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Welfare Law in California

Peter E. Sitkin

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by *Peter E. Sitkin**

I. Introduction

"An era of advocacy has begun out of which, I am sure, public assistance is never going to be the same."

* A.B. Cornell University, 1961, LL.B. Columbia University, School of Law, 1964. Director, Boalt-Hastings Clinical Law Program. Lecturer in Law, University of California, Boalt Hall. Instructor in Law, Hastings College of the Law. Member, New York and California State Bars.

The author would like to note that he was counsel in several of the cases discussed in this article.

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Welfare Law

John C. Montgomery [Former California State Welfare Director, in his final press statement as Director, 1969].

In California, over 1,500,000 people are dependent on public assistance for all or part of their means of subsistence.[1] To provide aid to these individuals, a large and complex bureaucracy has developed over the years that expends more than a billion dollars a year,[2] and is governed by an ever-growing set of federal, state, and local rules and regulations.[3]

Notwithstanding the size of the bureaucracy and the complexity of the laws governing the system, until recently there had been few instances of judicial review of welfare practices or laws. With a few exceptions,[4] the court decisions relating to welfare prior to 1968 dealt with situations where conflicts between county and state welfare agencies were resolved,[5] or where appeals were taken from convictions in welfare fraud prosecutions.[6] It was unusual to have a recipient seek affirm-

1. U. S. Department of HEW, Social Security Administration, *Social Security Bulletin,* Vol. 32, No. 12, p. 69 (December, 1969).

2. State Department of Social Welfare, Division of Research and Statistics, Draft Tables 1 & 50. Prepared for the *1968–1969 Annual Statistical Report,* as yet unpublished.

This amount reflects the total welfare expenditures that are paid from federal, state, and county funds. The federal government provides approximately 50% of the cost; the state, approximately 30%; and the counties, approximately 20%.

3. From the federal government comes 42 U.S.C. §§ 301 et seq. (The Social Security Act), the Department of Health, Education and Welfare's *Handbook of Public Assistance Administration,* and regulations in the Code of Federal Regulations. California has codified its public assistance laws in the Welfare and Institutions Code. Its regulations are compiled in the State Department of Social Welfares' *Manual of Policies and Procedures.* Other state manuals are the *Fiscal Manual* and the *Research and Statistics Manual.* Each county promulgates its own rules and regulations regarding its relief programs.

4. Morris v. Williams, 67 Cal.2d 733, 63 Cal. Rptr. 689, 433 P.2d 697 (1967); Cox v. State Social Welfare Board, 193 Cal. App.2d 708, 14 Cal. Rptr. 776 (1961); Pearson v. State Social Welfare Bd., 54 Cal.2d 184, 5 Cal. Rptr. 553, 353 P.2d 33 (1960).

5. See, e.g., County of L. A. v Department of Social Welfare, 41 Cal.2d 455, 260 P.2d 41 (1953); County of Contra Costa v. Social Welfare Board, 229 Cal. App.2d 762, 40 Cal Rptr. 605 (1964).

6. See, e.g., People v. Shirley, 55 Cal. 2d 521, 11 Cal Rptr. 537, 360 P.2d 33, 92 A.L.R.2d 413 (1961); People v. Owens, 231 Cal. App.2d 691, 42 Cal. Rptr. 153 (1965).

ative judicial redress on the grounds that welfare aid was illegally or unconstitutionally denied. Despite the substantial efforts of a few scholars—most notably Dr. Jacobus ten Broek[7]—little serious discussion of the legal issues raised by the welfare system was undertaken.

Not until the mid-sixties, with its emphasis on social reform and legal assistance to the poor, did the first substantial debates on welfare issues begin to take shape in California and the rest of the country.[8] With the funding of federally supported neighborhood law offices, under the Economic Opportunity Act of 1964,[9] litigation having potentially enormous impact on the administration of public assistance began in earnest. Practices and laws are now under challenge that in the past certainly would have been found illegal or unconstitutional had legal representation been available.[10] In part, the result of years of isolation from judicial scrutiny is now causing some disruption in the smooth administration of the system. Yet, for those who value the rule of law and the duty of state administrators to abide by it, such judicial review is essential to a properly ordered administrative system. The shock of having been exposed to the bright light of judicial review has caused some consternation among those who advocate the insulation of government from the legal challenges of the poor.[11]

Much of the welfare litigation in California in 1969 has been directed to the enforcement of existing law as well as

7. See, e.g., Jacobus ten Broek, *California's Dual System of Family Law: Its Origin, Development and Present Status.* Part I, 16 Stan. L. Rev. 257 (1964); Part II, 16 Stan. L. Rev. 900 (1964). See also Jacobus ten Broek and Floyd W. Matson: *The Disabled and the Law of Welfare,* 54 Cal. L. Rev. 809 (1966).

8. *Symposium: Law of the Poor,* 54 Cal. L. Rev. 319 (1966).

9. 42 U.S.C. §§ 2701 et. seq. (1964).

10. Before federal funding of legal assistance offices in 1964, the welfare recipient's case was seldom presented to the courts. Welfare administrators were free to interpret statutes and rules almost at will. Loren Miller, *Race, Poverty and the Law,* 54 Cal. L. Rev. 386, 396–97 (1966).

11. Senator Murphy introduced an amendment to the Economic Opportunity Act that was not passed but that was aimed at preventing legal services programs from suing government agencies. S.B. 3016; 91st Congress, 2nd session. Introduced on October 10, 1969.

to the challenge, on constitutional grounds, of welfare laws, regulations, and practices.[12] Some of these court actions have resulted in increasing the cost of public assistance programs.[13] For the most part, however, these added costs have resulted from judicially ordered compliance with existing law; the implication is that for years welfare administrators have been, and still are, illegally depriving thousands of persons of welfare aid to which they are legally entitled.

Before turning to a discussion of the significant court decisions of 1969, a brief overview of the California welfare system is in order.[14]

II. Public Assistance in California

Public assistance in California, as in most other states, is administered through two basic types of programs:

(1) the "categorical assistance" programs established by the Social Security Act,[15] (implemented by regulations adopted by the U.S. Department of Health, Education and Welfare, supervised by the state, administered by the individual counties,[16] and supported by county, state, and federal funds);[17] and

(2) the general assistance program created by state law[18]

12. See *infra,* for a detailed discussion of these cases.

13. The state estimated that one of the cases discussed *infra,* could cost about $9,000,000 in federal, state, and local funds. Nesbitt v. Montgomery, No. 193675, Sac. Sup. Ct. (Memorandum Opinion filed October 1, 1969).

14. A full description of the present welfare system is beyond the scope of this article. For those interested in the subject, see Wedemeyer & Moore, *The American Welfare System,* 54 Cal. L. Rev. 326 (1966); see also, Report of the Senate Social Welfare Subcommittee on General Research, *A Study of Welfare Expenditures,* Vol. 21, No. 15 (1969).

15. 42 U.S.C. §§ 301 et seq.

16. Cal Welf. & Inst. Code §§ 10600, 10800.

17. Total expenditures for cash grants for the year were $1,189,825,-199; federal expenditures were $548,-211,131; state expenditures, $453,053,-415; and county expenditures, $188,-560,653. State Department of Social Welfare, Division of Research and Statistics, Draft Table 1, prepared for the *1968–1969 Annual Statistical Report,* as yet unpublished.

18. Cal. Welf. & Inst. Code § 17000.

but supervised and administered by each county and supported solely by county funds.[19]

Most recipients receive financial aid under the "categorical assistance" programs.[20] Under the Social Security Act, certain categories of needy persons are entitled to receive federally supported public assistance. The elderly (those over 65) are eligible for Old Age Assistance[1] (known in California as Old Age Security); certain classes of needy children are eligible for aid and services to needy families with children[2] (known in California as AFDC;[3] needy blind are entitled to aid to the blind;[4] and permanently disabled persons are eligible for aid to the permanently and totally disabled[5] (known in California as ATD). Thus, aside from other specific eligibility requirements discussed below, a person must be needy[6] and must be either aged,[7] blind,[8] a dependent child[9] or the caretaker of a dependent child,[10] or permanently and totally disabled[11] in order to receive assistance under the Social Security Act.

Those persons who do not fit within one of the federally created categories are eligible only for general assistance, the

19. Cal. Welf. & Inst. Code § 17001. County of Los Angeles v. Department of Social Welfare, 41 Cal. 2d 455, 260 P.2d 41 (1953).

20. In California, in August 1969, 73,900 recipients were receiving county general assistance, whereas approximately 1,500,000 were counted on the categorical aid programs. U. S. Dept. of Health, Education and Welfare, Social Security Administration, *Social Security Bulletin,* Vol. 32, No. 12, p. 69 (Dec., 1969).

1. 42 U.S.C. §§ 301–306.

2. 42 U.S.C. §§ 601–644.

3. AFDC is also provided to families where one of the parents is unemployed. This program is referred to as the AFDC-U program. Welf. & Inst. Code § 11201. Because of federal eligibility conditions, a significant portion of the AFDC program for the unemployed in California is funded solely from state and county funds.

4. 42 U.S.C. §§ 1201–1206. California has developed two types of aid programs for the blind. The first, Aid to the Blind, is contained in sections 12500 et. seq. (Chapter 4) of the Welfare and Institutions Code. The second category, Aid to the Potentially Self-Supporting Blind, is contained in sections 13000 et. seq. (Chapter 5) of the Welfare and Institutions Code.

5. 42 U.S.C. §§ 1351–1355.

6. 42 U.S.C. §§ 301, 601, 1201, 1351.

7. 42 U.S.C. § 302.

8. 42 U.S.C. § 1202.

9. 42 U.S.C. § 602.

10. 42 U.S.C. § 602.

11. 42 U.S.C. § 1352.

welfare program funded entirely by local governments in California.[12] The basic requirements for general assistance are indigency and county residence.[13]

The Social Security Act establishes various requirements for a state's categorical assistance programs that, if complied with, result in federal participation in the costs of assistance provided to California's eligible poor. A state must conform to federal requirements in order to receive federal participation.[14] Failure to comply with federal requirements could result, in theory, in the loss of federal funds for the entire program.[15] Basic requirements common to each of the categorical assistance programs include: state-wide operation of the program,[16] financial participation by the state,[17] designation of a single state agency to administer the plan of public assistance,[18] an opportunity for a hearing for individuals aggrieved by welfare department action,[19] safeguards on the use

12. The county general assistance program and the obligation placed on each of the counties to establish such programs is created by Section 17000 of the Welfare and Institutions Code, which states:

"Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions."

13. Requirements of indigency and lawful residency are contained in Welf. & Inst. Code § 17000. As a result of the decision in Montgomery v. Burns, 394 U.S. 848, 23 L.Ed.2d 31, 89 S.Ct. 1623 (1969), a county may no longer impose durational residency requirements.

14. 42 U.S.C. §§ 302, 602, 1202, 1352.

15. The Secretary of Health, Education and Welfare may, after opportunity for hearing, discontinue federal payments to a state for its welfare programs. See e.g., 42 U.S.C. § 604(a). In practice, such conformity hearings have been rarely held and in no instance have funds been withheld from the state. See general *Note, Federal Judicial Review of State Welfare Practices,* 67 Colum. L. Rev. 84 (1967).

16. 42 U.S.C. § 302(a)(1)—(OAS); 42 U.S.C. § 602(a)(1)—(AFDC); 42 U.S.C. § 1202(a)(1)—(AB); 42 U.S.C. § 1352(a)(1)—(ATD).

17. 42 U.S.C. § 302(a)(2)—(OAS); 42 U.S.C. § 602(a)(2)—(AFDC); 42 U.S.C. § 1202(a)(2)—(AB); 42 U.S.C. § 1352 (a)(2)—(ATD).

18. 42 U.S.C. § 302(a)(3)—(OAS); 42 U.S.C. § 602(a)(3)—(AFDC); 42 U.S.C. § 1202(a)(3)—(AB); 42 U.S.C. § 1352(a)(3)—(ATD).

19. 42 U.S.C. § 302(a)(4)—(OAS); 42 U.S.C. § 602(a)(4)—(AFDC); 42 U.S.C. § 1202(a)(4)—(AB); 42 U.S.C. § 1352(a)(4)—(ATD).

or disclosure of information concerning applicants or recipients,[20] and the furnishing of assistance *promptly* to all eligible individuals.[1] In addition, each public assistance title under the Social Security Act contains certain conformity requirements particular to the type of recipient it benefits.[2] To the extent that any state statutes or regulations conflict with the Social Security Act or federal regulations promulgated thereunder, such statutes or regulations are invalid.[3]

The requirements of the Social Security Act are supplemented by federal regulations issued by the Department of Health, Education and Welfare that are binding on each of the states in the administration of their public assistance programs.[4]

The statutory authority for the categorical aid programs in California is found in the Welfare and Institutions Code.[5] Categorical assistance programs are administered by the individual county welfare departments subject to the rules, regulations, and overall supervision of the State Department of Social Welfare.[6]

20. 42 U.S.C. § 302(a)(7)—(OAS); 42 U.S.C. § 602(a)(9)—(AFDC); 42 U.S.C. § 1202(a)(9)—(AB); 42 U.S.C. § 1352(a)(9)—(ATD).

1. 42 U.S.C. § 302(a)(8)—(OAS); 42 U.S.C. § 602(a)(10)—(AFDC); 42 U.S.C. § 1202(a)(11)—(AB); 42 U.S.C. § 1353(a)(10)—(ATD).

2. Compare the following sections of 42 U.S.C.: 302, 602, 1202, 1352.

3. King v. Smith, 392 U.S. 309, 20 L.Ed.2d 1118, 88 S.Ct. 2128 (1968). It is the policy of this state to conform to the requirements of federal law. See Pearson v. State Social Welfare Board, 54 Cal.2d 184, 214, 5 Cal. Rptr. 553, 571, 353 P.2d 33, 51, and Welf. and Inst. Code § 11003.

4. Federal regulations are found in the HEW *Handbook of Public Assistance Administration* and are now being recodified in 45 Code of Federal Regulations. All new and proposed regulations are published initially in the Federal Register and then recodified in 45 Code of Federal Regulations.

5. Like the Social Security Act, the Welfare and Institutions Code is divided into separate sections covering both the eligibility requirements and grant payments for each of the separate aid categories. For example, the statutes governing the AFDC program are set out at Welfare & Institutions Code §§ 11,200–11,488. There are also a number of code sections generally applicable to the programs and the administration of public social services. Welf. & Inst. Code §§ 10,000–11,158.

6. The regulations of the State Welfare Department are found primarily in the *Manual of Policies and Procedures;* among other regulations issued by the Department are the *Fiscal Manual,* the *Research and Statistics Manual,* and the *Operations Manual.*

The federal act (with the exception of a recently enacted provision[7] that is now the subject of litigation in California)[8] does not specify a standard or level of living to be used by the states in administering their assistance programs. Consequently, each state is responsible (within the limits of state law and the Constitution) for defining the standard of living that is used to determine who "needy persons" are in relation to each of its federally aided assistance programs, as well as the amounts of assistance they are to receive.[9]

Despite the large sums spent annually for public welfare in California, the monthly cash grants received by individual welfare recipients are insufficient to provide them with a minimum amount for subsistence. In the adult categories, which include all the categorial aid programs except AFDC, the maximum allowable grants vary between $188.50 to $193.50 per month per recipient.[10] The average cash grant to the elderly is $107 per month, to the disabled $120, to the blind $149.[11] Even these sums exceed the amounts paid to needy children of this state under the AFDC program.[12] Under a system of inadequate need standards[13] and maximum grant

7. Section 402(a)(23) of the Social Security Act, 42 U.S.C. § 602(a)(23) reads as follows: ". . . provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.' '

8. Bryant v. Montgomery, No. 51909 Civil [N.D. Cal. filed Aug. 6, 1969].

9. King v. Smith, 392 U.S. 309, 318, 20 L.Ed.2d 1118, 1126, 88 S. Ct. 2128, 2134 (1968).

10. Department of Social Welfare, Research and Statistics Division, Public Assistance Caseloads and Expenditures, Jan. 6, 1970. Figures given are for November, 1969.

11. The average grants are lower than the maximum set forth above, since many adult recipients have some limited source of outside income such as social security or veteran's benefits.

12. The disparities in the grants paid to recipients in the various categories (particularly between AFDC and the adult aids) have been the subject of recent litigation in other states. See, e.g., Jefferson v. Hackney, 304 F.Supp. 1332, No. 3-3012-B Civil (N.D. Texas, July 31, 1969, appeal to S.Ct.) CCH Poverty Law Reporter § 10,055, p. 11,074.

13. The grant structure in the AFDC program is based on figures reflecting the cost of living in the period 1949–1951. Assembly Office of Research and Staff of Assembly Committee on Social Welfare, *California Welfare: A Legislative Program for Reform*, p. 117 (February, 1969).

ceilings,[14] a woman with one child can receive no more than $148 a month from the state, a woman with five children can receive no more than $300 a month, and a woman with ten children can receive no more than $392 a month,[15] with $6 increases for additional children.[16] General assistance grants (being supported solely out of county tax dollars) are even lower than AFDC grants and are, in some instances, practically nonexistent.[17]

III. A Review of the Cases

Given the general framework of the welfare system in California, let us examine the cases that were decided in 1969. In reviewing these cases, it is instructive to consider the decisions in terms of their impact on the welfare system. The discussion will begin with those cases directed against restrictive eligibility requirements, followed by the cases that have challenged illegal limitations on the amount of welfare payments. Finally, there will be a discussion of those cases directed at insuring that the welfare system will be fairly administered with due regard to the statutory and constitutional rights of recipients.

14. Welf. & Inst. Code § 11450(a). The maximum payable grants were last increased by the legislature in 1957. State Department of Social Welfare, California Welfare Director's Newsletter, Vol. IV, No. 6, p. 4 (November-December, 1968). A small upward adjustment of $2 or $3 per family was made administratively in 1966 as a result of an increase in federal participation in the cost of the AFDC program. Such an adjustment is required under the governing statute.

15. Welf. & Inst. Code § 11450(a) (as adjusted). The quoted figures can be found in the state welfare department's regulations, *Public Social Service Manual* (PSS) §§ 44–313.

16. The six dollar increment for additional children should once and for all dispel the myth that it is profitable to have more children on welfare to obtain greater benefits.

17. The general assistance grants paid by the various counties averaged approximately $46 a month in California. U.S. Department of HEW *Social Security Bulletin,* Vol. 32, No. 12, p. 69, December, 1969. Figures for August, 1969. Some counties paid considerably less than that figure. Whether the counties have met their obligations to provide support for their indigents under Welf. & Inst. Code § 17000 is open to serious question.

A. Cases Challenging Restrictive Eligibility Requirements

It is common knowledge among those familiar with the public assistance system that many thousands of needy persons in California do not receive public assistance of any form. A number of eligible persons do not apply for welfare either because they are unaware of their right to public aid or because they voluntarily decide not to seek "charity" (a decision partly induced by the community's generally negative attitude toward persons on public assistance).[18]

One reason for the increase in the number of persons on welfare has been the activity of various groups, including community action agencies, welfare rights groups, and legal aid programs in informing a growing number of poor people of their entitlements under the public assistance programs.[19]

The largest number of needy persons denied public assistance was excluded because of a series of restrictive eligibility requirements *unrelated to their need for aid.* The most publicized of these requirements was the durational residency test that operated, until recently, to deny public assistance to many needy persons lawfully resident in California.[20]

Other examples of restrictive eligibility requirements are found in the AFDC program. At present, eligibility for AFDC under both federal and state law turns on a finding not only of need but also of "deprivation." Only needy children who are deprived of "parental support," that is, who live in families where one of the parents is deceased, continually absent from the home, physically or mentally incapacitated,[1] or unemployed,[2] are eligible for assistance.[3] Needy children

18. Scott, Briar. *Welfare From Below: Recipients' Views of the Public Welfare System,* 54 Cal. L. Rev. 370 (1966).

19. In California, once a person is found eligible for assistance, he is entitled to aid as a matter of statutory right. Board of Social Welfare v. L. A. County, 27 Cal.2d 81, 85–86, 162 P.2d 630, 633 (1945). Most recipients do not believe they have such a right.

20. See text, *infra,* for a discussion of the requirement and of the cases successfully invalidating it.

1. 42 U.S.C. § 606(a)(1).

2. 42 U.S.C. § 607.

3. See Macias v. Finch, *infra,* for a discussion of the court challenge to this

whose parents are fully employed but earn less than the welfare standard of need are nevertheless ineligible for assistance. Children between 16 and 18 are denied aid (even though needy and deprived of parental support) unless they are in school, in a training program, or disabled.[4] Other needy children are denied aid if their mother refuses to sign a criminal complaint against their absent father, or otherwise fails to cooperate with law enforcement officers.[5]

Restrictive eligibility requirements are also found in the county administered general assistance programs. For example, needy individuals otherwise eligible for general assistance are denied aid in some counties on the ground that they are medically employable (even if, in fact, no employment is available to them).[6]

Recent court decisions in California have invalidated several of these restrictive eligibility requirements. It is fair to say that insofar as the decisions have invalidated existing eligibility requirements, they have contributed to an expansion in the number of needy persons eligible for assistance and have resulted in increased welfare expenditures in California.[7]

The most far-reaching decision affecting welfare eligibility in California was the United States Supreme Court's decision

policy, commonly referred to in welfare parlance as the "Don't Work" rule.

4. Welf. & Inst. Code § 11253.

5. Welf. & Inst. Code § 11477.

6. Two cases are now pending in the California federal courts challenging this rule on the grounds that it creates a conclusive presumption in violation of the due process clause of the Fourteenth Amendment. It is also contended that the rule violates California Welfare and Institutions Code Section 17000. Brunner v. Terzian, U.S.D.C. No. 51813 (N.D. Cal., Temporary Restraining Order issued July 25, 1969, Sweigert, J.) enjoining policy in Alameda County; and Robertson v. Born, U.S.D.C. No. 51364 (N.D. Cal., Preliminary Injunction issued on June 12, 1969, Peckham, J.) establishing a hearing procedure before aid could be terminated and finding as a matter of law that plaintiffs have established a prima facie case that the rule violated the Fourteenth Amendment and the Welfare and Institutions Code.

7. The former State Welfare Director, John C. Montgomery, estimated that the federal court's elimination of the durational residency requirements had a fiscal impact of $30,000,000 in federal, state, and local funds. California Welfare Director's Newsletter, Special Issue (Vol. V, No. 6), p. 3. (November-December, 1969).

in the durational residency case of *Shapiro v. Thompson*,[8] which resulted in the affirmance of a three-judge federal court's decision to enjoin California's durational residency laws.[9] Before the Court's decision, needy persons in California who were otherwise eligible for aid could not qualify for public assistance unless they had resided in California for a specified period of time. The time period ranged from 1 year in the AFDC program[10] to 5 of the last 9 years in the OAS program.[11]

California's residency laws reflected a welfare eligibility requirement that has existed in one form or another from the time of the Elizabethan Poor Laws.[12] Originally, the rationale for the requirement was that a community had no responsibility for "outsiders," and that a locality was only obligated to provide assistance for "its own." While that justification might have had some foundation in the past, in a mobile society such as the United States, the rationale becomes more difficult to accept, particularly where a large portion of the welfare costs are assumed by the federal government.

A majority of the United States Supreme Court held that durational residency requirements were unconstitutional, since they denied the equal protection of the laws under the Fourteenth Amendment to residents of less than a year and interfered with an individual's fundamental right to travel.[13] The Court found that the effect of the waiting requirement was to create two classes of resident families who were equally in need of public assistance, but whose situation differed solely on the basis of the fact that one group had resided in the state for less than one year. On this basis, aid was granted to one class while the second class was denied aid "upon which may

8. 394 U.S. 618, 22 L.Ed.2d 600, 89 S.Ct. 1322 (1969).

9. Burns v. Montgomery, 299 F. Supp. 1002 (N.D. Cal. 1968) aff'd *sub nom;* Montgomery v. Burns, 394 U.S. 848, 23 L.Ed.2d 31, 89 S.Ct. 1623 (1969).

10. Welf. & Inst. Code § 11252.

11. Welf. & Inst. Code §§ 12050 and 13550 (ATD). No period of residency is required for the category Aid to the Blind (§ 12550).

12. Shapiro v. Thompson, 394 U.S. 618, 628, n. 7, 22 L.Ed.2d 600, 611, n. 7, 89 S.Ct. 1322, 1328, n. 7.

13. As to the District of Columbia, the residency requirements were found to be an unconstitutional discrimination that violated the due process clause of the Fifth Amendment. 394 U.S. 618, 641–642, 22 L.Ed.2d 600, 619–620, 89 S.Ct. 1322, 1335.

depend the ability of the families to obtain the very means to subsist—food, shelter and other necessities of life."[14]

In reviewing the residency decision in light of present welfare litigation, a number of important points emerge. First, the Court laid to rest the notion that constitutional challenges to welfare practices can be answered by the argument that welfare is a "privilege and not a right."[15]

The Court (while recognizing the interest of the state in conserving state funds) flatly rejected the notion that this discrimination between needy persons could be justified as a device to save money:

> We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. Similarly, in the cases before us, appellants must do more than show that denying welfare benefits to new residents saves money. The saving of the welfare costs cannot justify an otherwise invidious classification.[16]

The majority also made plain that the traditional equal protection test of "any rational basis for the classification"[17] did not apply to the instant case. Rather, the majority held that unless the classification was necessary to promote a *compelling* governmental interest, it was unconstitutional. There has been considerable debate, following the Supreme Court decision in *Shapiro,* regarding the scope of application of the "compelling state interest" test in welfare cases. Some argue that the more stringent test was applied only because

14. 394 U.S. 618, 627, 22 L.Ed.2d 600, 610, 89 S.Ct. 1322, 1327.

15. 394 U.S. 618, 627, 22 L.Ed.2d 600, 610, 89 S.Ct. 1322, 1327.

16. 394 U.S. 618, 633, 22 L.Ed.2d 600, 614, 89 S.Ct. 1322, 1330.

17. Under the traditional standard, equal protection is denied only if the classification is without any rational basis. Lindsley v. Natural Carbonic Gas Co. 220 U.S. 61, 78, 55 L.Ed. 369, 377, 31 S.Ct. 337, 340 (1911).

constitutional rights were involved (the right to travel), while others, including Justice Harlan in dissent,[18] concluded that the majority followed a growing line of Supreme Court authority that requires the application of the "compelling interest" test in cases where a classification is based on certain suspect criteria (i.e., wealth or race)[19] or affects fundamental human rights such as the right to food, shelter, and other basic necessities of life.[20]

Since the *Shapiro* decision, only one California federal court has squarely faced the question of what equal protection test should be applied in reviewing social welfare legislation.[1] In *Macias v. Finch*,[2] a three-judge court concluded that the compelling state interest test should apply only where a recognized constitutional right is directly involved.[3]

In the *Macias* case, the plaintiffs challenged the constitutionality of two provisions of the Social Security Act[4] and of a state welfare statute[5] on equal protection grounds. Their principal contention was that the federal act, with its "depriva-

18. 394 U.S. 618, 658, 22 L.Ed.2d 600, 629, 89 S.Ct. 1322, 1344. But compare Justice Stewart's concurring opinion at 394 U.S. 618, 642, 22 L.Ed. 2d 600, 619, 89 S.Ct. 1322, 1335.

19. See e.g., Loving v. Virginia, 388 U.S. 1, 11, 18 L.Ed.2d 1010, 1017, 87 S.Ct. 1817, 1823 (1967) (race); Harper v. Virginia Bd. of Elections, 383 U.S. 663, 668, 16 L.Ed.2d 169, 173, 86 S.Ct. 1079, 1082 (1966) (wealth).

20. See Levy v. Louisiana, 391 U.S. 68, 71, 20 L.Ed.2d 436, 439, 88 S.Ct. 1509, 1511 (1968) summarizing the cases where the "compelling state interest" or "strict scrutiny" test was applied in cases where fundamental human rights were involved; see also Skinner v. Okla., 316 U.S. 535, 541, 86 L.Ed. 1655, 1660, 62 S.Ct. 1110, 1113 (1942) (right to procreate), and Brown v. Bd. of Education, 347 U.S. 483, 98 L.Ed. 873, 74 S.Ct. 686, 38 A.L.R.2d 1180 (1954) (right to equal education opportunity).

1. One welfare case decided prior to *Shapiro,* now on appeal to the Supreme Court, applied the traditional test without any discussion of the compelling interest test. Lewis v. Stark, — F.Supp. —, No. 50285 (N.D. Cal. Dec. 23, 1968) prob. juris. noted *sub nom.*, Lewis v. Montgomery (U.S. Nov. 10, 1969, 38 U.S.L.W. 3173). Now styled as Lewis v. Martin.

2. — F.Supp. —, No. 50956 U.S. D.C. (N.D. Cal., Jan. 5, 1970) CCH Poverty Law Reporter § 9568, p. 10.

3. Other recent California welfare cases where decisions rested in whole or part on equal protection grounds did not speak specifically to this issue. See, e.g., Kaiser v. Montgomery, — F. Supp. —, No. 49613 (N.D. Cal., August 28, 1969) CCH Poverty Law Reporter § 10,391, p. 11,299.

4. 42 U.S.C. §§ 606(a), 607.

5. Welf. & Inst. Code § 11250(c).

tion" as well as its "need" requirement, was discriminatory in denying aid to children whose fathers were employed full time. It was also contended that the statutes, commonly referred to as the "Don't Work" rule, discouraged recipients from seeking employment. Alternatively, they argued that certain federal regulations denying AFDC to families where the father was employed more than 30 hours a week (even though his earnings were below the welfare standard of need) violated the Social Security Act. After reviewing the legislative history of the Social Security Act, the Court rejected the plaintiffs' statutory arguments, concluding that Congress made eligible only those needy children who were deprived of parental support or care by reason of death, continued absence from the home, physical or mental incapacity, or *unemployment* of a parent. In the Court's view, a needy child not so deprived did not qualify for aid, and HEW did not violate the act in defining "unemployment" in terms of the number of hours worked rather than in terms of the amount earned.[6]

Regarding the constitutional claims, the Court held that plaintiffs' right to equal protection was not violated by the denial of welfare aid to otherwise eligible needy children solely because their father worked more than a given number of hours. In so ruling, the Court applied the traditional equal protection test of "any rational basis." The "compelling state interest" test was rejected despite plaintiffs' argument that the recognized constitutional right to seek and hold employment was penalized by the operation of the challenged statutes.[7]

Although acknowledging that a constitutional right to employment was involved, the Court restricted the holding of *Shapiro* by stating that the more stringent equal protection test applies to the restrictions on constitutional rights "where those restrictions are drawn in terms of suspect classes or

6. Macias v. Finch, No. 50956, U.S.D.C. (N.D. Cal., Jan. 5, 1970) pp. 7–10.

7. Macias v. Finch, No. 50956, U.S.D.C. (N.D. Cal., Jan. 5, 1970) pp. 7–10.

to impinge on specifically enumerated rights."[8] This conclusion appears to be an improper reading of *Shapiro,* even if one limits its holding to requiring the application of the "compelling state interest" test to cases involving infringement of constitutional rights. Certainly, the interference with the right to travel in discouraging migration by denying welfare aid is essentially the same interference that results in the *Macias* case: namely, the discouragement of full-time employment if the result of obtaining such employment is a denial of welfare assistance to supplement inadequate earnings.

Once the *Macias* court decided on the use of the traditional equal protection test, the road was open for the acceptance of any rational basis for the discrimination, and the plaintiffs' claims were denied. It is expected that the case will be appealed and that other cases raising this equal protection issue will be litigated in California.

Given the growing judicial recognition of the fundamental interest a poor person has in the receipt of welfare, the "compelling state interest" test should be applied in scrutinizing social welfare legislation that affects an individual's very means of subsistence. A recent decision of a three-judge federal court unanimously accepted this view. In the case of *Rothstein v. Wyman,*[9] a New York welfare statute was found to be unconstitutional on equal protection grounds. Although finding the classification unconstitutional under even traditional notions of equal protection, the Court emphasized that in welfare cases, strict scrutiny of legislation should be undertaken:

> It can hardly be doubted that the subsistence level of our indigent and unemployable aged, blind and disabled involves a more crucial aspect of life and liberty than the right to operate a business on Sunday or to extract gas from subsoil. We believe that with the stakes so high in terms of human misery the equal protection standard to be applied should be stricter than that used upon review of commercial legislation and more nearly approxi-

8. Macias v. Finch, No. 50956, U.S.D.C. (N.D. Cal., Jan. 5, 1970) p. 13.

9. 303 F.Supp. 339 (S.D.N.Y., 1969).

> mate that applied to laws affecting fundamental constitutional rights. Poverty is a bitter enough brew. It should not be made even less palatable by the addition of unjustifiable inequalities or discriminations. It must not be forgotten that in most cases public assistance represents the last resource of those bereft of any alternative.[10]

Not only are welfare recipients entitled to a court's most exacting protection because of the character of the interest affected, but such protection is compelled "by the defenseless and disadvantaged state of the class of citizens [involved] who are usually less able than others to enforce their rights."[11] Welfare recipients have not had an effective voice in the enactment of the laws that affect their lives. They are a minority usually held in low esteem by the general public. Under such circumstances, the need for protection of their rights by the courts is essential. As the Supreme Court recognized over thirty years ago:

> [P]rejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry.[12]

The issues in both the *Shapiro* and *Macias* cases may result in positive legislative action to resolve the welfare problems presented. It is generally accepted that the residency decision provided a good deal of the impetus for the present administration's proposals for minimum national welfare standards and for increased federal participation in meeting the cost

10. 303 F.Supp. 339, 347 (S.D.N.Y., 1969). In another context, Mr. Justice Douglas asked: "Is the right of a person to eat less basic than his right to travel which we protected in Edwards v. California, 314 U.S. 160?" Bell v. Maryland, 378 U.S. 226, 255, 12 L. Ed. 2d 822, 874, 84 S.Ct. 1814, 1830. Clearly not. Such a basic right should be entitled to the same protections afforded other constitutional rights.

11. 303 F.Supp. 339, 347.

12. United States v. Carolene Products, 304 U.S. 144, 153, n. 4, 82 L.Ed. 1234, 1241, n. 4, 58 S.Ct. 778, 784, n. 4 (1938).

of public assistance. Similarly, President Nixon's welfare proposals[13] recognized the cruel irony of denying aid to needy families with working fathers while providing aid to equally needy families whose fathers are unemployed or out of the home.[14]

The other major case decided in 1969 affecting eligibility for welfare was *Damico v. California.*[15] Rather than resting its decision on constitutional grounds, the Court struck down a state eligibility requirement for AFDC as violative of federal law. In so ruling, the Court followed the reasoning of the United States Supreme Court in its 1968 decision of *King v. Smith,*[16] which declared Alabama's "substitute father" welfare regulation invalid as inconsistent with the Social Security Act.[17]

In *Damico,* plaintiffs (mothers with needy children) were separated from their spouses and were denied aid on the basis of two California statutes[18] that provided, in substance, that aid may be granted to needy children deprived of parental support or care because of the continued absence of a parent, but that no aid may be granted for a separation that has endured less than three months. The state welfare regulations excepted families from the three-month rule where legal action had been taken to terminate the marriage.[19] Plaintiffs contended that the California statutes violated due process in creating a conclusive presumption that the separation was not genuine unless it endured for three months or a divorce action had been

13. *Welfare Reform,* U.S. Code Congressional and Administrative News, Sept. 20, 1969, #8, p. 1233.

14. *Welfare Reform,* U.S. Code Congressional and Administrative News, Sept. 20, 1969, #8, p. 1233.

15. Damico v. California, — F.Supp. —, No. 46538 (N.D. Cal., Sept. 12, 1969) CCH Poverty Law Reporter § 10,477, p. 11,370.

16. 392 U.S. 309, 20 L.Ed.2d 1118, 88 S.Ct. 2128 (1968).

17. The *Damico* case is also important in welfare litigation since it resulted in a 1967 Supreme Court decision holding that state administrative remedies need not be exhausted prior to instituting civil rights suits under 42 U.S.C. § 1983, challenging state welfare laws or practices. Damico v. California, 389 U.S. 416, 19 L.Ed.2d 647, 88 S.Ct. 526 (1967).

18. Welf. & Inst. Code §§ 11250(b), 11254.

19. State Department of Social Welfare, *Public Social Services Manual,* § 42-311 (1967).

filed. Plaintiffs also contended that the statutes discriminated against the poor (who could not afford divorce actions) and Catholics (by virtue of their being unwilling or unable to file for divorce on religious grounds).

They pressed other constitutional arguments, but the Court found for the plaintiffs on statutory rather than on constitutional grounds. The California statutes were "in conflict with the controlling federal statute and the primary purposes of the AFDC program."[20] In analyzing the statutes in question, the Court recognized that its decision must be controlled by the United States Supreme Court's well-supported conclusion in *King v. Smith* that "Congress has determined . . . protection of dependent children is the paramount goal of AFDC."[1] The *Damico* court then went on to hold that the state statutes, which operated to create a rigid waiting period as a precondition to receipt of aid, were contrary to the terms of the Social Security Act. The state statutes and regulations were found to "clearly [put] administrative convenience ahead of the welfare of the needy children. *This* is not permitted under the federal act."[2] [Emphasis added.]

The state's argument that the three-month period was a legitimate means to prevent fraud and to keep families together was also rejected on the basis of *King v. Smith.* As Judge Weigel stated in commenting on *King* in this regard:

> The Court there recognized the state's legitimate goal of preventing immorality and illegitimacy but held that the parent's wrongdoing should not be used to deprive the children of aid, since the state had other methods it could use to deal with such problems. 392 U.S. at 325–27. The same is true here. The state has many possible ways to check the reliability of information gathered from potential recipients, and thereby prevent

20. Damico v. California, — F.Supp. —, No. 46538 Civil (N.D. Cal., Sept. 12, 1969) p. 5. CCH Poverty Law Reporter § 10,478, p. 11372.

1. 392 U.S. 309, 325, 20 L.Ed.2d 1118, 1130, 88 S.Ct. 2128, 2137.

2. The *Damico* court relied on King v. Smith as authority for this proposition. Damico v. California, — F. Supp. —, No. 46538 (N.D. Cal., Sept. 12, 1969) p. 7. CCH Poverty Law Reporter § 10,478, p. 11,373.

> fraud *ab initio*. It also may punish those who are subsequently found to have obtained benefits fraudulently. But it may not, consistently with the AFDC program, deny benefits to many eligible and needy children in order to avoid granting benefits to those few children whose parents have applied fraudulently.
>
> Defendants further argue that the three-month waiting period furthers the legitimate state interest of keeping families together, since parents will be less likely to separate if they know the children will have to wait three months for aid. This legitimate interest is clearly promoted by means impermissible under the federal Act, because it postulates deprivation of the children as the club to keep the parents together. Moreover, the argument does not focus on the crucial inquiries which must be made: Are the children eligible and needy? Is the absence of the parent 'continued'?[8]

There still remain many welfare practices and laws in California that place administrative convenience ahead of the needs of the poor,[4] that penalize children for the actions of their parents,[5] and that exclude from aid persons entitled to assistance under federal law.[6] In all probability, the next year

3. Damico v. California, — F. Supp. —, No. 46538 (N.D. Cal., Sept. 12, 1969) pp. 7, 8. CCH Poverty Law Reporter pp. 11373–11374. In holding that the state statutes were invalid, the court stressed California could still consider the length of the absence as one of the factors in determining whether a "continued absence" existed (recognizing that in appropriate cases, a bona fide separation might exist after a few days), but that the state could not deny aid to needy children who in fact were deprived and therefore eligible for aid under the federal act on the basis of a conclusive presumption.

4. See, e.g., Welf. & Inst. Code § 11351, and the discussion of the Lewis v. Montgomery decision, *infra*.

5. Welf. & Inst. Code § 11477, requires the termination of welfare aid to needy children if their mother refuses to sign a criminal complaint against their father or fails otherwise to cooperate with law enforcement officials. Recently, a suit challenging the validity of this provision on constitutional statutory grounds was filed in San Francisco. Taylor v. Montgomery, No. C-69-666 Civil (N.D. Cal., filed Dec. 30, 1969, Peckham, J.) (three-judge court convened and temporary restraining order issued Dec. 30, 1969). A three-judge court in Connecticut recently invalidated a similar regulation. Doe v. Shapiro, 302 F.Supp 761 (D. Conn., 1969).

6. Wel. & Inst. Code § 11253. Un-

will see more cases challenging these practices and statutes by emphasizing the principles established in *King v. Smith* and followed in *Damico v. California.*

B. Cases Challenging the Level of Welfare Payments

While the court decisions affecting eligibility were decided in the main on constitutional or sharply contested statutory grounds, litigation affecting the *level* of welfare payments proved to be quite different. In most cases, the recipients were asserting clearly defined rights under federal and state law that had been too long ignored by the administrators of public assistance in California.

Of the five cases decided in 1969, all but one (now on appeal to the United States Supreme Court) were decided in favor of the recipients.[7] In each of the cases save one, recipients were found to have been illegally deprived of welfare benefits to which they were entitled as a matter of law. The situation becomes more startling when it is recognized that of the four decisions in favor of the recipients, only one was decided on constitutional grounds.[8] In the other cases, courts found clear and obvious violations of state and federal law that resulted in the denial of assistance to thousands of recipients.[9]

der federal law, all eligible persons are entitled to assistance. Eligible children in the AFDC program are defined as those needy children under the age of 18. California, however, denies aid to children between 16–18 unless they meet additional state-imposed eligibility requirements. (They must be in school, in a training program, or employed.) Under the reasoning of *King v. Smith,* California has narrowed the definition of "child" to exclude otherwise eligible children as Alabama did in creating its own definition of "parent," and thereby violated the Social Security Act's mandate "that all eligible individuals receive aid." One case in California that developed this argument resulted in the convening of a three-judge federal court and the issuance of a temporary restraining order enjoining the denial of aid on the basis of Welf. & Inst. Code § 11253 to a 17-year-old boy. Kerr v. Montgomery, No. 50520 (N.D. Cal., Filed Dec. 30, 1968). The case was later voluntarily dismissed as moot.

7. In commenting on the State Welfare Department's record in recent welfare cases, an unnamed state official lamented: "We don't have a good batting average in the courts." Wall Street Journal, page 7 (Wednesday, February 4, 1970).

8. Kaiser v. Montgomery, CCH Poverty Law Reporter § 10,391, p. 11,299.

9. Ivy v. Montgomery Sup. Ct. S. F. Cty. (No. 592705 Sept. 11, 1969); Nes-

Not only have the cases reflected a pattern of law violation on the part of the welfare bureaucracy of this state, but the post-judgment history of two of these cases reflects a pattern of intentional avoidance of court judgments.[10] *It is indeed ironic that a state administration that is so strident in urging compliance with law and order fails to follow the law when the poor and their welfare are at stake.*

To appreciate the significance of the decisions of 1969, it is essential to describe briefly the setting in which the cases arose. The California Department of Social Welfare (through the counties) is required to make payments to needy children under the AFDC program in accordance with the provisions of Welfare and Institutions Code sections 11450, 11452, and 11454. Pursuant to section 11452, the department is charged with determining each recipient's minimum need. In making that determination, the department has computed for each county a "Cost Schedule for Family Budget Units." This cost schedule sets forth amounts representing the allowances for the following items: housing, food, clothing, personal needs, recreation, transportation, household operations, education and incidentals, utilities, and intermittent needs.[11] The amounts in the cost schedule for these items vary according to such factors as a recipient's age, sex, and county of residence.[12] In establishing the amounts, the state department is required to set the cost of the items in conformity with the mandate of section 11452 of the Welfare and Institutions Code. For example, housing allowances are to be established to insure that the amounts contained in the schedules reflect the minimum cost of "safe, healthful housing."[13] In practice, the

bitt v. Montgomery Sup. Ct. Sac. Cty. (No. 193675 Oct. 1, 1969); C.C.H. Poverty Law Reporter § 10,645 p. 11,513; Daley v. State Department of Social Welfare, 276 Cal. App.2d 961, 81 Cal. Rptr. 318 (1969).

10. Ivy v. Montgomery Sup. Ct. San Francisco Cty. (No. 592705, Sept. 11, 1969); Nesbitt v. Montgomery Sup. Ct. Sac. Cty. (No. 193675, Oct. 1, 1969) CCH Poverty Law Reporter § 10,645, p. 11,513.

11. California Department of Social Welfare, *Manual of Policies and Procedures* (PSS) § 44–221.1–.21 and, generally, all of chapter 44 of the *Manual.* Also Kaiser v. Montgomery No. 49613 Civil (N.D. Cal., August 28, 1969) p. 2.

12. Kaiser v. Montgomery, No. 49613 Civil (N.D. Cal., August 28, 1969) p. 2. CCH Poverty Law Reporter § 10,391, p. 11,300.

13. Welf. & Inst. Code § 11452(a).

amounts contained in the cost schedules do not reflect the average minimum cost of many items in the standard, and, in a number of instances, the amounts are grossly inadequate.[14]

Once a family's needs are determined by the use of a cost schedule (and any special nonrecurring needs are added), the county welfare department calculates the amount of nonexempt income the family has available. If the family's minimum need exceeds its available income, the family has met the "need" requirement for AFDC. Pursuant to section 11454, a family is to be paid the amount of its minimum needs calculated pursuant to section 11452 (or that amount of its minimum needs not met by available income) *unless* that amount exceeds the *ceilings* on aid payments established by section 11450 of the Welfare and Institutions Code. This statute arbitrarily places a limit on the amount of money the state will pay an AFDC family *regardless* of the amount of its state-determined minimum needs.[15] These ceilings are commonly referred to as "maximum grants."[16]

14. Food allowances are on the average substantially below the levels set by Welf. & Inst. Code § 11452. Each recipient's monthly transportation allowance (set in 1950) is $1.00 (less than the cost of three round-trip bus fares in San Francisco). As to the inadequacy of the housing allowances, see discussion of Ivy v. Montgomery, *infra*.

15. The maximum grants vary only with the size of a family and do not take age, sex, or county of residence of a recipient into account. The maxima have no relationship to the state-determined needs of a family. In almost all cases, the maximum grant ceiling for a family is less than their state-determined needs. Unless outside income is received by a family to supplement their monthly income up to their state-determined needs, they must live on maximum payments set by Welf. & Inst. Code § 11450(a). The counties have the option under Welf. & Inst. Code § 11451 of paying the recipients additional sums from county funds to meet their state-determined needs, but only Marin county does this.

16. The maximum grants payable under the statute are as follows:

Children Living with One Parent or Other Relative	
Number of Children	Amount
1	148
2	172
3	221
4	263
5	300
6	330
7	355
8	373
9	386
10	392
11	399
12	405
13	412
14	418
15	424

Welfare Law

Approximately one-half of the recipients of AFDC in California (by virtue of the maximum grant limitation of section 11450(a)) subsist on incomes that are below their state-determined minimum needs.[17] This fact, coupled with the realization that the state standards of need are set far below the amounts actually necessary for a minimum basic standard of adequate care, places the need for a raise in welfare grants beyond debate.

Two of the cases decided in 1969 resulted in judicial holdings that (1) California's maximum grant statute is unconstitutional, and that (2) California's present standards of need in the AFDC program are illegal and inadequate as a matter of state law.

The first of these cases, *Kaiser v. Montgomery*,[18] was brought by a number of AFDC families who received welfare grants below their state-determined needs. The suit was brought as a class action on behalf of all other similarly situated families. The plaintiffs contended that section 11450(a) was unconstitutional, since the limitations imposed by the statute (1) lacked any reasonable basis in light of the purposes of the aid program, and (2) arbitrarily deprived certain AFDC recipients of assistance sufficient to meet their state-determined need.

In a 2-1 decision, the federal Court held the statute to be violative of the equal protection clause of the Fourteenth Amendment.[19] A preliminary injunction was issued enjoining

Children Living with Two Eligible Parents Number of Children	Amount
1	166
2	191
3	239
4	282
5	318
6	349
7	373
8	392
9	404
10	411
11	417
12	424
13	430
14	437
15	443

Plus $6.00 for each additional child

17. Kaiser v. Montgomery, No. 49613 Civil USDC (N.D. Cal., August 28, 1969) CCH Poverty Law Reporter § 10,391, p. 11,300, n. 2.

18. — F.Supp. —, No. 49613 Civil (N.D. Cal., August 28, 1969) CCH Poverty Law Reporter § 10,391, p. 11,-299.

19. — F.Supp. —, No. 49613 Civil

its further enforcement,[20] but the Court later stayed its injunction pending appeal of the case to the United States Supreme Court.[1] The majority found that the maximum grant statute lacked a reasonable relationship to the needs of AFDC recipients because the limitations it imposed took no account of those factors the state itself used in determining need (i.e., age, sex, unmet work expenses, and cost of living in each county) nor did it take a reasonable account of family size in determining need. In analyzing the discrimination effected by the statute, the Court observed that it operated with particular harshness against large AFDC families. The majority cited several examples of the effect of the statute on the plaintiffs' families. One plaintiff, a mother with two teenage and two subteenage children, needed $300 a month to subsist according to the state's own figures. Section 11450(a), however, permits a family of four needy children and one needy parent only $263 on which to live. Another plaintiff, the mother of eleven children all of whom were eligible to receive benefits, had a monthly state-determined need of $532. But according to section 11450(a), the family could receive no more than $399 per month. Therefore, this woman received $133 less per month than the state considered minimally necessary to provide clothing, food, shelter, and other necessities for herself and her children.

(N.D. Cal., August 28, 1969) CCH Poverty Law Reporter p. 11,303.

20. — F.Supp. —, No. 49613 Civil (N.D. Cal., August 28, 1969) p. 10; CCH Poverty Law Reporter p. 11,-303.

1. The order granting the stay was issued on Nov. 17, 1969, and is unreported. In all probability, the case will be decided on a summary basis by the Supreme Court (as was the case with California residency decision) since another "maximum grant" case has already been argued before the Supreme Court. Williams v. Dandridge, 297 F. Supp. 450 (D.Md., 1968) sub nom. Dandridge v. Williams, prob. juris. noted October 14, 1969 (38 USLW 3127). (After submission of this article, the United States Supreme Court in a 5–3 decision, upheld the constitutionality of Maryland's maximum grants applying the traditional equal protection test of "any rational basis." The Supreme Court limited the "compelling state interest" test to cases where constitutional rights were involved. (— U.S. —, 25 L.Ed.2d 491, 90 S.Ct. 1153, 38 U.S.L.W. 4277 (1970).) On April 20, 1970, the Court vacated the decision in Kaiser v. Montgomery and remanded the case for further consideration in light of *Dandridge* (38 U.S.L.W. 3405).)

In holding the statute unconstitutional, the majority followed similar federal court decisions in three other jurisdictions.[2] The fact that these other decisions involved absolute ceilings on aid to families, while California's statute permits a maximum increase of $6 per child regardless of a family size, did not prove a significant reason for distinguishing those cases from the *Kaiser* case. The Court simply noted that the $6 increment did not come anywhere near closing the gap between child need and the actual aid received by children in large families.[3]

The Court was careful to delineate the scope of its holding. It was not making any determinations regarding the actual needs of recipients or suggesting that the state must furnish children with aid covering those needs.[4] The majority directed its attention solely to the constitutionality of section 11450 (a), and the method of payment it commands:

> We say only that, the state having chosen to make expenditures to promote the welfare of needy children, those expenditures may not be made in such a way as to discriminate irrationally among the recipients. The limitations imposed by § 11450(a) create the forbidden irrational discrimination among recipients and that portion of § 11450(a) is therefore unconstitutional.[5]

2. Williams v. Dandridge, 297 F. Supp. 450 (D.Md., 1968), *sub nom.* Dandridge v. Williams (U.S. prob. juris. noted October 14, 1969, argued on Dec. 13, 1969); Westberry v. Fisher, 297 F.Supp. 1109 (D.Me. 1969); and Dews v. Henry, 297 F.Supp. 587 (D. Arizona, 1969). Another similar decision not cited by the majority was Lindsey v. Smith, 303 F.Supp. 1203 (W.D. Wash., 1969) CCH Poverty Law Reporter § 10,278, p. 11,223.

3. As the majority noted: "The statutory increment of $6.00 for each child after the ninth fails by at least $13.00 to meet the state-determined need of such child *for food alone.*" CCH Poverty Law Reporter § 10,391, p. 11,301, n. 5. Kaiser v. Montgomery, No. 49613 Civil USDC (N.D. Cal., August 28, 1969) p. 6.

4. The question of whether a state must pay recipients their state-determined minimum needs was not raised by plaintiffs in *Kaiser*. It remains an open question raising state, federal, and constitutional issues of great magnitude. Given the present plight in which most recipients find themselves, in all probability it will be an issue facing the courts in the next several years.

5. Kaiser v. Montgomery, No. 49613 Civil USDC (N.D. Cal., August 28, 1969) pp. 9–10, and Kaiser v. Montgomery, CCH Poverty Law Reporter § 10,392, p. 11,303.

As noted earlier, another case decided in 1969 found the state-determined standards of need to be inadequate and in clear violation of state law. In the case of *Ivy v. Montgomery,*[6] plaintiffs, recipients of AFDC, brought a class action on behalf of recipients in San Francisco and Alameda Counties, as well as all other counties in the state. They challenged the validity of the minimum standards of need for the AFDC program, which are set forth in cost schedules issued on a county-by-county basis.[7] Although the action challenged the validity of all cost schedules in California (which contain specific dollar figures for each of the items of need), the suit focused primarily on the State Welfare Department's procedure for establishing the housing component of the need standard.

Under Welfare and Institutions Code section 11452, the State Welfare Department has a mandatory duty to establish standards of need that reflect, inter alia, *the minimum cost for safe, healthful housing.* The plaintiffs first alleged that the department's regulation,[8] which required only that the counties establish housing allowances based on actual costs of housing rather than on the minimum cost of safe, healthful housing, was in conflict with the governing statute. It was further alleged that the cost schedules in Alameda and San Francisco Counties, and in all other counties of the state, were invalid, since the housing allowances contained therein were much below the minimum standard of safe, healthful housing required by Welfare and Institutions Code section 11452. It was also alleged that the housing allowances in the cost schedules were far below the actual costs of housing and therefore violated the department's own regulation. Finally, it was contended that all the cost schedules were invalid because they were adopted without notice or the opportunity for a hearing as required by the Administrative Procedure Act.

After a full trial in which virtually all the essential facts

6. Sup. Ct., San Francisco Cty., No. 592705. (Judgment entered September 11, 1969, Alvin E. Weinberger, J.)

7. The cost schedules are issued pursuant to the state *Public Social Services Manual* (PSS) § 44–212.

8. *Public Social Services Manual* (PSS) § 44–212.

were stipulated to by the defendant State Department of Social Welfare (including a stipulation that the application of present cost schedules resulted in irreparable injury and malnutrition among welfare children),[9] Superior Court Judge Alvin Weinberger sustained all of plaintiffs' contentions. He ruled that all of the cost schedules were invalid, having been adopted without notice and hearing as required by the Administrative Procedure Act.[10] Judge Weinberger further held that the cost schedules violated both the state's own regulation and the mandate of section 11452, since the housing allowances contained therein were below the actual cost of housing as reflected in county samples in the possession of the defendants and were even further below the minimum costs of safe, healthful housing. Finally, the trial judge held that the state's "actual rent" regulation violated the governing statute—Welfare and Institutions Code section 11452.[11]

In reaching his decision, the trial judge made a number of significant findings that illustrate the magnitude of the department's violation of state law. Based on stipulated facts, it was found:

1. The housing allowances in San Francisco County for 1968 varied between $52 a month for 2 persons to $80 for 10 persons.[12]
2. The minimum costs of safe, healthful housing in San Francisco County varied between $100 for 2 persons to $200 for 10 persons in 1968.[13]
3. The average actual housing cost in San Francisco in 1969 according to the State Welfare Department's

9. Ivy v. Montgomery, Findings of Fact, Conclusions of Law entered Sept. 11, 1969, Findings of Fact No. 45. For more general information on malnutrition among welfare recipients, see Citizens' Board of Inquiry into Hunger and Malnutrition in the United States, *Hunger, USA* p. 28 at 72 (1968), and Le Beaux, "Life on ADC: Budgets of Despair," in *Poverty in America,* p. 519 at 523–26 (Ferman, Kornbluh, and Haber, eds., 1968).

10. Govt. Code §§ 11423–11425.

11. Ivy v. Montgomery, Conclusions of Law and Judgment entered on September 11, 1969.

12. Ivy v. Montgomery, Findings of Fact No. 14.

13. Ivy. v. Montgomery, Findings of Fact No. 15.

own data was approximately $23 higher than the average housing allowance.[14]

4. The gap between the AFDC allowance for rent and the minimum rents actually paid for safe, healthful housing can only be met out of the subsistence amount allowed for other living necessities such as food and clothing. For every rent dollar paid above the AFDC allowance, the recipient has one dollar less than she needs for the other needs of her family.[15]
5. The application of the 1967, 1968, and 1969 Cost Schedules in determining AFDC recipients' grants has resulted in irreparable injury, including malnutrition and ascertainable monetary loss among AFDC families.[16]
6. The housing allowances contained in the Cost Schedules (except for annual cost-of-living increases begun in 1966 and a Federal pass-through increase) are based on actual housing costs computed in 1950, effective June 1951.[17]

The defendants raised no serious defense to the action, but maintained that no funds were available to meet the costs of a judgment. The trial court ruled that the defense was legally insufficient to prevent the entry of a judgment for plaintiffs.[18] The court found that plaintiffs did not have the burden of establishing the existence of available funds to obtain the relief sought, and further, that the General Fund of the State is available to meet the cost of unanticipated welfare expenditures above the budget limitation set in section 32.5 of the Budget Act if such expenditures are occasioned by rule or regulation change required by court order.[19]

14. Ivy v. Montgomery, Findings of Fact No. 8.

15. Ivy v. Montgomery, Findings of Fact No. 23.

16. Ivy v. Montgomery, Findings of Fact No. 45.

17. Ivy v. Montgomery, Findings of Fact No. 20.

18. Ivy v. Montgomery, Conclusions of Law No. 16. The same conclusion was reached by Judge B. Abbott Goldberg in the case of Nesbitt v. Montgomery, discussed *infra*.

19. Ivy v. Montgomery, Conclusions of Law Nos. 25 and 26.

The court also found that the state had not submitted any evidence to support its claim that no funds were available.[20] Indeed, all of the evidence before the court demonstrated that more than ample funds were available to satisfy the judgment.[1]

On September 11, 1969, judgment was rendered in the case. The Court enjoined further application of the invalid cost schedules and ordered the State Welfare Director to immediately issue new cost schedules that would comply with the statutory mandate of safe, healthful housing.[2]

In light of the possible administrative complexity in issuing cost schedules that would comply with the mandate of Welfare and Institutions Code section 11452, the Court further ordered, as an interim measure and incidental to the prohibition against further application of the invalid cost schedules, that the State Welfare Department at least comply with their own regulations pending adoption of new cost schedules, and pay actual rents to the plaintiffs and similarly situated families in San Francisco and Alameda Counties to prevent further irreparable injury occurring in the period between judgment and the adoption of valid cost schedules.[3]

Shortly after judgment, the State Welfare Department held public hearings to determine the actual costs of safe, healthful housing and the other items of need for use in the cost schedules. Other than holding hearings in accordance with the Administrative Procedure Act, the State Welfare Department took no other action to comply with the Court's judgment until contempt proceedings were instituted against the State Welfare Director. The trial court in its judgment had given the state until October 15, 1969, to comply with its interim payment order in San Francisco and Alameda Counties.[4] No

20. Ivy v. Montgomery, Findings of Fact No. 59.

1. Ivy v. Montgomery, Findings of Fact No. 56. The "availability of funds" defense has no application in these welfare cases as a matter of law and fact. It is no more than a clever tactic aimed at persuading courts to avoid their responsibility to declare invalid and to enjoin illegal state welfare practices. Fortunately, the courts faced with this argument have recognized its irrelevance and have squarely rejected the defense.

2. Ivy v Montgomery, Judgment, p. 3, paragraphs 1 and 3.

3. Ivy v. Montgomery, Judgment, p. 3, paragraph 2.

4. The court ordered that the pay-

payments were made on October 15. On October 21, the state took an appeal from the judgment and asserted that its appeal stayed the effect of the interim payment order. However, the state acknowledged that it was appealing only that portion of the judgment regarding the interim payments.[5] Thus, the trial court's determination that all of the existing cost schedules violated state law and that new schedules would have to be immediately issued became final.

After the state had failed, for over two months, to comply with the court's judgment, the plaintiffs moved for and obtained an order from the trial judge declaring the judgment not stayed pending appeal.[6] The trial court, however, stayed the effect of its order until the 15th of December, to allow the state to apply for a writ of supersedeas in the Court of Appeal. The court made it clear that if a writ was not issued, its judgment would have to be complied with by December 15, 1969, or the State Welfare Director would face contempt proceedings.[7]

The Court of Appeal denied the State Welfare Department's application for a writ of supersedeas.[8] The state failed to comply with the court's order on the 15th of December, and contempt proceedings were instituted shortly thereafter. A hearing was held on December 30, 1969, which was continued until January 13, 1970, at which time the State Welfare Director indicated that finally (some four and a half months after judgment) he was going to direct the payment of actual rent in the two named counties, and that he was going to issue new cost schedules containing increased housing allowances by the end of February effective the 1st of June. The trial judge ordered the adoption of new cost schedules by February 1,

ments be made retroactive to the date of judgment.

5. Defendants-Appellants' Petition for Writ of Supersedeas dated December 12, 1969, filed in the first District Court of Appeal, No. 27614, at p. 3.

6. Order Declaring Judgment is Not Stayed Pending Appeal entered December 1, 1969.

7. Order Declaring Judgment is Not Stayed Pending Appeal, entered December 1, 1969.

8. Order Denying Petition for Writ of Supersedeas and Temporary Restraining Order dated December 15, 1969, District Court of Appeal (1st Dept., Div. 3), No. 27614.

1970, and their implementation in all counties by March 1, 1970, continuing the contempt hearing until March 12, 1970.

Regardless of the ultimate outcome of the contempt proceeding and the individual responsibility of the members of the State Welfare Department, Finance Department, and executive branch of government, the fact remains that state officials defied a lawful court order for several months, a court order that (except for interim relief) was not being appealed by the state.

The defiance of a court order by the State Welfare Department was not limited to the *Ivy* case. A similar pattern was repeated in another case, *Nesbitt v. Montgomery*.[9] In *Nesbitt*, the State Welfare Department was again found to be acting in direct violation of the law. This time, however, the violation was of federal as well as state law. The department's regulation establishing the method for exempting a portion of a working AFDC recipient's earnings was held to conflict with Welfare and Institutions Code section 11008[10] and binding federal regulations promulgated by the Secretary of Health, Education and Welfare[11] pursuant to the Social Security Act amendment of 1967.[12] As a result, some 28,000 families in California were illegally deprived of an average of $28 per month in welfare payments.[13] The loss of welfare resulted from the State Welfare Department's regulation requiring that the federal earning exemption be applied against a recipi-

9. Sup. Ct. Sac. Cty. No. 193675, Dept. 4 (Memorandum Decision entered Oct. 1, 1969, B. Abbott Goldberg, J.) CCH Poverty Law Reporter § 10,645, p. 11,513.

10. In relevant part, Welf. & Inst. Code § 11008 reads:

"To the *maximum* extent permitted by federal law, earned income of a recipient of aid under any public assistance program for which federal funds are available shall not be considered income or resources of the recipient, and shall not be deducted from the amount of aid to which the recipient would otherwise be entitled."

11. The HEW regulations were issued on Jan. 29, 1969, in The Federal Register, effective on publication. 34 Fed. Reg. No. 19, pp. 1394, 1396. They were later recodified at 45 Code Fed. Reg. § 233.20(a)(7); see also 45 Code Fed. Reg. § 233.20(a)(11)(ii).

12. 81 Stat. 881 (1968), 42 U.S.C. § 602.

13. Nesbitt v. Montgomery, No. 193675 Dept. 4, Sup. Ct. Sac. Cty. (October 1, 1969) p 16.

ent's *net* rather than *gross* earnings.[14] Not only were recipients deprived of benefits to which they were legally entitled, but one of the major goals of social welfare—encouraging recipients to work—was compromised by the department's illegal rule.[15]

During the litigation, defendants conceded that their regulation was in conflict with the HEW regulation,[16] but still argued that no judicial redress was available to the recipient plaintiffs.

Judge B. Abbott Goldberg, in a well-documented opinion, held to the contrary, and enjoined the further application of the invalid regulation. His decision was not appealed by the state. In so ruling, Judge Goldberg made a number of significant points regarding the ability of welfare recipients to seek judicial redress for violations of their rights under state and federal law. First, Judge Goldberg found that the recipients had standing to challenge the validity of a state welfare regulation as violative of federal or state law in state court.[17] The fact that the Secretary of HEW had not acted to enforce his own regulation was no bar to judicial action by aggrieved recipients.[18] Judge Goldberg also found that state courts could hear and resolve actions created by federal law.[19]

14. The Secretary of HEW summarized the federal regulations' requirement as follows:

"The method for disregard of earned income has been modified. In arriving at the amount of earned income to be applied against the assistance budget the amount to be disregarded is to be deducted from gross income rather than from net income. Next, the amount allowed for work expenses is to be deducted. The remaining amount is then applied against the assistance budget (§ 233.20(a)(7))." 33 Fed. Reg. No. 19, p. 1394 (Jan. 29, 1969).

15. Welf. & Inst. Code § 11205, provides in relevant part:

"It is the intent of the Legislature that the employment and self-maintenance of parents of needy children be encouraged to the maximum extent and that this chapter shall be administered in such a way that needy children and their parents will be encouraged and inspired to assist in their own maintenance. The [state] department [of Social Welfare] shall take all steps necessary to implement this section."

16. Nesbitt v. Montgomery, No. 193675 Dept. 4, Sup. Ct. Sac. Cty. (October 1, 1969) p. 5.

17. Nesbitt v. Montgomery, No. 193675 Dept. 4, Sup. Ct. Sac. Cty. (October 1, 1969) pp. 8–12.

18. Nesbitt v. Montgomery, No. 193675 Dept 4, Sup. Ct. Sac. Cty. (October 1, 1969) pp. 6–7.

19. Miller v. Municipal Court, 22 Cal.2d 818, 851, 142 P.2d 297, 316 (1943). Judge Goldberg concluded that petitioners not only had standing to

With regard to standing under state law, Judge Goldberg found the petitioners "interested person[s]" within the meaning of Government Code section 11440, because the regulations directly affected them, and "beneficially interested" within the meaning of Code of Civil Procedure section 1086, because they had sufficient reason to challenge the regulation.[20]

Judge Goldberg also concluded that petitioners did not have to exhaust their administrative remedies before instituting court action. After carefully analyzing the relevant authorities, Judge Goldberg held that:

> [P]etitioners may obtain a judicial determination of the validity of the regulation by resorting to Gov. C. § 11440, or traditional mandamus, *Brock v. Superior Court, supra,* 109 Cal. App.2d at 603 without exhausting the administrative remedies provided by Welfare and Institutions Code §§ 10950 *et seq.*[1]

As in the *Ivy* case, the state's defense of lack of funds was rejected as a matter of law.[2]

On November 17, 1969, Judge Goldberg entered judgment in the *Nesbitt* case enjoining *forthwith* the further application of the state welfare regulation and declaring that the *gross* rather than *net* income method of computing earning exemptions should have been applied since at least January 29, 1969 (the effective date of the federal regulation). Although the State Welfare Department issued an emergency regulation shortly after the court decision, it was not, by its terms, to replace the invalid regulation until February 1, 1970 (some two and a half months after judgment).[3]

maintain the proceeding, but also that the Court must hear the case.

20. Nesbitt v. Montgomery, No. 193675 Dept. 4, Sup. Ct. Sac. Cty. (October 1, 1969) p. 12.

1. Nesbitt v. Montgomery, No. 193675 Dept. 4, Sup. Ct. Sac. Cty. (October 1, 1969) p. 14.

2. Nesbitt v. Montgomery, No. 193675 Dept. 4, Sup. Ct. Sac. Cty. (October 1, 1969) pp. 10–21. The Court reviewed the leading authorities on this question and found that unavailability of funds is no impediment to the entry of a judgment against the state. However, as in *Ivy*, the state failed to submit any evidence to support its claim that funds were unavailable.

3. Not only were the emergency regulations not to become operative until

As in *Ivy*, contempt proceedings were instituted and, after hearing, Judge Goldberg issued a peremptory writ of mandate directing immediate repeal of the newly adopted regulations.[4] Of significance in terms of the State Welfare Department's pattern of law violation was the finding made by Judge Goldberg after the contempt hearing:

> . . . the former respondent John Montgomery as Director of Social Welfare, and the former respondent Paul C. Zimmer, as Acting Director of Social Welfare, together with their counsel, engaged in a course of conduct designed to impede the enforcement of this Court's judgment of November 17, 1969. The Court finds further, that since Montgomery has left the jurisdiction and since Zimmer no longer acts as director, it is not expedient or necessary to proceed against them for their personal derelictions in regard to the judgment of November 17, 1969. The Court finds further that the present respondent, Robert Martin, as Director of Social Welfare, is continuing the conduct of his two predecessors in violation of the judgment.[5]

While the actions of the State Welfare Department may have been motivated by fiscal or economic considerations, the fact remains that these interests, as valid as they might be, must be subservient to the rule of law. As the poor have so often been told, the law must be obeyed until it is changed through the legislative process. So long as the laws are in force, they are binding even on state administrators, and the courts must be looked to as the forum where the rights of the poor may be vindicated.

Despite the court victories in the *Ivy* and *Nesbitt* cases, it is apparent that the State Welfare Department benefited from its violations of law for considerable periods of time before judgment was rendered in those cases. Welfare payments illegally denied recipients prior to judgment will in most cases

February 1, 1970, but they were conceded to be in violation of the court's judgment of November 17, 1969.

4. Peremptory Writ of Mandate filed and entered Jan. 13, 1970.

5. Minute Order dated Jan. 13, 1970.

be reflected as savings in state welfare costs. Until judgment, therefore, the state loses nothing by its violation of law. Probably because of the sums involved, some trial courts have been reluctant to grant retroactive payments or order the department to take effective corrective action to remedy the past hardship caused by illegal regulations or practices. This situation should not and cannot continue, for it encourages the type of law violations exemplified by the cases discussed herein. Recipients are entitled to those benefits illegally denied them by the state. Equally important, the state must be held responsible for its illegal actions and should not benefit from its own wrongs. The right of recipients to receive retroactive payments and the need for such relief was recognized by the California Supreme Court over twenty-five years ago:

> In the case now before us we are of the view that the provisions for appeal to the State Social Welfare Board and for 'the payments, if awarded, to commence from the date the applicant was first entitled thereto' likewise subserve a clear public purpose by securing to those entitled to aid the full payment thereof 'from the date . . . [they were] first entitled thereto' regardless of errors or delays by local authorities. It was the mandatory duty of the county to furnish aid according to the plan therefor which is laid down by the applicable provisions of the Welfare and Institutions Code [citations omitted]. The bare fact that an applicant has by one means or another managed to ward off starvation pending receipt of the payments to which he was previously entitled provides no sufficient excuse for a county to refuse to make such payments. To hold otherwise would, as suggested by petitioner herein, provide a money-saving device for the counties at the expense of those of our citizenry least able to bear the burden thereof.[6]

Violations of state law by the State Welfare Department were not limited to the AFDC program. The Court of Ap-

6. Board of Social Welfare v. Los Angeles County, 27 Cal.2d 81, 85–86, 162 P.2d 630, 633 (1945); compare Proctor v. S. F. Port Authority, 266 Cal. App.2d 675, 72 Cal. Rptr. 248 (1st Dist., 1968).

peal, in the case of *Daley v. State Department of Social Welfare,*[7] recently held that the exclusion of increases in the cost of medical care from consumer price indices for the purpose of computing increases payable under welfare programs for the blind, potentially self-supporting blind, disabled, and elderly, did not conform to statutory directives[8] that such indices be used as a basis for computing changes in payments, and were therefore invalid. The exclusion of the medical care component resulted in a loss of $2 a month to recipients of blind aid and $1 a month to elderly and disabled recipients.[9] (Although these sums might appear to be small, any recipient living at a subsistence level can testify that the loss of one dollar is significant.)[10] To justify its action, the State Welfare Department contended that the elimination of the medical care component was proper, since medical expenses were being met by public payments under other programs. In answering this contention, the court indicated that the department's thesis was one properly addressed to the legislature, but that it could not justify the department's unilateral amendment of existing state law.

In reaching its decision, the *Daley* court quoted from the State Supreme Court decision in *Morris v. Williams,* which enjoined illegal state cuts in the Medi-Cal program:[11]

> Administrative regulations that violate acts of the Legislature are void. . . . *They must conform to the legislative will if we are to preserve an orderly system of government.*[12] (Emphasis added.)

7. 276 Cal. App.2d 961, 81 Cal. Rptr. 318 (1969) (3rd Dist., Oct. 16, 1969).

8. Welf. & Inst. Code §§ 12150, 12650, 13100, 13701.

9. Daley v. State Department of Social Welfare, 276 Cal. App.2d 961, 962, 81 Cal. Rptr. 318, 319 (1969).

10. In commenting on the loss of $4 to a welfare recipient, a three-judge federal court recently noted:

"While this may seem minor to most citizens, it is of crucial importance to the recipients here. . . . To an indigent person now receiving approximately 90 cents per day for food, an additional 15 cents per day can hardly be described as *de minimus*. Access to such bare necessities of life . . . involves a critical interest for those whose life depends on it." Rothstein v. Wyman, 303 F.Supp. 339, 348 (S.D.N.Y., 1969).

11. 67 Cal.2d 733, 63 Cal. Rptr. 689, 433 P.2d 697 (1967).

12. 67 Cal.2d 733, 737, 63 Cal. Rptr. 689, 692, 433 P.2d 697, 700.

A writ of mandate was issued directing the State Welfare Department to take all necessary steps to nullify and supersede its action in 1968, regarding the annual adjustment of grants of public assistance to reflect the change in the cost of living and in lieu thereof, to put into effect, as of December 1, 1968, an adjustment increasing recipients' grants by the proper amount of the cost-of-living increase.[13]

The final case where recipients challenged a state statute as violative of both federal law and the Constitution was *Lewis v. Martin*.[14] There, AFDC recipients challenged a California statute[15] that obligates an adult male assuming the role of spouse (known as a "MARS man") or a stepfather to support the needy children with whom he resides,[16] and requires that his income be considered in determining the children's welfare grant whether or not he actually contributes to their support. The statute, in conjunction with implementing state regulations,[17] operates to conclusively presume that the man's income (less certain deductions) is available for such support. As a result, many needy children are denied welfare aid or have their grants significantly reduced without receiving any income. The statute's validity was upheld in *Lewis* by a three-judge federal court. This case is presently

13. The specific relief granted by the Court is not reported in the decision, as the Court only stated that a writ should issue as prayed for by petitioners. 81 Cal. Rptr. 318, 320. However, the terms of the relief set forth above reflect the prayer contained in the petition for the writ (pp. 11–12) filed in the action.

14. Lewis v. Stark, No. 50284 Civil (N.D. Cal., Dec. 23, 1968) prob. juris. noted *sub nom.* Lewis v. Montgomery (U.S. Nov. 10, 1969) (38 U.S.L.W. 3173). Now styled as Lewis v. Martin. CCH Poverty Law Reporter § 9299, p. 10,543.

15. Welf. & Inst. Code § 11351. Since the decision in Lewis, the statute has been amended to include a new section 11351.5, but the same basic legal problems still exist with regard to its validity.

16. The extent of the legal obligation to support under the statute is open to question. See People v. Rozell, 212 Cal. App.2d 875, 878, 28 Cal. Rptr. 478, 480; People v. Owens, 231 Cal. App. 2d 691, 697, 42 Cal. Rptr. 153, 157. See also 44 Ops. Atty. Gen. 155, 157 where the Attorney General citing People v. Rozell concluded that a MARS is a man ". . . who has no legal obligation to support . . . and who may legally refuse to do so." The Civil Code expressly prohibits the imposition of legal liability on stepfathers generally. Civ. Code § 209.

17. California Department of Social Welfare Regulations, *Public Social Services Manual* § 44–133.5.

before the U.S. Supreme Court on appeal. The Court, although finding a federal regulation[18] to be in direct conflict with the state statute, held the HEW regulation to be invalid as violative of the Social Security Act, despite the fact that the regulation reaffirmed policies regarding the assumption of actually available income approved by the Supreme Court in *King v. Smith.*[19]

The Court also rejected plaintiffs' constitutional challenges to the statute and regulations. The Court found no violation of due process, despite the fact that the statute operated to reduce state expenditures by irrefutably presuming receipt of nonexistent child support. The presumption proves unusually harsh, since the amount of assumed income is calculated by using welfare need standards; the very standards found to be inadequate in the *Ivy* case, above. In rejecting the due process contention, it is submitted the Court improperly placed administrative convenience over the needs of impoverished children in direct contravention of the purposes of the AFDC program.[20] Plaintiffs' equal protection challenges were also rejected, the Court employing the "any rational basis test" in reaching its decision.[1] For an excellent summary of the constitutional challenges to Welfare and Institutions Code § 11351, and the serious questions they raise, see the California Supreme Court decision of *People v. Gilbert.*[2]

18. 45 C.F.R. 203.1.

19. King v. Smith, n. 16, another three-judge court upheld the HEW regulation and its decision was affirmed per curiam by the Supreme Court. Solman v. Shapiro, 300 F.Supp. 409, aff'd 396 U.S. 5, 24 L.Ed.2d 5, 90 S.Ct. — (1969). (After submission of this article, the United States Supreme Court reversed the decision of the three-judge court. 38 U.S.L.W. 4307 (April, 1970).) (Given its holding, the United States Supreme Court did not reach the constitutional claims advanced by the welfare recipients.)

20. Compare Damico v. California, discussed *supra,* where a different three-judge court in the same district took a seemingly contrary view.

1. See text, *supra,* for a discussion of the proper equal protection test to be applied in reviewing welfare legislation.

2. 1 Cal. Rptr. 475, 482–485, particularly n. 15 at 485, 82 Cal. Rptr. 724, 729–731, n. 15 at 731, 462 P.2d 580, 585–587, n. 15 at 587 (1969).

In *Gilbert,* the Supreme Court did not have to resolve the constitutional challenges to § 11351, since the Court decided the case on other grounds. The Court overturned a welfare fraud conviction arising out of the failure of a recipient to report her cohabitation

C. *Cases Affecting the Procedural Rights of Welfare Recipients—Fair Administration*

Over the years, those charged with the administration of public assistance programs have developed a complex of procedures by which the right to receive welfare is determined, modified, and terminated. Procedures were adopted to insure that recipients were advised of their rights under the public assistance programs,[3] and, further, that they were given a right to contest decisions of the welfare department regarding their status.[4] However, without legal counsel and without knowledge of their rights, the vast majority of recipients were unable to avail themselves of these procedural protections and were subject to the unfettered discretion of their social workers.[5] Although many individual social workers were concerned about their clients' well-being, the need to protect individual rights was subsidiary to the overriding pressure to conserve funds.[6] Not many administrative decisions were

with an unrelated male on the ground that the special provision of Welf. & Inst. Code § 11482 (classifying as a misdemeanor any fraudulent representation in obtaining aid to dependent children) precludes prosecution of such fraud under the general theft statute, Penal Code § 484. In so holding, the Supreme Court expressly disapproved the decision of the Court of Appeal in People v. Lopez, 265 Cal. App.2d Supp. 980, 71 Cal. Rptr. 667 (1968).

3. Welf. & Inst. Code §§ 10607–10608, *State Welfare Department Public Social Services Manual,* Regulations 40–107.1 and 40–109.1.

4. The Social Security Act requires that an administrative appeal procedure be established for all categorical aid programs. See, e.g., 42 U.S.C. 602 (a)(4). The administrative hearing available to recipients is known as the "fair hearing," where the local welfare department's determination may be reviewed by an impartial official of the State Welfare Department. See HEW *Federal Handbook of Public Assistance Administration,* Part IV, §§ 6200 et seq. for the procedural elements embodied in the fair hearing; Welf. & Inst. Code §§ 10950 et seq. and State Welfare Regulations *PSS* 22–105—22–113.

5. See Briar, *Welfare from Below: Recipients' Views of the Public Welfare System,* 54 Cal. L. Rev. 370 (1966); Graham, *Civil Liberties Problems in Welfare Administration,* 43 N.Y.U. L. Rev. 836 (1968) .

6. See Carlin, Howard and Messinger, *Civil Justice and the Poor* (Russell Sage Foundation, 1967). The California Assembly Office of Research and the Staff of the Assembly Committee on Social Welfare stated: ". . . It is clear that administrative 'accountability' is interpreted as a duty to avoid ineligibility rather than as a duty to make correct determinations. This produces a wasteful emphasis on over-investigating eligibility and a tendency

challenged, since most recipients accepted the welfare workers' word as final, and feared that "rocking the boat" might lead to an end to their welfare grants.[7]

Although recipients have been entitled to request state administrative hearings to review county action of which they are aggrieved, until recently no opportunity for notice or hearing was given *prior* to the termination of welfare assistance. As a result, thousands of recipients were erroneously or prematurely terminated from aid.[8] Many individuals, therefore, were abruptly deprived of money to purchase food and pay the rent; their only remedy being a state administrative hearing in which a decision is usually rendered many months after aid is terminated.[9]

The question of the right to a hearing *prior* to the termination of welfare benefits has been the subject of much litigation in California and throughout the country. There has also been a considerable amount of scholarly research on the subject.[10] Two California cases raising the issue are presently pending before the United States and California Supreme Courts. The facts in the first of these cases, *Wheeler v.*

toward denying legitimate claims when any doubt exists." *California Welfare: A Legislative Program for Reform,* (Feb. 1969) at p. 92.

7. The California experience has shown that social workers have great power over recipients, even to the point where recipients will abandon their constitutional rights rather than risk a social worker's disfavor. Parrish v. Civil Service Commission of the County of Alameda, 66 Cal.2d 260, 268–270, 57 Cal. Rptr. 623, 628–630, 425 P.2d 223, 228–230 (1967); see, also, County of Contra Costa v. Social Welfare Board, 229 Cal. App.2d 762, 40 Cal. Rptr. 605 (1964).

8. California Department of Social Welfare, Circular Letter No. 2064 (Nov., 1967).

9. Over 30 percent of the cases awaiting hearing decisions have been pending over 6 months; approximately half of the cases awaiting hearing decisions have been pending for over 3 months. SDSW, Division of Research & Statistics, Draft Table 62, prepared for the *1968–1969 Annual Statistical Report,* as yet unpublished.

10. See, e.g., *Comment: Withdrawal of Public Welfare: The Right to a Prior Hearing,* 76 Yale L.J. 1234 (1967); Burris and Fessler, *Constitutional Due Process Hearing Requirements in the Administration of Public Assistance; The District of Columbia Experience,* 16 American University L. Rev. 199 (1967); *The Constitutional Minimum for the Termination of Welfare Benefits: The Need for and Requirements of a Prior Hearing,* 68 Michigan L. Rev. 112 (1969).

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Montgomery,[11] illustrate the dangers and inequities inherent in an inadequate hearing procedure.

Plaintiff, Mae Wheeler, was an elderly widow receiving public assistance under the OAS program. On August 30, 1967, the county welfare department received an anonymous telephone call informing the county that Mrs. Wheeler had received the proceeds of her deceased son's insurance policy and had transferred the money to her grandson. A welfare worker contacted Mrs. Wheeler that same day. Mrs. Wheeler explained that the money represented the proceeds of her son's veterans' insurance policy and that her deceased son had previously made a deathbed wish that Mrs. Wheeler give the check to her grandson in satisfaction of a debt owed by him to her grandson. Mrs. Wheeler's OAS grant was terminated by the county the next day because the county determined that she had transferred the funds in order to remain eligible for welfare aid. In January, 1968 (some four months after aid was withdrawn) a state hearing officer found that the county had erred in terminating her benefits.[12]

Mrs. Wheeler filed suit on November 30, 1967, to challenge termination of her benefits without prior notice or any opportunity for a hearing. Judge Alfonso J. Zirpoli issued a temporary restraining order restoring Mrs. Wheeler's grant. He found the action necessitated the convening of a three-judge court, and found a class action appropriate.[13]

During the course of the litigation, the California State Welfare Department issued new regulations providing for an informal conference prior to termination with a 3-day notice requirement.[14] The new procedure was challenged as being constitutionally inadequate, since it lacked many of the procedural protections usually associated with adjudicative hearings.[15] Specifically, it was contended that the notice period

11. 296 F.Supp. 138 (N.D. Cal. 1968); Prob. juris. noted, April 21, 1969, 394 U.S. 970, 22 L.Ed.2d 751, 89 S.Ct. 1452 (1969). Case argued on October 13, 1969.

12. Wheeler v. Montgomery, Appellants' Brief, pp. 4–6.

13. Wheeler v. Montgomery, 296 F. Supp. 138 (1968).

14. California State Department of Social Welfare, *Public Social Services Manual*, Regulation § 44–325.43.

15. Welfare terminations often involve factual determinations relating to

was too short for adequate preparation, the conference was not held before an impartial referee (but could be held before the very person who made the initial decision to terminate), confrontation and cross-examination were not available, there was no requirement that a decision be based on the evidence, and the burden of proof was placed on the recipient to re-establish eligibility. Despite these contentions, the federal Court found the new California procedure to be constitutional, holding that the combination of the informal conference before termination plus the existence of the state administrative hearing after termination, would provide sufficient procedural protection to recipients such as Mrs. Wheeler.[16] In so ruling, the Court failed to recognize that state administrative hearing decisions were not rendered in a timely manner.[17] The Court also failed to recognize that the existence of a subsequent state administrative hearing (even if rendered within 60 days, as required by federal law) is of little consolation to a recipient without a means of subsistence who is denied an opportunity to effectively contest an erroneous termination decision before aid is withheld.[18]

third-party evidence and testimony. This is especially true where AFDC families are discontinued because there is alleged to be a "man in the house." In administrative hearings held subsequent to termination (where cross-examination and the subpoena power are available), 54% of the cases resulted in reversing county discontinuances of aid and restoration of grants to California recipients. Briar, *The Welfare Appeals System in California*, October 23, 1968. (Mimeographed copy on file at the Graduate Social Welfare Library, University of California School of Social Welfare, Berkeley, California.) Dr. Briar read, analyzed, codified, and compared statistically the 1,088 California hearing decisions rendered in 1965–66.

16. 296 F.Supp. 138, 140.

17. Although HEW required the states, effective July 1, 1968, to render administrative hearing decisions within 60 days from the date of request, California failed to adhere to these requirements. Wheeler v. Montgomery, Appellee's Brief, p. 17, n. 26.

18. Not only does termination of aid without notice and hearing result in severe individual injury, but it discourages later state administrative welfare:

". . . the brutal need of the recipient erroneously denied assistance will make him all the less able to pursue the subsequent [fair] hearing now available. Faced with the need to live somehow, he can scarcely devote the time and energy necessary to effectively show his continued eligibility on appeal. Because of this, it is hardly surprising that recipients rarely ever request a hearing after the administrator stops payment." (Comment: *Withdrawal of Public Welfare: The Right to a Prior Hearing*, 76 Yale L.J. 1234, 1244 (1967).)

Shortly after the federal Court's decision in *Wheeler*, a California state court reviewed the constitutionality of the regulation upheld in the *Wheeler* case and reached a contrary result. In *McCullough v. Terzian*,[19] a Superior Court judge ordered the county welfare department to reinstate an AFDC family's grant and to continue aid until a decision was rendered in a state administrative hearing. The Court found that the pretermination hearing must at least require that the decision be based solely on the evidence and be rendered by an impartial person or body not previously connected with the case. Because the Court felt these requirements were constitutionally compelled, it declared the new California informal conference procedure inadequate and invalid. The Court issued a writ of mandate to the State Welfare Department establishing a procedure by which aid could continue to a recipient pending a decision in the state administrative hearing, if a request for such a hearing and an affidavit controverting the reasons for discontinuance were filed with the welfare department.[20]

The *McCullough* decision was appealed, and on August 19, 1969, the decision of the trial court was reversed.[1] The Court of Appeal held that the 3-day notice was not inadequate as a matter of law, nor was cross-examination, confrontation, or an impartial referee required in a pretermination hearing. The Court also found that the regulation satisfied the procedural due process requirements of the California Constitution and the California Welfare and Institutions Code.[2] On December 19, 1969, however, the Supreme Court of California agreed to hear the *McCullough* case.[3] Thus, the decision of

19. No. 379011, Cal. Sup. Ct., Alameda Cty. Judgment entered May 2, 1968.

20. No. 379011, Cal. Sup. Ct., Alameda Cty. Judgment entered May 2, 1968.

1. McCullough v. Terzian, 275 Cal. App.2d 745, 80 Cal. Rptr. 283 (1969).

2. 275 Cal. App.2d 745, 754, 80 Cal. Rptr 283, 289.

3. No substantial dislocation of the administrative agency has been experienced since the operation of the procedure established by the trial court in the McCullough case. For an eight-month period, September 20, 1968 to April 20, 1969, only 55 recipients had aid continued pending their fair hearing. California Department, Research and Statistics Division, Restoration of Aid Payments Following Filing of Affidavit, Table B (May 6, 1969).

the trial court remains in full force and effect, and aid can continue pending the state administrative hearing decision for recipients who contend their aid has been erroneously terminated.

The Court of Appeal decision upholding the California regulation gave a very strict reading to the cases involving procedural due process, ruling in each instance that because no case precisely granted the protections sought by the recipients, no right to the procedures requested was indicated. More importantly, the Court failed to give any weight to the plight of individual recipients erroneously denied aid or to their dependent relationship vis-à-vis the welfare department. Thus, the Court failed to perform the basic task of balancing the competing interests of the individual and the state in deciding what due process requires in this particular administrative context.[4]

There is considerable reason to believe that the Court of Appeal decision, as well as the three-judge Court decision in *Wheeler,* will ultimately be reversed.[5] Since these decisions, both the California[6] and U.S. Supreme Courts[7] have held prejudgment wage garnishment unconstitutional, recognizing that the withdrawal of one's livelihood (even temporarily) can result in severe injury to the individual.[8] Furthermore, since *Wheeler,* other federal and state courts faced with the issue have ruled, in the main, that a hearing containing basic ele-

4. For the generally accepted test to be applied in determining the extent to which procedural protections are to be afforded in a particular administrative context, see the concurring opinion of Mr. Justice Frankfurter in Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 163, 95 L.Ed. 817, 849, 71 S.Ct. 624, 644 (1951).

5. As noted *supra,* after submission of this article, the Supreme Court reversed the decision of the three-judge court in the *Wheeler* case. — U.S. —, 25 L.Ed.2d 307, 90 S.Ct. 1026, 38 U.S.L.W. 4230; see also Goldberg v. Kelly, — U.S. —, 90 S.Ct. 1011, 38 U.S.L.W. 4223 (March, 1970).

6. McCallop v. Universal Acceptance Corp., No. 605038 (Sup. Ct. S.F., July 11, 1969). Aff'd, McCallop v. Carberry, No. S.F. 22705, 1 Cal.3d 903, 83 Cal. Rptr. 666, 464 P.2d 122 (Sup. Ct. of Calif., January 30, 1970).

7. Sniadach v. Family Finance Corporation of Bay View, 395 U.S. 337, 23 L.Ed.2d 349, 89 S.Ct. 1820 (1969). CCH Poverty Law Reporter § 9879, p. 10,975.

8. 395 U.S. 337, 340–342, 23 L.Ed.2d 349, 353–354, 89 S.Ct. 1820, 1822–23.

ments of due process is required before welfare aid can be terminated.[9] Indeed, two federal judges in the same district where *Wheeler* was decided ruled that such hearings were required before aid to General Assistance recipients could be terminated or denied.[10] In addition, HEW, possibly as a result of the court litigation and in recognition of the need for greater procedural fairness in welfare administration, has issued a new regulation to become effective June 1, 1970, that requires the continuation of aid in contested welfare terminations pending a state administrative hearing decision.[11]

Given the significant interests of the recipients at stake when aid is terminated, it is suggested that the administrative procedural protections afforded to others in our society should also be granted welfare recipients. As Professor Charles Reich has stated:

> "In a society where a significant portion of population is dependent on social welfare, decisions about eligibility for benefits are among the most important that a government can make. By one set of values the granting of a license to broadcast over a television channel, or to build a hydroelectric project on a river, might seem of more far-reaching significance. But in a society that considers the individual as its basic unit, a decision affecting the life of a person or a family should not be taken by means that would be unfair for a television station or a power company. Indeed, full adjudicatory procedures are far more appropriate in welfare cases than in most of the areas of administrative procedure."[12]

9. See, e.g., Kelly v. Wyman, 294 F. Supp. 893 (S.D., New York, 1968), sub nom. Goldberg v. Kelly, prob. juris. noted April 21, 1969 (37 U.S.L.W. 3399). Argument held Oct. 13, 1969; Machado v. Hackney, 299 F.Supp. 644 (W.D. Tex. 1969); Moore v. Houston, No. 104435 (Mich. Cir. Ct., Wayne Cty., Nov. 1, 1968); CCH Poverty Law Reporter § 10,717, p. 11,579.

10. Robertson v. Born, No. 51364 Civil (N.D. Cal., a preliminary injunction issued June 12, 1969), ordering a full hearing prior to termination of county welfare benefits. Peckham, J.); CCH Poverty Law Reporter § 10254, p. 11,201. Brunner v. Terzian, No. 51813 Civil (N.D. Cal.) (TRO granting similar relief issued on July 25, 1969. Sweigert, J.); CCH Poverty Law Reporter § 10,248, p. 11,198.

11. 34 Fed. Reg. 13595, January 23, 1969.

12. Reich, *Individual Rights and So-*

Although some existing California statutes provide recipients with the promise of equitable treatment and assistance from the county departments in the determination of their eligibility and grant levels,[13] often the statutory commands are not followed in practice. For example, Welfare and Institutions Code section 10500, requires that:

> "Every person administering aid under any public assistance program . . . perform his duties in such manner as to secure for every [applicant] the maximum amount of aid to which he is entitled . . . ."

Despite this statutory command and the detailed regulations implementing that statutory mandate, some counties in California have engaged in the practice of not informing individuals of their right to apply for particular public assistance programs or of their right to request a hearing if they are aggrieved by county action. The Sutter County Welfare Department was the most infamous violator of the statutory mandate. To stop these practices, welfare recipients sought a writ of mandate to compel the Sutter County Welfare Director to advise all applicants of their right to apply for assistance and of their right to a state administrative hearing. The petition was dismissed by the trial court, but the decision was reversed by the Court of Appeal in the case of *Diaz v. Quitoriano*.[14] The reviewing Court held that no administrative remedies need be exhausted to bring such a petition, since the action was on behalf of a class of recipients and the state administrative hearing process did not allow for class relief. The Court of Appeal set forth much of the statutory and regulatory material referred to above,[15] and concluded that the county welfare departments had a duty to inform recipients of their rights under the public assistance programs, including their right to appeal. On remand of the case to the

cial Welfare: The Emerging Legal Issues. 74 Yale L.J. 1245, 1253 (1965).

13. Welf. & Inst. Code §§ 10500, 11000.

14. Diaz v. Quitoriano, 268 Cal. App.2d 807, 74 Cal. Rptr. 358 (1969).

15. 268 Cal. App.2d 807, 810 n. 6, 74 Cal. Rptr. 358, 361, n. 6.

trial court, a stipulated judgment was entered.[16] It was stipulated that petitioners' allegations regarding Sutter County's action were true. Among the more significant portions of the stipulated order, Sutter County agreed to:

> "(10) . . . exercise their duty to courteously and promptly grant every applicant the maximum amount of aid to which he is entitled.
>
> (11) All inquirers shall be immediately advised of their right to make written application for any type of [welfare] . . . aid.
>
> (13) Respondents shall advise all applicants of their right to request a fair hearing . . . ."[17]

The *Diaz* case is significant not only for the procedural rights secured for the recipients of Sutter County and the recognition that recipients may go directly to the courts for vindication of their rights, but also is important for its exposure of the type of arbitrary and illegal practices that exist in the administration of public assistance in this state. Although most counties do not act so blatantly as did Sutter County, nevertheless, many procedural rights secured by state and federal law are honored more in their violation than in their obedience.[18]

IV. Conclusion

The year 1969 has seen substantial legal challenges to many of the practices and policies underpinning the present welfare system. Many issues (indeed, many illegal practices) are still to be brought before the courts. It is not surprising

16. Diaz v. Quitoriano, No. 14651 Sup. Ct. Sutter Cty. (July 7, 1969).

17. Diaz v. Quitoriano, No. 14651 Sup. Ct. Sutter Cty. (July 7, 1969).

18. As noted previously, California is presently violating federal time requirements in the rendering of fair hearing decisions. Until recently, California failed to comply with state and federal law in compiling a summary of fair hearing decisions that would be available to the public. At present, although Aid to the Totally Disabled eligibility determinations are to be made within 60 days, San Francisco County has had over 1,000 cases pending for more than six months. These are but a few of the numerous examples of state and county violations of existing law.

that in many cases clear violations of law were found to exist. For years, no legal representation was available to the poor, no counter-pressures were operative to insure that individual rights were not sacrificed for the sake of economy and ease of administration. For years, no attorneys or organized groups of recipients were available to hold the administrators of one of the state's largest bureaucracies accountable for their actions.

Perhaps the best summary of the legal developments in the welfare field in California was given by the former State Welfare Director in his final press statement:

> Almost simultaneously, it seemed, with my appointment as Director by Governor Reagan there began a series of court actions both state and national to challenge public welfare rules and regulations.
>
> . . .
>
> Here in California we have been challenged on dozens of issues, all of them coming back to the fact that for the first time, the poor have real and effective advocacy in our courts. This, again, is the significant point transcending all other considerations and consequences. An era of advocacy has begun out of which, I am sure, public assistance is never going to be the same.
>
> Not only is this happening through the courts, but also in the meetings and hearings of welfare boards, advisory commissions and administrators at every government level. The poor have come out of their apathy, and our accountability for what we do and why we do it is theirs to know—as it always has been under the law but never before so vocally sought.[19]

Notwithstanding recent decisions, whether the courts can serve as an effective means to redress the grievances of the poor dependent upon public assistance is still an open question.

19. Calif. Welfare Director's Newsletter, Special Issue (Vol. V, No. 6) p. 3–4 (Nov.-Dec. 1969).

So, too, is the more fundamental question of whether our society is ready and willing to support the poor adequately and with dignity. Only one thing is certain—the era of advocacy by, and on behalf of, the poor will definitely continue.