WELFARE RESIDENCE REQUIREMENTS: A STUDY IN DUE PROCESS AND EQUAL PROTECTION

Qualifying for the receipt of welfare assistance is based upon one's need and the satisfaction of certain eligibility standards. One such standard is the residence requirement. State welfare residence requirements are statutory provisions which require a stipulated period of residency as a prerequisite to the receipt of welfare assistance. Until recently, these requirements were applied to five basic types of relief: old age assistance, aid to dependent children, aid to the blind, aid to the disabled, and general assistance or aid to the poor.[1]

The modern statutory residence requirement devolves historically from the settlement concept embodied in the Elizabethan Poor Laws.[2] According to this concept, each community had exclusive responsibility for the care of its own poor. Thus a distinction between *local* and *foreign* indigents developed. The long-term local indigent was granted community support, whereas the foreign indigent was either deterred from entering the community or else forced to return to his place of settlement.[3] Consequently, many indigent persons were coerced into remaining in a place in which they had no future, their free movement and personal opportunity having been greatly restricted.[4]

To an extent the Social Security Act of 1935 permitted the continuance of this practice. The federal act provided in part for federal subsidization of state aid programs for dependent children, the aged, blind, and disabled.[5] "To be eligible for federal grants the individual states were required to submit acceptable plans for the administration of these funds."[6] No plan would be approved unless it contained residence requirements below those which "Congress viewed as an acceptable maximum."[7] These

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[1] Note, *Residence Requirements in State Public Welfare Statutes*, 51 IOWA L. REV. 1080 (1966) [hereinafter cited as Note, *Residence Requirements*].

[2] The Poor Relief Act of 1601, 43 Eliz. 1, c.2.

> [T]he Elizabethan Poor Law was both a consolidation of earlier Tudor Statutes and a consummation of English experience with care of the poor. A growth rather than a creation, it contained almost nothing new but fixed the character of poor relief for three centuries not only in England but in America as well. Today its principal features linger in the welfare programs of all our states. TenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status*, 16 STAN. L. REV. 257, 258 (1964).

"A supplemental 'Act of Settlement' (14 Car. 2, c.12 (1662)) passed in 1662 added a residence requirement (to the Poor Relief Act of 1601). . . ." Note, *Welfare Benefits—A Constitutional Right to Change Residence*, 7 J. FAMILY LAW 660, 661 (1968) [hereinafter cited as Note, *Welfare Benefits*].

[3] Mandelker, *The Settlement Requirement in General Assistance*, 1955 WASH. U. L. Q. 355, 356-58.

[4] Note, *Residence Requirements*, *supra* note 1, at 1801.

[5] *Id.*

[6] *Id.*

[7] Shapiro v. Thompson, 394 U.S. 618, 646 (1969).

maximum requirements were included within the provisions of the Social Security Act. For example, section 402 (b) of the act, which set forth the requirements for the aid to dependent children program, authorized the Secretary of Health, Education, and Welfare to approve only those state assistance programs which set residence requirements at one year or less.[8] The effect of this section was to require "41 States to repeal or drastically revise offending statutes . . . ."[9] if they were to qualify for federal funding.

There has been much recent debate concerning the reasons for Congress allowing the continuation of the residence requirement in the state-federal aid programs. The main issue has been whether or not Congress actually intended to authorize the states to impose residence requirements.[10] "Both those favoring lengthy residence requirements and those opposing all requirements pleaded their case during the congressional hearings on the Social Security Act."[11] The history of the act "discloses that Congress enacted the [provision] to curb hardships resulting from lengthy residence requirements."[12] For example, "[b]oth the House and Senate Committee Reports expressly stated that the objective of § 402 (b) [involving AFDC assistance] was to force '[l]iberality of residence requirements.' "[13] Arguably, the continuation of residence requirements may have been allowed merely as a compromise in the hope that the states could, in the future, be encouraged to voluntarily relax or eliminate their residence requirements.[14]

Between 1935 and 1969, reductions in residence requirements, primarily in the programs involving old age assistance, were made.[15] Few states, however, voluntarily eliminated their residence requirements.[16] The residence requirement remained a primary means of conditioning the receipt of welfare assistance. In 1969, most states still had statutes requiring a stipulated period of residency as a prerequisite for receipt of welfare benefits.[17]

Shapiro v. Thompson,[18] however, reversed this established practice by declaring such residence requirements unconstitutional. In 1966-1967 the constitutionality of the residence requirement was tested when rejected AFDC (Aid to Families With Dependent Children) applicants brought

[8] Note, *Welfare Benefits*, *supra* note 2, at 661 & n.8.

[9] Shapiro v. Thompson, 394 U.S. 618, 640 (1969).

[10] *See* Smith v. Reynolds, 277 F. Supp. 65 (E.D. Pa. 1967); Thompson v. Shapiro, 270 F. Supp. 331 (D. Conn. 1967); Green v. Department of Pub. Welfare, 270 F. Supp. 173 (D. Del. 1967); Harrell v. Tobriner, 279 F. Supp. 22 (D.D.C. 1967).

[11] Shapiro v. Thompson, 394 U.S. 618, 646 (1969) (dissenting opinion).

[12] Shapiro v. Thompson, 394 U.S. 618, 639 (1969).

[13] *Id.* at 640.

[14] Note, *Residence Requirements*, *supra* note 1, at 1081-82.

[15] *Id.* at 1082 & nn.15 & 17.

[16] *Id.* at n. 17.

[17] *See*, *id.* at 1091-95. The appendix sets out the residence requirement for each aid program for each state.

[18] 394 U.S. 618 (1969).

declaratory judgment actions in the federal District Courts of Connecticut,[19] the District of Columbia,[20] and Pennsylvania.[21] These applicants sought a declaration that state statutes imposing a one-year residence requirement were unconstitutional. Benefits had been denied to the appellees solely on the ground that they failed to meet the one-year residence requirement. The District Courts, in each case, held the statutory provisions unconstitutional.[22] On appeal, the United States Supreme Court consolidated these cases in order to base its decision on the broadest possible spectrum of available issue.

The Supreme Court affirmed the District Court decisions on the grounds that the statutes in question violated the equal protection clause of the fourteenth amendment and the due process clause of the fifth amendment,[23] stating that only a "compelling state interest" could provide sufficient justification for the infringement of the applicant's constitutional right to travel.[24]

The states relied on the presumption of constitutionality normally attributed to police power regulation in order to justify the use of the waiting period requirement, and the resultant classification.[25] State legislatures are generally vested with a wide range of "discretion in determining what measures are necessary to promote the public welfare."[26] Because of the normal presumption attending such legislation, a "classification [by the legislature] need not be accurate, scientific, logical or harmonious, so long as it is not arbitrary and will accomplish the legislative design."[27] The states contended that the qualification in question "is a reasonable one directly related to the problem sought to be governed . . . . [and, as such, is within the state's] discretion and authority to enact."[28]

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[19] Thompson v. Shapiro, 270 F. Supp. 331 (D. Conn. 1967).

[20] Harrell v. Tobriner, 279 F. Supp. 22 (D.D.C. 1967).

[21] Smith v. Reynolds, 277 F. Supp. 65 (E.D. Pa. 1967).

[22] *See* cases cited in notes 21-23 *supra*. *See generally* 37 U. CIN. L. REV. 207 (1968); 42 CONN. B. J. 114 (1968); 29 U. PITT. L. REV. 138 (1967); 43 N.Y.U. L. REV. 570 (1968).

[23] The fact that the District of Columbia statute was adopted by Congress poses constitutional problems of a somewhat different nature than those involved in determining the constitutionality of a state statutory provision. The principal dispute between the majority and the dissent concerned the extent to which federal power could be exercised in enacting a minimal residence requirement.

[24] Shapiro v. Thompson, 394 U.S. 618, 634, 641-42 (1969).

[25] [T]he effect of the waiting period requirement is
> to create two classes of needy resident families indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less than a year, in the jurisdiction. On the basis of this sole difference the first class is granted and the second class is denied welfare aid upon which may depend the ability of the families to obtain the very means to subsist—food, shelter and other necessities of life.

Shapiro v. Thompson, 394 U.S. 618, 627 (1969).

[26] People *ex rel.* Heydenreich v. Lyons, 374 Ill. 557, 562, 30 N.E.2d 46, 50 (1940).

[27] *Id.* at 564, 30 N.E.2d at 51.

[28] Thompson v. Shapiro, 270 F. Supp. 331, 338 (D. Conn. 1967) (dissenting opinion).

Through the use of the one-year residence requirement the states alleged they could protect "the fiscal integrity of state public assistance programs."[29] The states feared that the elimination of the requirement would result in a heavy influx of individuals into the state providing the most generous benefits, thereby putting great stress on the state's welfare budget. To reduce expenditures, or to prevent any reduction in aid to long-term residents, the states erected the one-year residence requirement barrier to prevent the influx of such indigents. The states contended that the residence tests, in addition to being a reasonable and permissible means of accomplishing this objective, also served certain administrative and related governmental objectives, such as preventing fraud, facilitating budget planning and providing an objective test for residence.[30]

The Supreme Court summarily dismissed the above contention on the grounds that such requirements violate an individual's right to interstate movement, and his right to equal protection.[31] The premise of the first finding is that the constitutional right to travel exists. The right of interstate travel has long been recognized by the courts as a basic right under the Constitution.[32] Although its exact source has remained unclear, it has been implied from the commerce clause, the privileges and immunities clause of the fourteenth amendment, and the due process clause of the fifth amendment.[33] The landmark case recognizing the existence of a right to travel is *Edwards v. California.*[34] More recent cases have not only affirmed the existence of the right of interstate movement and its concomitant right to establish residence, but have further expanded this right through the recognition of a right to be free from infringement upon that right.[35] The right to travel not only prohibits the deterrence of in-migration by indigents but, more importantly, it prohibits any state action which has the effect of penalizing an individual for exercising constitutionally protected rights.[36] Indigents moving to a new state may do so for a variety of reasons. If the constitutional right of travel of these persons is to be fully protected, the purpose for entering must necessarily be

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[29] Shapiro v. Thompson, 394 U.S. 618, 627 (1969).

[30] *Id.* at 633-38.

[31] Shapiro v. Thompson, 394 U.S. 618, (1969).

[32] "The constitutional right to travel from one state to another . . . occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized." United States v. Guest, 383 U.S. 745, 757-58 (1966) (quoted with approval in Shapiro v. Thompson 394 U.S. 618, 630 (1960)).

[33] Shapiro v. Thompson, 394 U.S. 618, 630 & n.8 (1969).

[34] 314 U.S. 160 (1941).

[35] United States v. Guest, 383 U.S. 745 (1966); Aptheker v. Rusk, 378 U.S. 500 (1964); Kent v. Dulles, 357 U.S. 116 (1958). *But see*, Zemel v. Rusk, 381 U.S. 1 (1965).

[36] Sherbert v. Verner, 374 U.S. 398, 406 (1963); United States v. Jackson, 390 U.S. 570, 581 (1968).

irrelevant. To hold otherwise would be to subvert the mandates of the Constitution.[37]

The court's second finding was that the one-year residence requirement established a classification which violated the equal protection clause of fourteenth amendment. The lower courts in addressing themselves to this question held that the waiting period requirement violated equal protection "because even if its purpose were valid, which it is not, the classifications are unreasonable."[38] No lower court had suggested, however, that a stricter test than that of reasonableness be applied in such cases. The courts in *Thompson v. Shapiro*[39] and *Green v. Department of Public Welfare*,[40] for example, expressly stated that "the classifications are not drawn on the presumptively suspect lines of race or color"[41] which would reverse the normal presumption of constitutionality."[42] The Supreme Court in *Shapiro v. Thompson*,[43] however, held that "statutory classifications which either are based upon certain 'suspect' criteria or affect 'fundamental rights' will be held to deny equal protection unless justified by a 'compelling' governmental interest."[44] Thus, the Court expanded the list of inherently suspect classifications (formerly race, wealth, and political alliance) "to include [a classification] based upon recent interstate movements . . . ."[45]

The result of the Court's decision is to recognize, at least by implication, a fundamental national right to receive continuous welfare benefits sufficient to provide families with "the very means to subsist—food, shelter, and other necessities of life."[46] In this light, this case can best be analyzed as an attempt by the court to add to the growing law of substantive equal protection. The basic principles of this doctrine are that: "There are some 'classifications' that are far from irrational, but are nonetheless unconstitutional because they produce inequalities that are unacceptable in this generation's idealization of America."[47] The Court's

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[37] See Shapiro v. Thompson, 394 U.S. 618, 631-32 (1969).

[38] E.g., Thompson v. Shapiro, 270 F. Supp. 331, 337-38 (D. Conn. 1967). The district courts were applying the traditional test under which equal protection is denied only if the classification established is not reasonable in light of the intended purpose of the statute.

[39] 270 F. Supp. 331 (D. Conn. 1967).

[40] 270 F. Supp. 173 (D. Del. 1967).

[41] Thompson v. Shapiro, 270 F. Supp. 331, 337 (D. Conn. 1967); Green v. Department of Pub. Welfare, 270 F. Supp. 173, 176 (D. Del. 1967).

[42] The classification "does not appear to be inherently 'suspect' in a constitutional sense, in contrast to certain classifications such as those based on race. Thus plaintiffs must shoulder the burden of showing that the classification based on residence does not have any reasonable justification." Green v. Department of Pub. Welfare, 270 F. Supp. 173, 176 (D. Del. 1967).

[43] 394 U.S. 618 (1969).

[44] *Id.* at 658 (dissenting opinion).

[45] *Id.* at 658-59 (dissenting opinion).

[46] *See* Shapiro v. Thompson, 394 U.S. 618 (1969).

[47] Karst & Horowitz, *Reitman v. Mulkey: A Telophase of Substantive Equal Protection*, 1967 SUP. CT. REV. 39, 57-58 [hereinafter cited as Karst & Horowitz].

decisions in this area appear to be primarily concerned with the attainment of this goal—the elimination of such inequities in our society. Because of the nature of these decisions, the explanations set forth in these cases are at times criticized for not providing sufficient guidance for later litigation.[48] There are, however, certain bases which are discernible in the Court's decisions in this area. An analysis of the rationale set forth in several pertinent cases will demonstrate the approaches utilized by the Court in giving effect to the principles of substantive equal protection.

"[T]he Court will [sometimes] state that a classification, even though rational, bears a heavier burden of justification than mere rationality."[49] In *Loving v. Virginia*,[50] for example, the court held unconstitutional Virginia's miscegenation statute as violative of equal protection and due process. In that case the state's statute was arguably rational in light of its purpose " 'to preserve the racial integrity of its citizens'. . . ."[51] The Court, however, held that "the Equal Protection clause demands that racial classifications . . . be subjected to the 'most rigid scrutiny' . . . ."[52] Mere rationality was held to be an insufficient justification for a statutory classification based solely upon race.

The Court may also hold "that the classification is impermissible, without any analysis of the degree of rationality or degree of justification."[53] Illustrative of this is *Harper v. Virginia Board of Elections*,[54] in which the Virginia poll tax was declared unconstitutional. The Court held that "a state violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electorial standard."[55] This conclusion was reached without attempting to determine whether there was any rational state policy which justified the imposition of the tax.

The Court may also "apply the principle of the 'least onerous alternative' and hold a rational classification to be impermissible because . . . ." less harsh means are available.[56] The Court in *Carrington v. Rash*[57] recognized as rational the argument used to justify its statute prohibiting any serviceman from acquiring a new voting residence so long as he remains

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[48] Kurland, *The Supreme Court 1963 Term—Forward: Equal in Origin and Equal in Title to the Legislative and Executive Branches of the Government*, 78 HARV. L. REV. 143, 169-70 (1964); Henkin, *The Supreme Court 1967 Term—Forward: On Drawing Lines*, 82 HARV. L. REV. 63, 64 (1968).

[49] Karst & Horowitz, *supra* note 47, at 58 & n.54.

[50] 388 U.S. 1 (1967).

[51] *See* Naim v. Naim, 197 Va. 80, 89-90, 87 S.E.2d 749, 756 *judgment vacated and remanded* 350 U.S. 891 (1955) (*per curiam*) [vacated because of an insufficient record].

[52] Loving v. Virginia, 388 U.S. 1, 11 (1966).

[53] Karst & Horowitz, *supra* note 47, at 58 & n.55.

[54] 383 U.S. 663 (1966).

[55] *Id.* at 666.

[56] Karst & Horowitz, *supra* note 47, at 58 & n.56.

[57] 380 U.S. 89 (1965).

in service.[58] The Court held, however, that the objectives sought could be achieved by the development of more precise tests for "determining whether servicemen have actually acquired a new domicile in a State for franchise purposes."[59] Since the state had reasonable alternatives available to it which infringed less upon protected interests, it was required to utilize these means.

The Court in the present case seems to have utilized all the above approaches in arriving at its decision. The Court, for example, conceded that "the one-year waiting-period device [was] well suited to discourage the influx of poor families in need of assistance,"[60] but concluded, without any further inquiry as to the necessity of such a requirement, that such a purpose was "constitutionally impermissible."[61] The court also held that "any classification which serves to penalize the exercise of that right [the right to travel], unless shown to be necessary to promote a *compelling* governmental interest [and regardless of its rationality] is unconstitutional."[62] Similarly, the Court concluded that "there [was] no need for a State to use the one-year waiting period as a safeguard against fraudulent receipt of benefits; for less drastic means are available, and are employed, to minimize that hazard."[63]

The specific types of cases decided under this doctrine have involved, for the most part, those sectors of our population most alienated from our political processes. The Court has identified certain fundamental interests that are vital to the development of these sectors of society, and have imposed equality in these areas in the name of the Constitution.[64] The influence of this equalitarianism is well exemplified by decisions concerning the administration of criminal justice. In *Griffin v. Illinois*,[65] *Douglas v. California*,[66] and *Anders v. California*,[67] the Court focused on "inequities between rich and poor defendants that resulted from [criminal] . . . procedures,"[68] and held that equal protection forbids invidious discrimination against indigents.[69] The Court thus attempted to assure every person, regardless of his economic status, equal rights under criminal proce-

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[58] *Id.* at 91-94.

[59] *Id.* at 96.

[60] Shapiro v. Thompson, 394 U.S. 618, 629 (1969).

[61] *Id.* at 629, 631.

[62] *Id.* at 634.

[63] *Id.* at 637.

[64] Karst & Horowitz, *supra* note 47, at 58.

[65] 351 U.S. 12 (1956).

[66] 372 U.S. 353 (1963).

[67] 386 U.S. 738 (1967).

[68] Karst & Horowitz, *supra* note 47, at 60.

[69] An example of the type of language used in these decisions appears in Griffin v. Illinois, 351 U.S. 12, 19 (1956). In that case the court held that "there can be no equal justice where the kind of trial a man gets depends on the amount of money he has."

dure. Cases involving the franchise, racial discrimination, and state responsibility for discrimination have also been decided by this method of judicial inquiry.[70]

The cases suggest that neutral statutory treatment may not be enough, but that affirmative governmental action may be required if necessary to prevent discrimination in these vital areas. "[E]mphasis is [being placed] upon measures the states must adopt in carrying on their activities and steps they must take to offset disabilities not of their creation."[71] The activity of the Court may best be summarized as follows:

> [J]udicial activism feeds on itself. The public has come to expect the Court to intervene against gross abuses. And so the Court must intervene. . . . Given that fact, we shall be lucky to get good explanations in substantive equal protection cases.[72]

The recognition of the right to receive welfare assistance, and the obvious importance of such funds to the individual recipient, raises some significant questions about the extent and type of regulation that government can place upon the receipt of such aid. Historically, welfare benefits were thought to be a gratuity, rather than a right of citizenship,[73] and as such, were subject to qualifications imposed by the state. Additionally, welfare agencies were given the power to regulate the use of funds after they were distributed. Thus, besides conditioning eligibility on need and the satisfaction of a residence requirement, government, via the welfare agency, is able to impose administrative regulations which effect the continued enjoyment of benefits once received.

Certainly some form of control is necessary and its imposition proper. Few "will deny that fair and reasonable eligibility standards and effective protection against fraud are necessary when benefits are handed out."[74] However, these standards and conditions can not be used to coerce the recipient into relinquishing his constitutional rights. The issue then becomes the extent to which these conditions and standards can infringe upon the recipient's constitutional rights. This necessitates a balancing of the interests of the state against those of the recipient.

In distributing welfare funds, the government should not be allowed to impose any conditions that would be unconstitutional if imposed upon persons not on welfare. Government can not buy-up constitutional rights.[75]

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[70] Karst & Horowitz, *supra* note 47, at 59-78.

[71] Cox, *The Supreme Court 1965 Term—Forward: Constitutional Adjudication and the Promotion of Human Rights*, 80 HARV. L. REV. 91, 93 (1966).

[72] Karst & Horowitz, *supra* note 47, at 79.

[73] Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 YALE L.J. 1245 (1965) [hereinafter cited as Reich, *Individual Rights*]; *See generally*, O'Neil, *Unconstitutional Conditions: Welfare Benefits with Strings Attached*, 54 CALIF. L. REV. 443, 444-46 (1966).

[74] Reich, *Individual Rights*, *supra* note 73, at 1245.

[75] Handler, *Controlling Official Behavior in Welfare Administration*, 54 CALIF. L. REV. 478, 482 (1966). *See* Reich, *The New Property*, 73 YALE L. REV. 732, 782-83, 1252 (1964).

One way to prevent such "purchases" is to require certain basic procedural safeguards in the administration of assistance programs. "The Social Security Act has long required 'opportunity for a fair hearing' both in the denial of applications and in the termination of benefits."[76] In practice, however, the act has not afforded the recipient sufficient protection from arbitrary administrative practices and procedures which deprive a recipient of his substantive and constitutional rights, and most importantly, his dignity as a human being.[77]

The local welfare agency is given a wide range of discretion in the administration of its local programs. In fact, the administrators possess the ultimate means of control over the recipient. By threatening, either expressly or impliedly, to discontinue public assistance, the agency official is able to force compliance with almost any condition which he may deem necessary. The recipient is often subject to the whim and caprice of the administrator. One has little choice but to submit to all conditions imposed, since to do otherwise would result in the loss of benefits necessary for survival.

Some welfare regulations are merely attempts to impose a standard of moral behavior on beneficiaries.[78] The agency may use its power to grant or deny funds as a tool to curtail what officials may consider an illicit relationship. For example, mothers receiving AFDC benefits may be threatened with the immediate suspension of benefits or with neglect proceedings if "while receiving assistance . . . [they] give birth to an illegitimate child . . ."[79] or if found "living with a man capable of rendering financial support . . ."[80] notwithstanding the amount of support actually received from said paramour. Most of these practices have been found invalid and improper, either by the courts or by the Secretary of Health, Education and Welfare, but the fact remains that for many years such tactics were common practice. It is imperative that recipients be legally protected from such unreasonable administrative practices since they are, for the most part, unable to sufficiently protect themselves.

A recent case attacking one form of arbitrary administrative regulation is *King v. Smith*.[81] The case held Alabama's "substituted father" regula-

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[76] Pye & Cochran, *Legal Aid—A Proposal*, 47 N.C.L. REV. 528, 560 (1969) [hereinafter cited as Pye & Cochran].

[77] The act's opportunity for a fair hearing "has not meant the right to know before a requested post-termination hearing exactly what rules and evidence the department relied upon; it has not meant notice of the exact issues considered relevant; it has not meant a right to counsel at the hearing; it has not meant that the recipient had a right to confront and examine witnesses; and it has not meant the right to access to department records that affect the cases." *Id.* at 560-61.

[78] Reich, *Individual Rights*, *supra* note 73, at 1247.

[79] *Id.*

[80] *Id.*

[81] 392 U.S. 309 (1968).

tion invalid "because it defines parent in a manner that is inconsistent with section 406 (a) of the Social Security Act."[82]

> The Supreme Court. . .found the term 'parent' as used in the act meant an individual who was under a state recognized duty of support and that . . . 'destitute children who are legally fatherless cannot be flatly denied federal funded assistance on the transparent fiction that they have a substituted father.'[83]

The effect of the holding was to prohibit the states from terminating benefits solely on the unjustified presumption of contribution, without regard to actual contribution, or legal responsibility for the support of the children. The decision thus represents a further recognition of the importance of safeguarding the eligible individual's interest in public assistance.

Important legal questions also arise in regard to the investigatory methods used by welfare officials for determining an individual's eligibility and extent of need. One "common practice [is] for authorities to make unannounced inspections of the homes of persons receiving public assistance."[84] While regularly scheduled housecalls may be reasonable, in the extreme, such action inevitably raises the question of invasion of privacy. One striking example is the "practice of conducting 'midnight raids' on homes receiving aid to dependent children, to see if there is a 'man in the house'. . . ."[85] "The demand for entry [often carries] with it the threat, express or implied, that refusal to admit [would] lead to discontinuance of public assistance."[86] Searches of this nature "without warrants [are] . . . unreasonable and therefore illegal and unconstitutional."[87] Such undue interference with the private lives of welfare beneficiaries should not be tolerated. The above are only a sampling of the relevant issues. There are many other conditions imposed which, while appearing less obvious or blatant than the above, may still infringe upon a recipient's rights and freedom.[88]

The denial of benefits, without sufficient procedural safeguards, seems diametrically opposed to the concept of assistance as a basic right. "At a minimum, there should be notice to beneficiaries of regulations and proposed adverse action, and fact finding should be carried on in a scrupulous fashion."[89] Beyond this minimum, however, it is vital that effective pre-

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[82] *Id.*; *Note* 15 How. L.J. 265, 269 & n.16 (1969).

[83] Pye & Cochran, *supra* note 76, at 564.

[84] Reich, *Midnight Welfare Searches and the Social Security Act*, 72 YALE L.J. 1347 (1963) [hereinafter cited as Reich, *Midnight Welfare Searches*].

[85] Reich, *Individual Rights*, *supra* note 73, at 1248.

[86] Reich, *Midnight Welfare Searches*, *supra* note 84, at 1347.

[87] *Id.* at 1355.

[88] For other conditions imposed upon the recipient, *see* Pye & Cochran, *supra* note 76, at 562-56.

[89] Reich, *Individual Rights*, *supra* note 73, at 1253.

termination procedures be provided. Due process requires an adequate hearing before termination of welfare benefits.[90] Such a hearing should afford the right to be heard in person.

> A personal hearing is necessary; if the recipient wishes it, both to explain to him the nature of the charges against him and to inform him of the evidence on which they are based. . . .
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> The stakes are simply too high for the welfare recipient . . . to allow termination of aid without giving the recipient a chance, if he so desires, to be fully informed of the case against him so that he may contest its basis and produce evidence in rebuttal.[91]

There should be a right to counsel and a right to confront and examine witnesses. Only by requiring such procedures can the arbitrary and harsh practices utilized in the adminstration of welfare programs be restrained. "[D]ecisions concerning human rights are too important to be left to public welfare workers and public administration officials without the aid of law."[92]

The trend in recent judicial decisions is certainly toward an increasing recognition of the importance of eliminating inequality and arbitrariness in the enactment and administration of welfare programs. Recent court rulings, at all levels, have changed the status of welfare recipients "from objects of charity to citizens asserting rights under the laws of the land."[93] This trend must be continued in the future if the goals of the welfare system are ever to be achieved. Only by recognizing that, "When individuals have insufficient resources to live under conditions of health and decency, society has obligations to provide support, and the individual is entitled to that support as of right,"[94] will this country approach fulfillment of its commitment to eliminate poverty while preserving the self-sufficiency and dignity of the individual.

David D. Buvinger

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[90] Kelly v. Wyman, 37 U.S.L.W. 2324 (D. N.Y.) (3 judge court), *cert. granted*, 394 U.S. 971 (1968).

[91] *Id.*

[92] Reich, *Individual Rights*, *supra* note 73, at 1257.

[93] Pye & Cochran, *supra* note 76, at 566.

[94] Reich, *Individual Rights*, *supra* note 73, at 1256.