. So I waited until like 5, got back on the train."

"Well, we're going to get you a place for tonight," Banks said. He waved Pagano back over.

New York is the only city in the United States with what's known as a universal "right to shelter," which means, broadly, that no one is turned away because the shelters are full. The right to shelter is Banks's most wide-ranging victory — he won it as a lawyer at Legal Aid, in a lawsuit against an agency he was later appointed to lead — but also a reason that the city's shelter system has become so overburdened.

When Banks left office, at the end of last year, conditions in some shelters remained dreadful, and investigations by journalists and the agency exposed financial irregularities and ethical concerns at some of the nonprofit organizations that partnered with the agency. Forty-five thousand New Yorkers remained in shelters. But under Banks, the average number of people in shelter declined for three years in a row, after rising for decades.

Countless thousands were spared homelessness before they lost their housing, and New York became the first city in the country to guarantee that every tenant in housing court will have a lawyer. The department has been more effective than at any time in its history, yet still not effective enough.

When asked about this, Banks sometimes tells a story about a cross-examination he conducted at Legal Aid, a decade or so into the homelessness litigation. On paper, Banks had already won — the highest court in the state had ruled unanimously that families had a right to emergency shelter and that New York City had an obligation to provide it to them. But the city had families sleeping on the intake-office floor.

The witness testifying was a senior official at the Human Resources Administration. “One day the judge is sitting in court, listening to me ask this official, ‘What would it take to comply with these orders to provide shelter?’” Banks said. “And the judge, who had been presiding over this case for years, basically said, ‘Yeah, I’d really like to know the answer to this question — what would it take to comply with my orders that you’ve been violating all this time?’” Banks was struck by the honesty of the official’s response: “He said you need services to prevent homelessness, you need decent, adequate shelter for people who need it, and you need a way to provide permanent housing.”

Along with outreach, that view is more or less shared by experts across the field. The question of how to end homelessness, in one important way, has been answered for decades.

Banks knew this as a lawyer, and he knew this as commissioner. His career, however, seems to suggest a different question. If the people in charge — mayors, commissioners, Banks himself — have long known how to end homelessness, why haven’t they?

The Covid-19 pandemic has renewed a sense of a nationwide homelessness crisis. Cities that had long treated informal “tent villages” as a public nuisance and a target for removal, especially in residential and business districts, began to sanction them as a solution to meet immediate need. San Francisco established its first one downtown, a block from City Hall, in spring 2020. In New York, homelessness gained renewed visibility during the pandemic as D.H.S. moved 10,000 people, largely single men, from dorm-style shelters in all corners of the city into empty hotel rooms concentrated largely in Manhattan, at a time when remote work and other Covid disruptions reduced most other kinds of life on the street. The decision worked as a safety measure — the Covid rate in the shelter system was lower than the rate for the city over all — but the increased presence of shelter occupants in neighborhoods where other residents were not used to seeing them gave many

the impression of an emergency out of control.

It has also renewed outdated myths about what homelessness looks like. People may become homeless if they are evicted but also if they age out of foster care, leave prison or a nursing home without support or seek to escape domestic violence. Many live precariously for long periods before an unexpected change upsets the balance of their lives: a death in the family, the loss of a job, a new child. Nationally, the age when people face the highest risk of a shelter stay is infancy. At its peak in New York more than two-thirds of the people sleeping in the city’s shelter system were families with children, and one in three families earned income. Homelessness in New York is, in large part, working families who return to a shelter at night.

In the absence of a comprehensive national effort to address homelessness, the responsibility falls to state and local governments. Shelter wait lists and limits on length of stay are not uncommon. Additionally, many shelters have rules that break up families, separating spouses from one another or sometimes a child from a parent. Others open beds only to whoever shows up first each night — securing one can mean standing in a line that begins in the afternoon, rather than working or looking for a job. In California, a recent reform to bring people off the streets has been found to effectively force a choice between forfeiting many of their possessions for a shelter stay or keeping their things but facing arrest or citation by the police. Some places seem to have shifted their focus from emergency shelter to housing subsidies as a more permanent solution, although the average wait for a subsidy is more than two years.

Almost universally, the resources and authority to address homelessness are spread across different branches of city and state government. Some cities have several departments that provide housing. Others have separate agencies for housing, homelessness and the social services that can keep people in their homes, each with its own political and policy incentives. Very few policymakers with the power to coordinate legislation more broadly — mayors, governors, members of Congress — choose to focus on homelessness over other priorities. Many proposals, especially ones written in the urgency of a crisis, seem designed less to improve the lives of people experiencing homelessness than to provide shortcuts to quell a backlash, move homelessness out of the sight of other constituents or minimize a political cost. One of the simplest ways to describe homelessness is as the failure of every other social system a government can provide.

In 2014, Banks was appointed commissioner of the city’s Human Resources Administration, which manages public

benefits, including food stamps, Medicaid and cash assistance. Banks argued that the goal of the agency was, in addition to fighting poverty and income inequality, to prevent homelessness. (“I understand it’s not always the mission that’s been embraced previously,” he said, when pressed by a member of the City Council.) Within two years, he became commissioner of the Department of Homeless Services as well, and soon incorporated the two agencies into the Department of Social Services. Altogether, D.S.S. has about 16,000 employees and a \$12 billion budget, which makes it the largest social-services agency in any American city.

New York’s homelessness services and shelter system were built by litigation, rather than legislation, a patchwork of narrow, nearly independent fixes to specific circumstances that it had been forced to address in court. In one of his appearances at the City Council as commissioner, Banks said that government officials acted as if they were faced with a temporary problem. “Modern mass homelessness,” Banks said, “has been an emergency for 40 years.” At D.S.S., he set out to create a total system, with each part aware of the others. It would be, essentially, the city’s first.

The litigation that has defined New York’s response to homelessness began in 1979, when a young lawyer named Robert Hayes filed a lawsuit that would lead to a right to shelter, but for men only. After Hayes won, New York resisted extending the right to shelter to women, and then to families, until it was sued again and again. “Government never responds to human need,” Hayes told me. “Government responds to pressure. And that became our job, to create pressure.”

Around this time, Banks started working at Legal Aid, where he was assigned to the organization’s four-person office on Staten Island. It was a neighborhood office, so the lawyers there handled whatever kinds of cases walked in the door. He has described his early days there as a version of “My Cousin Vinny,” a movie that he and his daughter can recite by heart. “The office was in kind of a run-down building, typical at the time for Legal Aid,” Banks said. “If I was interviewing a tenant on a housing case, I’d have to ask about the conditions in their apartment. I would point to the ceiling and say, ‘Is your ceiling better or worse than this one?’”

One day in 1982, a woman named Yvonne McCain walked into the Legal Aid office serving southern Brooklyn, looking for help with her public benefits. McCain and her four youngest children had been evicted earlier that year and spent two months “doubled up” at her disabled mother’s two-room basement apartment in Harlem before she found what she thought would be a new apartment in Brooklyn, close to where her children went to school. When the apartment fell

through, she asked the city for shelter and was eventually placed in the Martinique Hotel, in Midtown Manhattan, one of 11 privately operated “welfare hotels” that New York had begun to use for makeshift emergency housing.

McCain would later describe her first night at the Martinique as “one of the worst nights of my life.” She found the mattresses burned, ripped and stained with urine on both sides, and the windows jammed open; the two rooms she had been assigned were on the 11th floor. “I stayed up all night crying,” she later recalled, “terrified that if I didn’t watch them, one of my children might fall out a window.” There was no heat or refrigeration and sometimes no running water. She put milk on the window ledge to keep it cold and hung a bag of food from a nail in the wall to protect it from mice and rats. She sponged the mattresses with disinfectant and, eventually, took in a stray cat to fight the rodents. Each morning, after accompanying her children on their commute to school in Brooklyn, McCain scoured newspaper listings and looked for affordable housing.

“At the time I didn’t altogether know what the Martinique was like,” Marcella Silverman, the Legal Aid lawyer who helped McCain find emergency housing, said. When she visited McCain’s room she felt that she must be looking at a violation of the law. Soon, lawyers from Legal Aid became regular visitors to hotels and city intake offices, looking for other families in similar circumstances — arbitrarily denied shelter, provided substandard emergency housing or given no notice of city decisions about their cases — who might be willing to join McCain in a class-action lawsuit demanding a right to shelter for families. “This was a practice case,” Silverman said. “We had to prove what the city’s practices were. And the only way to prove a practice is to put before the court more and more people suffering the same harm.”

The right-to-shelter cases built New York City’s shelter-and-services system in ways large and small. The city, essentially overnight, found itself with a legal obligation to house thousands of people and to provide minimum shelter standards that could be enforced by the court system. It tried to convert unused hospitals, schools and armories — buildings that were large, empty and publicly owned. “We just needed volume,” said Bonnie Stone, then an assistant deputy administrator at the Human Resources Administration. “Every day we were on the search for new places.” Shelters were often opened with little notice, under the cover of night.

A family shelter that was opened briefly in an unused Bronx jail had to be closed after inspectors hired by Legal Aid found lead paint. In other shelters, Legal Aid found violations of fire and safety regulations or hired inspectors who found dan-

gerous levels of asbestos, allowing Banks to file motions that forced the city to find safer quarters. The city continually missed deadlines that he had persuaded the court to impose, and court orders mandating a narrow, legalistic solution to one problem could generate scores of others. With each violation, Banks returned to court, seeking enforcement. By the mid-1990s, he was responsible for enforcing the city’s compliance in the cases that Hayes brought as well, bringing every right-to-shelter claim under his purview.

Before long, city officials would make day-to-day decisions with an eye on the courtroom. “The system before asked essentially one contentious question: Are you eligible for shelter or not?” Linda Gibbs, then the D.H.S. commissioner, told reporters in 2004. “Now, instead of hiring investigators, we are hiring staffers with social-services backgrounds. We assume families that come to us have a problem, and we ask, ‘How can we help?’” Agency managers grew reluctant to analyze their own data, fearing that reports they produced internally would be subpoenaed by Legal Aid. A former D.H.S. commissioner told the public-policy scholar Thomas Main that when he was considering the job, a city lawyer asked him to be sure he really wanted it, “because you’re about to be named in over 70 lawsuits.”

Over the decades that he worked on the right to shelter, Banks came to know the system of shelters and services better than anyone else, in no small part because, directly or indirectly, it was built in response to what he persuaded the court to demand. By the time the McCain case was settled, in 2008, with a final judgment that permanently enshrined the right to shelter, a system that had barely served a few hundred people had become a city within the city, providing emergency housing for 35,000, and a body of law had been built block by block alongside it.

Thomas Crane, New York City’s chief of general litigation, estimates that in nearly four decades as a city lawyer, he has spent more time on homelessness litigation than on anything else. Crane said that “in the bad old days,” they were in court “every week or every other week, and when we weren’t in court, we were writing papers to address the motions that were being made,” he said. In one 18-month stretch, the city submitted more than 300,000 pages to court. “Steve knew what data was out there, and he’d want to get his hands on it,” Crane said. “And we had a lot of dirty laundry.” He added, “They were driving us crazy.”

Six years after reaching the settlement, Crane was in a meeting on other city business when, he recalls, “one of my colleagues who worked with me on homeless litigation burst into this office — just really burst in, with other people here — and said: ‘You won’t [expletive] believe it. Do you know who the new commissioner is?’”

Banks was the rare commissioner who

had no previous experience working in government. Certainly no other agency head had made a career working against it. When he was a lawyer, staff members at one of D.H.S.’s intake offices had a running joke about posting Banks’s photo behind the desk, like a food critic’s in a restaurant kitchen, with a note to call management if he showed up. In the courtroom, it was easy to think that city officials’ hardheadedness was all that stood between Banks and the solutions to his clients’ problems.

The responsibility for finding open beds fell to a small office within D.H.S. called Housing Emergency Referral Operations, known inside the agency as HERO. HERO ran 24 hours a day, seven days a week, and may be the place inside D.H.S. that felt the right to shelter most acutely. “The office is working to forecast how much capacity is likely to be needed,” Banks explained. “Is there enough? Who is moving out? Where are they moving out from?” Another D.H.S. staff member who was not authorized to speak on the record described it more bluntly. “They make the math work,” he said. “It was a real thing — it’s not theoretical anymore. They got to show Banks what he had wrought.”

One of the first things Banks learned was that three people had to leave shelter for the city’s count, a number known as the census, to drop by one. This indicated not only an unrelenting demand for housing but also a system in near-constant motion. In 2018, when the annual census reached a record high — an average of 60,000 people per night — more than 132,000 people spent at least one night in shelter over the course of a year, enough for every bed in the system to turn over. The last thing Banks wanted was to be sued for violating the right to shelter, but the numbers were bleak. “He never mentioned it,” a HERO employee who worked closely with Banks at the time but was not authorized to speak on the record, said, “but if it was me, that’s what I’d be thinking, right?”

When Banks started, HERO’s day began at 6 or 7 a.m. with a review of remaining vacancies. HERO staff members then spent business hours making calls and visits to shelters and, often, cold-calling hotels for extra rooms. Early on, they were sometimes thwarted by disorganization elsewhere in the agency: They might hear from a shelter operator that had a pocket of open rooms but needed another D.H.S. office to approve its budget before they could be released. The office is legally mandated to place everyone by 4 a.m. — the next day’s first report on new shelter applications arrives just four hours later — and under Banks, they met their deadline every night, but in his first year sometimes not by much. “There were many days where the outsider looking in would think, Oh, today is going to be the day where we just don’t make it,”

the HERO staff member said. “I’m sure many nights the commissioner was humbled by his nerves, watching it play out.”

It became clear to Banks that the shelter system should work locally rather than as a triage operation crisscrossing the city. “If I come from the Bronx and I work in the Bronx or my kids go to school there, or if I have health care needs there, or if my house of worship is there, what can the agency do to say I’m going to be sheltered as close as possible to those anchors of life?” Banks said. Shortly after he became commissioner, D.S.S. began to work with the City Council member Antonio Reynoso to open a pilot shelter that would prioritize people who lived nearby. Over the summer, the agency made plans for others, including one in Maspeth, a working-class community in western Queens. The neighborhood had long been majority white, but in recent years that majority became thinner and thinner. Maspeth was the first place where the neighbors called a large town-hall meeting to oppose a proposed shelter. They seemed unable to imagine that New York’s homeless residents came from every community district in the city, including theirs.

Residents held a meeting at the gymnasium of a Maspeth high school. The Queens Ledger reported that the gymnasium could hold about 750 people and that turnout surpassed 1,700. Banks stood behind a lectern at one end of the room, facing rows of people sitting in folding chairs. He was not received warmly.

“To the people yelling at me in the front row, saying they should go back to East New York, I want to just emphasize again — ”

The crowd interrupted with cheers.

“ — I want to just emphasize again that there are 243 of your neighbors in shelters — ”

The crowd interrupted with boos.

Later that fall, protesters marched in front of Banks’s house four times, and he received a threatening phone call from a woman who declined to identify herself, mentioned his children by name and asked why he hadn’t picked up his newspaper the previous weekend. She said he would be hearing from her again. The Police Department instructed him to stop taking the subway to work. “People ask me, ‘You have a listed phone number?’” Banks said. “I thought that was part of what I was supposed to do, be accessible.” By mid-October, the landlord for the proposed shelter had pulled out.

Banks took two lessons from Maspeth. In neighborhoods that are likely to be hostile to new shelters, the agency no longer provided wide notice until they had a finalized agreement with the landlord. And Banks began to send an annual request to every community board and elected official in the city, asking for promising locations in their districts. “Some of them have been extraordinary partners,” Banks said. “But in other communities it doesn’t happen.” Eric Ulrich, a former

City Council member from a district in southern Queens — “He came to a protest at my house,” Banks noted — tried to submit a location in the Bronx. “And when we open a shelter in a community like that, we might hear that there wasn’t any consultation. But we can say, ‘Well, wait a minute, we asked.’” By the end of 2021, more than 50 borough-based shelters had opened.

From the start, Banks began to put together things he hadn’t been able to win as a lawyer. He came into office shortly after the chief judge of New York’s highest court, Jonathan Lippman, convened a task force to investigate access to legal services in civil court. What it found was so stark — in New York City eviction cases, 99 percent of tenants appeared without a lawyer, while only 4 percent of landlords did — that the city’s housing courts began to gain a reputation as a collection-and-eviction service for landlords. “Ever since *Gideon v. Wainwright*, the seminal case on criminal legal representation, if your liberty is at stake, you have a right to a lawyer,” Lippman said. But *Gideon* applies to criminal cases only, not to civil litigation, like evictions. And if you can’t make your rent, it’s very unlikely you can pay for a lawyer. “Who do you think wins when one side’s got a lawyer and the other side doesn’t?” Banks asked.

Plenty of lawyers have argued for a right to counsel in housing court. Banks himself couldn’t get it to stick while at Legal Aid. But a commissioner who wants to make it a priority, he said, can accomplish things that are much harder to do on the outside. Banks created a pilot program, targeted by ZIP code, that provided counsel in housing court for any person who needed it. Some estimates put the cost of a full program at \$200 million a year or more; the funding for Banks’s pilot began at \$8 million. The idea of a city-wide program had support from a growing group of advocates and members of the City Council, but it was received with less enthusiasm in the executive branch. (A spokesperson for the de Blasio administration said that the mayor and Banks worked closely throughout this project to make sure it had the funding and resources to be effective.) During a City Council committee hearing, Letitia James, then the city’s public advocate, relayed a conversation with someone she suggested was a city representative, who told her the city “should basically only give a right to counsel to individuals who have a likelihood of success.” James left unsaid how the city might evaluate that likelihood.

“Steve was the guy who had to get it across to the administration that you can make this work from a fiscal perspective,” Lippman said. “Little by little, he was able to wear the mayor down.” In 2017, de Blasio signed a law that expanded Banks’s program and imposed a deadline to reach every low-income tenant in the city by mid-2022. Lippman called it “the first really, truly, civil

Gideon piece of legislation” in the country. It will likely have the furthest reach of anything Banks has done.

By the arrival of the pandemic, evictions in the city had dropped by more than 40 percent, and the dynamic of the courtroom had changed in other, indirect ways. Some landlords will stop pursuing certain kinds of evictions, Banks said, once they know there’s a lawyer on the other side. “There’s a kind of case that the landlord would never be able to win, because it had no merit,” he said. “But they were able to win with an unrepresented tenant.”

In 2020, the court system decided to hold all hearings virtually, and evictions slowed because of the statewide eviction moratorium. But they never entirely stopped. “So instead of the classic housing court, with thousands of cases on the calendar each day throughout the city, we had a system limited to the number of conferences the 50 judges can do over the internet,” Banks said. “And it turns out you can only do about 10 conferences a day, per judge. We could handle all of those.” As the city began to reopen later that year, the program soon expanded fully. The right to counsel had effectively arrived in housing court two years early.

For decades, the city’s response to homelessness had often been built around the idea, stated or not, that the right to shelter meant the shelter system could only grow and grow, regardless of cost, of the strain on other resources and of the number of qualified service providers. When previous administrations fought Banks, that was the idea of the future they were trying to refute.

Over Banks’s tenure, a series of investigations repeatedly pointed to the work still to be done. Tenants of a Bronx shelter company accused the chief executive of sexual assault or offering better living conditions in exchange for sex, and employees spoke of a pattern of sexual harassment and assault. A Queens-based nonprofit submitted invoices for services that the city could find no evidence it had provided. Another hired a security company founded by one of its executives as its largest subcontractor. (Many of the executives and providers denied wrongdoing.) Police Department data seemed to dispute D.S.S. safety reports. Several reports documented shelters with vermin and mold, and accounts of violence deterred people from leaving the street.

This fall, The New York Times published an investigation into CORE Services Group, which operated several city shelters, that provided evidence of widespread financial improprieties. The Times noted that D.S.S. had been aware of many of the violations; it also noted that the agency continued to work with the organization after the violations surfaced. The investigation’s sharpest critique may have been one of its most subtle: Five people, identified only as current or former D.S.S. officials, told the paper that

the city was hesitant to closely scrutinize the finances of nonprofit groups because the immense need for shelter and the legal obligation to provide it left the department with virtually nowhere else to turn.

“Among the things that keep me up at night is the concern that the pace of change isn’t fast enough,” Banks told me in October. “If CORE or any other organization does not agree to reforms that we are demanding, we will replace them. But we can’t replace them by just shutting their doors. We have to find alternate providers, and that takes time.” (The city cut ties with CORE the following month; the chief executive denies any wrongdoing and a spokesman for CORE disputes the city’s account of how their contract ended.) “I understand that’s unsatisfying to the public, because there is a sense that action should happen immediately,” Banks said. But the risk of tossing people onto the street is unacceptable.

Despite decades of work to ensure shelter, Banks sees it as necessary but insufficient, an “emergency-room response” to homelessness. “The ultimate tool that D.S.S. has to address homelessness is to provide people stability,” he said, to keep them from becoming homeless in the first place. “Food assistance, legal services, rent arrears — even in a good shelter, clients are going through the trauma of losing their home.”

From the start, he was determined to try to help keep residents in their homes. When Banks began at the Human Resources Administration, the city had stopped providing rental assistance entirely. He restarted it. He worked with the city’s Department of Education to identify students whose families were on the verge of homelessness, living with friends or relatives. He moved crisis-intervention workers into neglected communities. He reduced administrative barriers to other public benefits and made them available online for the first time.

It was not enough. D.S.S. is a social-services agency; the tools it has are social-service tools. Banks combed the city charter to find a passage that would give D.S.S. the legal authority to build housing; he couldn’t find it.

New York has lost roughly 150,000 rent-regulated apartments over the past 25 years, but the city’s affordable housing didn’t simply disappear — it was replaced. “The shelter system seems to me to be part of the housing market in New York City — it’s not like some add-on,” Kim Hopper, an anthropologist and one of New York City’s earliest homelessness advocates, said. “And I don’t see how you get around the problem of affordability without producing affordable housing.”

The city’s housing initiatives are assigned to a separate department, Housing Preservation and Development, with its own directives, its own commissioner and its own politics. It was the lead agency of the city’s housing plan. The agency began

many of its projects with a set number of apartments put aside for people leaving shelter, but by the time negotiations between the city and developers were finalized, these units often vanished. In 2017, the agency’s commissioner at the time testified to the City Council that the agency is “often forced to reduce or eliminate homeless set-asides to garner support for our projects.”

After a few years in office, when Banks looked at the shelter census, he saw a number that had stopped rising but that he couldn’t get to drop. Social-service tools could keep more people from needing shelter, but there was hardly anywhere for the people already in shelter to go. Banks began to question why he had come into government. Maybe keeping the census essentially flat was the best D.S.S. could do.

Banks spoke with Lippman, the former chief judge of New York, who had become a kind of mentor and confidant. Banks consulted him before he decided to leave Legal Aid, and Banks approached him again. “He came to me and said maybe I can’t make the kind of change that I want to,” Lippman said. “Maybe I have to get out of here.” The question was whether Banks could hold onto his beliefs while holding onto his job. “And my advice to him,” Lippmann said, “was get the tools you need or get out.”

“He only stayed because the mayor promised him things that would help,” Lippman said. Without drawing much attention, parts of Banks’s social-services agency began to behave like a housing department. D.S.S. pieced together a kind of housing plan outside the city’s official housing plan, focused entirely on homelessness. The agency developed teams to investigate and prosecute landlords who discriminate against tenants paying with city vouchers. Banks demanded that landlords of apartments paid for with city public assistance make repairs or address unacceptable conditions. If they didn’t, he withheld payment to them or threatened to, which was often as effective, making D.S.S. an enforcer of the city’s housing code.

Part of D.S.S.’s portfolio was the “cluster program”: thousands of apartments the city rented in a series of run-down buildings for use as small-scale shelters, despite substandard maintenance and poor access to services. The city relied on the program for decades, but the cluster program had arguably the worst shelters in the system; Banks had always wanted to end it. “When I looked at it, I thought, OK, we want to end the program, we want to get clients into permanent housing and we want to preserve permanent affordability of that housing,” Banks said. “Why isn’t that a public purpose that’s suitable for eminent domain?”

Eminent domain is the ability of the government to take private property, at a fair price, and convert it for public use.

“Government, in general, uses eminent domain all the time,” Banks said. “How did they create the railroads? How did they create the subways?” Banks threatened to take the clusters, and the landlords decided they didn’t want to test his argument in court. D.S.S. arranged for nonprofit housing organizations to buy and convert 45 cluster buildings, totaling more than 1,700 apartments, for use as permanent affordable housing. Nearly every transaction, by turning what had been a shelter unit into an affordable apartment, simultaneously reduced the number of people in shelter and increased the city’s affordable-housing stock. In the converted buildings, the private, market-rate units became permanent affordable housing, too.

The threat of eminent domain, especially from a social-services agency, is widely considered an extremely aggressive tactic. A covert housing program assembled outside the direction of the housing agency is essentially unheard-of. In part, Banks found his way to them out of desperation and creativity, and a conclusion that even prevention and shelter together were falling short.

Another reason might be that the city’s affordable-housing plan seemed to largely fail its homeless people. The city typically creates affordable housing in two ways: development and preservation. Development finances the construction of new buildings; preservation ensures that existing affordable housing does not disappear. The de Blasio administration’s flagship plan, called Housing New York, promised 200,000 units of affordable housing by the end of 2021. In December, the city announced that it had reached that goal, calling it a signal success. According to Housing Preservation and Development data, however, it can take as long as four years from the time a new building is financed until it is built and occupied. The wait can be even longer for existing housing that the plan preserves: Those apartments are not available to new occupants until the current tenants leave. As of mid-2021, the city listed only one number for units — approximately 16,000 — that it had set aside for people exiting shelter. About half those units are supportive housing, available only to people with specific medical or social-service needs. The agency would not provide a more detailed count of the remaining “homeless set-aside” units, but according to internal agency data obtained by the Coalition for the Homeless, the number of those units “financed” by the spring of 2021 was fewer than 3,000. Even fewer than that, presumably, had been built.

Housing Preservation and Development says it does not have complete data on how many people the department has moved from shelter, though it does track how many units it has filled. As of mid-2021, excluding supportive housing, whose placement is largely determined

by D.S.S., that number was 5,133. The agency estimates this to be housing for “nearly 12,000 people.”

D.S.S. was left to fill the gap, without the tools of Housing Preservation and Development. Over the same period, D.S.S. found post-shelter affordable housing for more than 144,000 people. D.S.S. couldn’t build permanent affordable housing to bring New Yorkers out of homelessness, but Banks created more of it than anyone else, including the housing department.

New mayors like to pick their own deputies, and no one wants an adversary for a partner. Last summer, though, after Eric Adams won the Democratic primary, he told the local news channel PIX11 that he was not planning to replace every commissioner and mentioned Banks’s work. When Adams won the election, a person “close to the Adams campaign and transition” told the news organization City Limits that it was a “done deal” that Banks would continue in his role. “Even if you don’t like him, you have to keep him on,” the person said. (The Adams administration and Banks declined to comment.) But Banks decided to get out. In November he announced that he would lead the pro bono practice at the law firm Paul, Weiss, which litigates public-interest cases nationwide. Adams promoted the administrator of the Human Resources Administration, Gary Jenkins, who had worked for Banks.

The mayors that Banks fought at Legal Aid would argue that they couldn’t end homelessness without a state and federal government willing to help. They may have been right in a very narrow sense, but they were wrong where it counted. “If you want to end homelessness, you need

the other two levels of government working with you rather than against you,” Banks said. “But that doesn’t let the city off the hook.” The de Blasio administration was the first in 40 years to have fewer people in shelter on its last day than on its first. “We’ve shown what the city can do with a social-service response,” Banks said. He has also shown, he says, how beholden the Department of Social Services is to other systems that create the need for shelter. The cost of their failures appear in the shelter budget.

“When we brought McCain,” Banks said, referring to the right-to-shelter case he argued for nearly three decades, “we couldn’t make a claim for permanent housing because all of the case law said there wasn’t a right to permanent housing.” The right to shelter was the limit to what the law would allow. The language in the state constitution that anchors it is vague — it says little more than that “the aid, care and support of the needy are public concerns, and shall be provided by the state” — and had lay dormant for nearly 50 years. “What brought it to life,” Banks said, “was modern mass homelessness.” New Yorkers were freezing to death in the streets or losing limbs to hypothermia, and Banks and his colleagues thought that the social circumstances should change the way that the courts interpreted the law. Their work, eventually, showed that they were right.

Over the past two years, our social circumstances have been reordered again. A pandemic still not under control has been shown to spread more rapidly in overcrowded housing. “Is that not a ‘public concern’?” Banks asked. Additionally, he said, “federal law already provides a

right to housing assistance — if you own your home.” There are tax deductions available to mortgage holders and a suite of subsidies open to homeowners. The path to prosperity in America — to the kind of wealth that can be passed from one generation to the next — runs through housing, and for the bulk of the last century, it also ran through discriminatory policies, like redlining and segregation, that governed homeownership. This means it has also been a way for intergenerational wealth to be denied. Yet the tax code continues to reward homeowners and ignore renters. “We’re at a moment of racial reckoning,” Banks said. “Isn’t there an argument to be made that now is the time to undo the impact of current law that provides a right to housing assistance if you own your home, but not if you don’t?”

The moral argument for a right to housing, cynics might say, remains naïve; it has always been too idealistic to catch on widely. But the grounds for a legal argument may have just taken shape, and Banks has made a career of moral arguments spoken through the language of the law.

“Let me put it this way,” Banks said. “I look forward to returning to the practice of law, and it would be a great case to bring.”

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