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From Public Charity to Social Justice: The Role of the Court in California's General Relief Program

Kerry R. Bensinger

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"A fella got to eat," he began; and then,
belligerently, "A fella got a right to eat."
"What fella?" Ma asked.[1]

I. INTRODUCTION

In January of 1964, President Lyndon B. Johnson declared an "unconditional war on poverty."[2] President Johnson asked Congress to enact a thirteen point program designed to eliminate the "domestic enemy which threaten[ed] the strength of our Nation and the welfare of our people."[3] Sargent Shriver, Director of the Office of Economic Opportunity,[4] indicated that by 1985, the federal government would have waged and won the war against poverty.[5]

However, in 1984,[6] the national poverty rate was at its third highest level since 1965, the year after the government began its fight.[7] According to the Census Bureau Report, 14.4% of the nation lived below the poverty line.[8] Roughly thirty-four million Americans were described as

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1. J. STEINBECK, THE GRAPES OF WRATH 414 (1939).

2. W. TRATTNER, FROM POOR LAW TO WELFARE STATE 301 (3d ed. 1984).

3. *Id.*

4. *Id.*

5. *See* Roderick, *Seattle Women Get New Start — Then it Ended; Case History of a 20-Year War on Poverty*, L.A. Times, July 31, 1985, at 21, col. 2.

6. The statistics for 1984 were the most recent available at the time this Article was written.

7. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACTS OF THE UNITED STATES, CHART NO. 766, at 457 (1986).

8. *Id.* The United States Department of Commerce, Bureau of the Census, defines various levels of poverty as follows: an individual earning less than $5,400 per year falls below the poverty line; a couple that earns less than $6,983 is considered to be below the poverty level; and a family of four is considered to be below the poverty line if its gross income is less than $10,609 per year. *Id.* at 430.

being impoverished.[9] One out of every seven Americans was poor.[10] Eighteen years after President Johnson declared his war on poverty, President Reagan, in his 1982 State of the Union Address, sounded the retreat.[11] Under President Reagan's new federalism plan, states will assume the problems and responsibilities of caring for the poor.[12]

In light of the federal government's withdrawal,[13] how each state chooses to care for its poor has become increasingly important.[14] In California, every county resident who has no income, no savings or resources and receives no financial support from family or friends has the statutory right to general relief. How this right is defined affects the lives of almost 67,000 Californians.[15]

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9. *Id.* at 457, Chart No. 766.

10. *Id.* at 26.

11. Support for Reagan's decision to retreat can be found in C. MURRAY, LOSING GROUND: AMERICAN SOCIAL POLICY 1950 - 1980 (1984). *But see* Mattison, *Stop Making Sense: Charles Murray and the Reagan Perspective on Social Welfare Policy and the Poor*, 4 YALE L. & POL'Y REV. 90 (1985).

12. Under Reagan's new federalism plan, by 1987 the states would have to assume the entire cost for 43 social programs including Aid to Families with Dependent Children (AFDC) and food stamps. Under the plan, state and local governments would have the option to reduce or abandon any or all of the programs. W. TRATTNER, *supra* note 2, at 333; *see also*, F. PIVEN & R. CLOWARD, THE NEW CLASS WAR 125-34 (1982). Although much of Reagan's new federalism plan was not adopted by Congress, by 1985 between 400,000-500,000 families were cut from AFDC and an additional 300,000 families had their checks reduced. Meyer & Bearak, *Poverty: Toll Grows Amid Aid Cutbacks*, L.A. Times, July 28, 1985, at 7, col. 3.

13. The House of Representatives, reacting to both the federal government's retreat and the increasing numbers of homeless people, passed a $725,000,000 aid package for the nation's homeless. Mills, *Cost Complaints Fail to Stop $725-Million Package; House Approves More Aid to Homeless*, L.A. Times, Mar. 6, 1987, § I, at 17, col. 1. Congressman Foley, t he Democratic Majority Leader from Washington, stated "[n]obody in this country should have to go without food and shelter. This bill recognizes that priority." *Id.* The White House reacted by saying that the measure was "costly and duplicative." *Id.* Claiming that the federal government has spent $260,000,000 in fiscal 1987, the White House stated that "the rest of the burden should be carried by the state and local governments." *Id.*

14. Every state and the District of Columbia has a general assistance program. General assistance programs, whether they are called general relief, emergency relief, home relief, or county relief, all have one thing in common—they are the benefit programs of last resort. They are the largest non-federal welfare programs in the United States. They provide financial assistance to those persons who are ineligible for federal/state categorical assistance programs such as AFDC or Social Security Insurance (SSI).

The structure of the state programs, however, differs. Nineteen states and the District of Columbia administer their programs directly. Nine states supervise county administered programs which are state-county funded. Twenty-two states, including California, have locally administered programs with little or no state supervision. HEW, SSA/Office of Family Assistance, Characteristics of General Assistance in the United States, HEW Pub. No. (SSA) 78-21239 (1978).

15. The latest available statistics show that in the 58 California counties, a total of 66,844 people received general relief in 1985. DATA PROCESSING & STATISTICAL SERVS. BUREAU, STATE OF CALIFORNIA, HEALTH & WELFARE AGENCY DEP'T OF SOCIAL SERVS., PA3-315,

This Article will examine the court's role in determining the scope and quality of the right to general relief. The first part of the Article will discuss the statutory framework, purpose and structural flaws of California's general relief program. Part II will examine how the courts' different roles have affected the substantive quality of the right to general relief. Finally, in Part III, the Article argues that the courts should assume an active role in reviewing county welfare regulations to ensure they adequately relieve and support the poor.

II. THE STATUTORY RIGHT

Under the United States Constitution, no one has the fundamental right to welfare.[16] No one has the constitutional right to food, shelter or clothing.[17] The Supreme Court has stated:

> [T]he intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. . . . the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients.[18]

Welfare assistance programs, however, are the business of the California courts. While no right to relief from poverty exists under the United States' Constitution, every county in California has a statutory duty to relieve and support its poor.[19]

Since 1855 there has been some form of county general assistance in California.[20] But not until 1937 did the California legislature create the Welfare and Institutions Code.[21] In 1965, the legislature adopted the

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PUBLIC WELFARE IN CALIFORNIA, TABLE 9 (Dec. 1985) [hereinafter PUBLIC WELFARE IN CALIFORNIA].

The characteristics of people on skid row today differ from those of the past. For example, in Los Angeles, a study conducted by the Community Redevelopment Agency showed that over half of the residents on skid row finished high school. Clifford & McMillan, *Homeless Tally Overstated for L.A., Study Says*, L.A. Times, Feb. 8, 1987, § I, at 30, col. 1. Almost 20% attended college. *Id.* Persons on skid row are younger than their predecessors, and a greater number of women inhabit the streets than ever before. *Id.* These statistics indicate that a new strata of society is living on skid row. The right to general relief, therefore, if it is to mean anything at all, must correlate to the needs of persons presently on skid row rather than to the needs of persons who lived on skid row 20 years ago.

16. Dandridge v. Williams, 397 U.S. 471 (1970).

17. *Id.*

18. *Id.* at 487.

19. CAL. WELF. & INST. CODE §§ 17000-17009 (West 1980).

20. Mooney v. Pickett, 4 Cal. 3d 669, 677, 483 P.2d 1231, 1236, 94 Cal. Rptr. 279, 284 (1971).

21. *Id.* at 677-78, 483 P.2d at 1236, 94 Cal. Rptr. at 284.

present general relief statutes.[22] Welfare and Institutions Code sections 17000-17009 describe the functioning structure of the program.[23] Section 17000 provides:

> 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.[24]

Under section 17000, a county has no discretion whether to relieve and support its poor. Section 17000 mandates that each county aid its incompetent, poor and indigent.

Two depression era cases support this construction of section 17000.[25] In 1932, "due to world-wide economic conditions," an estimated 40,000 to 60,000 families needed assistance in the City and County of San Francisco.[26] The board of supervisors, lacking sufficient revenue to support so many people, placed a bond issue on the ballot in an effort to raise the needed revenue.[27] The registrar of voters refused to place the bond issue on the ballot, claiming that the board lacked the authority to issue that type of a bond.[28] The California Supreme Court in *City of San Francisco v. Collins*, interpreting the Pauper Act of 1931, which is virtually identical to the 1965 draft of California's general relief statutes, held that the city and county had a mandatory duty to relieve its poor, and thus had the authority to place the bond issue on the ballot.[29]

Five years later, in *County of Los Angeles v. Payne*,[30] the Board of Supervisors of the County of Los Angeles declared that "a grave public emergency existed" in Los Angeles when approximately 75,000 persons were destitute and indigent.[31] The board of supervisors, having already expended all the funds previously budgeted for poor relief, appropriated an additional $1,000,000 for "the purpose of furnishing direct relief to the poor, destitute, indigent and infirm persons of the County . . . ."[32]

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22. CAL. WELF. & INST. CODE §§ 17000-17009.
23. *Id.*
24. CAL. WELF. & INST. CODE § 17000 (West 1980).
25. County of Los Angeles v. Payne, 8 Cal. 2d 563, 66 P.2d 658 (1937); City of San Francisco v. Collins, 216 Cal. 187, 13 P.2d 912 (1932).
26. *Collins*, 216 Cal. at 189, 13 P.2d at 913.
27. *Id.*
28. *Id.*
29. *Id.* at 190, 13 P.2d at 913.
30. 8 Cal. 2d 563, 66 P.2d 658.
31. *Id.* at 566-67, 66 P.2d at 659-60.
32. *Id.* at 566, 66 P.2d at 660.

The auditor and treasurer of the county, however, refused to approve the requisition of funds, claiming that, among other things, "the cost and expense of furnishing such relief to indigent persons . . . is not a 'mandatory expenditure required by law' . . . ."[33] The California Supreme Court, relying on *City of San Francisco v. Collins*,[34] flatly rejected the treasurer and auditor's claim. The court reasoned that "the expenditures provided in said resolution are mandatory expenditures required by law . . . ."[35]

In neither case, however, did the court inquire if the amount of money to be raised was sufficient to actually provide relief and support to the poor. This determination and the appropriate manner of implementation were left to the discretion of the counties.[36]

Deference to the counties' discretion in administering their programs is supported by the statutory framework of county assistance. Welfare and Institutions Code section 17001 provides: "The board of supervisors of each county, or the agency authorized by county charter, shall adopt standards of aid and care for the indigent and dependent poor of the county or city and county."[37] The statute does not indicate what form or content those standards should take. Rather, the statute leaves to the discretion of the counties the kind and amount of aid they should allocate.

The 1965 legislature also allowed each county to decide whether to establish almshouses and county farms to care for the poor.[38] Welfare and Institutions Code section 17200 provides that "[w]ork may be required of an indigent . . . as a condition of relief."[39] Such programs are commonly referred to as workfare projects.

That every county must provide general relief and that each county has the discretion to administer its own programs is to recognize only the mechanical framework of the statutory program. The codes also require that the counties administer their programs humanely, with the purpose of engendering self-reliance and self-respect.[40] For example, California Welfare and Institutions Code section 10000 expresses the statutory purpose and legislative intent of division nine (sections 10000-18971) which

33. *Id.* at 568, 66 P.2d at 661.
34. 216 Cal. 187, 13 P.2d 912.
35. *Payne*, 8 Cal. 2d at 573, 66 P.2d at 663.
36. *Collins*, 216 Cal. at 190, 13 P.2d at 913; *Payne*, 8 Cal. 2d at 573, 66 P.2d at 664.
37. CAL. WELF. & INST. CODE § 17001.
38. *Id.* § 17002.
39. CAL. WELF. & INST. CODE § 17200 (West 1980 & Supp. 1987).
40. CAL. WELF. & INST. CODE § 10000 (West 1980).

contains the provisions governing the general relief program (sections 17000-17410). Section 10000 provides:

> The purpose of this division is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all the people of the state by providing appropriate aid and services to all of its needy and distressed. It is the legislative intent that aid shall be administered and services provided promptly and humanely . . . and that aid shall be so administered and services so provided . . . as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society.[41]

Section 17111 mandates that an applicant or recipient "be permitted to retain, without effect on his eligibility for aid or the amount of aid to which he is otherwise entitled, the tools of his trade necessary to continue or seek employment . . . in order to enable the applicant or recipient to become self-supporting."[42] Furthermore, the statutes indicate that workfare projects, if adopted by the counties, "shall be created for the purpose of keeping the indigent from idleness and assisting in his or her rehabilitation and the preservation of his or her self-respect."[43]

Two separate goals can be identified within the authorizing language of the general relief statutes. First, that each county relieve and support its poor in a humane and decent manner mindful of the desire to encourage self-respect and self-reliance. And, second, that a county, which requires workfare projects of its able-bodied, employable poor, provide them with an opportunity to revolve out of poverty and to become self-supporting members of society.

Implicit in these two goals is the acknowledgement of two classes of general relief recipients. The first is the unemployable, disabled poor. This class is comprised of the very young, the old, the disabled and mentally incompetent.[44] These persons, since feudal times in England, have been considered the deserving poor, worthy of society's care.[45] The second class of recipients is the able-bodied, but unemployed. These persons historically have been perceived as the "undeserving," the poor who are on the dole.[46] Since the great depression, however, the reality of the de-

41. *Id.*.

42. *Id.* § 17111.

43. CAL. WELF. & INST. CODE § 17200.

44. W. TRATTNER, *supra* note 2, at 8-10.

45. *Id.*

46. As Governor of California in 1967, Ronald Reagan said "[w]e are not going to perpetuate poverty by substituting a permanent dole for a paycheck." *Id.* at 307.

serving, able-bodied poor has been recognized.[47] This group is comprised of the poor, who through no fault of their own, are unable to find work or cannot maintain a job. The identifiable goals of the general relief statutes are to adequately care for the needs of both of these classes. The adoption of the general relief statutes is, therefore, a public recognition of the desire and the duty to care for the needs of those who cannot care for themselves. The statutes contemplate the evolution of public welfare from a privilege to a right, from a notion of public charity to dedication to social justice.[48]

The right to general relief should be interpreted to promote these purposes. Aid should be provided to the needy for their "protection, care and assistance."[49] Appropriate aid and care should be provided to the needy to encourage self-respect and self-reliance.

But what are appropriate standards of aid and care? What does it mean to "relieve and support" the poor, and who has the authority to make these decisions? According to the statutes, the board of supervisors of each county has the duty to adopt standards of aid and care.[50] Inherent in this duty is the authority to interpret and define the substantive quality (the assistance levels) and the scope (the eligibility standards) of the statutory right to general relief.

There is no legislative history, or record, however, to guide counties or courts in determining county obligations under or the substantive meaning of the general relief statutes. The statutes do not instruct the counties how to implement or administer their programs. Nor do the statutes indicate what the proper role of the court should be in reviewing general relief programs. The legislature's intent must be taken from the plain meaning of the statutes themselves.

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47. For example, Ms. Jill Halverson, director of the Downtown Women's Center, a Los Angeles residence for homeless women, has observed that the able-bodied unemployables:

> 'are the hardest group for the general public to care about because they appear to be able-bodied, and they do not seem maimed in the sense that they are not visibly mentally ill or hopelessly alcoholic.'
>
> . . . .
>
> 'But they are maimed . . . in that they are the laborers, farmhands and factory workers trained for a world that no longer exists, and they lack the know-how or the motivation for retraining.'

Clifford, *A Wide-Open Alternative For Homeless*, L.A. Times, Mar. 10, 1987, § II (Metro), at 1, col. 2-4. For further discussion of the economic causes and dilemmas of the able-bodied unemployed see Mattison, *supra* note 11, at 93.

48. *See* Robbins v. Superior Court, 38 Cal. 3d 199, 209, 695 P.2d 695, 701, 211 Cal. Rptr. 398, 404 (1985).

49. CAL. WELF. & INST. CODE § 10000.

50. CAL. WELF. & INST. CODE § 17001 (West 1980).

The statutes make it the counties' legal duty to adopt "standards of aid and care" which will "relieve and support" their poor. Does this statutory language require that the counties actually feed, clothe and house their poor in a style suitable to the middle class? Or can the counties provide so little care that aid becomes meaningless? An analysis of the plain meaning of the statutes manifests the legislature's intent that the counties adequately relieve and support the minimum subsistence needs of their poor.

The legislature intended the terms "relieve" and "support" to have meaning. Therefore, the legislature must have intended the counties to provide some assistance. The question, then, is how much and to whom. In the absence of legislative guidance, we must look to the common usage of the statutory terms employed to determine legislative intent.

Webster's Dictionary defines the terms "relieve" and "support" as follows: "[r]elieve: to free from a burden, evil, pain or distress: give ease, comfort, or consolation . . . to bring about the removal or alleviation of . . . ;[51] [s]upport: to uphold by aid, countenance or adherence: actively promote the interests or cause of . . . ."[52] Read in conjunction with the aspirational goals of section 10000, usage of these terms indicates that the counties' duty to aid the poor requires them to adequately aid and care for the poor. To relieve the poor from their distress, homelessness, and hunger requires that the counties provide adequate care. To provide less than adequate care would result in continued suffering, homelessness and distress. If a county had discretion to provide less than adequate care, the welfare statutes would be impotent.

Assuming the legislature intended the counties to provide adequate care for the poor, such care, would have to include enough aid to provide for minimum subsistence needs. The most basic needs of the poor have been recognized to include food, shelter, utilities, clothing, medical care, and transportation.[53] Providing care for these needs is the statutory minimum; it is the least that a county must do to fulfill its legal obligation. A county may raise its general relief grant to provide more aid, but a county may not provide less care than necessary.

The counties, however, argue that because the legislature authorized them to administer their own general relief programs, the legislature implicitly allowed them to consider their needs over those of the poor. But it does not stand to reason that the legislature allocated such discretion

51. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1918 (1976).

52. *Id.* at 2297.

53. *See* Boehm v. Superior Court, 178 Cal. App. 3d 494, 503, 223 Cal. Rptr. 716, 722 (1986).

to the counties so the board of supervisors could circumvent the purposes of the statutes and provide less than adequate care. By delegating such authority to county boards of supervisors, the state legislators intended the counties to exercise their discretion consistently with the statutes' purpose.

Furthermore, the fact that the legislature chose a county run program instead of a state controlled program does not mean the legislature intended the counties to act independently of statutory purposes or the state's interests. Rather, the counties were to act as the agents of the state,[54] completing another link in the overall welfare safety net. The state legislators most likely believed the adoption of county run programs would be more effective and efficient than would state run bureaus. Theoretically, each county would be able to assess the needs of its poor better than a centralized bureau. Each county would therefore be better able to tailor its program to adequately meet the needs of its poor.

In addition, the 1965 legislature may have believed that with the birth of the Great Society and civil right's movement, a county board of supervisors would be more aware of the needs of the community's indigents, and thus, more responsive to the indigents' needs than a centralized bureau. Under any conceivable rationale, the state legislature left the statutory terms, "aid" and "care," "relieve" and "support," open-ended, so counties could effectively and efficiently meet the needs of its poor, rather than insulate themselves and avoid their statutory duties.

In reality, the lack of any guidelines and definitions has permitted each county to adopt its own interpretation of the statutes' meaning. This has led to many unintended consequences. Counties have interpreted the meaning of "relieve" and "support" in such a way as to obscure the goals of the general relief program. For example, because it is each county's duty to adopt standards of relief and support, counties have attempted to exclude from relief young persons who are employable but temporarily unemployed.[55] In addition, counties exercising their discretion to determine what is adequate care, have attempted to allocate $83 per month to the poor when all relevant indicators show that a minimum of $143 is necessary to provide for their most basic needs.[56] In such cases, counties contend that they are acting within their statutory authority to define the meaning of "relieve" and "support." However, the counties have been oblivious to the plain language of the statutes and the goals of the general relief program.

54. *See Mooney*, 4 Cal. 3d at 679, 483 P.2d at 1237, 94 Cal. Rptr. at 285.
55. *See id.* at 671, 483 P.2d at 1232, 94 Cal. Rptr. at 280.
56. *See City of San Francisco*, 57 Cal. App. 3d at 48-49, 128 Cal. Rptr. at 715-16.

The practical difficulties of a county run general relief program stem from the fact that a county board of supervisors' acts are not reviewed by any state agency, administrative body or committee. They are not accountable to any state office; they need only listen to their own constituents. As a result, each county sees itself as an autonomous entity, free to run its program as it chooses and free to ignore the mandatory duty the statutes impose. One example of this occurred in Del Norte County. By 1932 it was clear that the counties had a mandatory duty to support the poor. Yet, as of 1980, Del Norte County, had for all practical purposes no general relief program.[57] And "[u]ntil 1981, Placer County denied relief to employable persons who did not participate in a county work program. However, no county work program was in existence. Therefore, no employable person could qualify under the program requirements."[58]

County run general relief programs have the additional shortcoming of being susceptible to political pressures. The county board of supervisors are elected officials. Their determinations regarding county social services are thus constrained by budgetary concerns. Faced with limited budgets, supervisors must inevitably balance the needs of the poor against the needs of other persons and programs in the county.

The problem is that general relief recipients have no political influence. General relief recipients are the poorest of the poor; they are the homeless and helpless. They are the least likely of any in society to assert their rights because they are the least likely to know them. In addition, county supervisors perceive a portion of the general relief population as undeserving poor who are taking advantage of the system and not entitled to aid. A combination of these factors places the right to general relief at the bottom of supervisors' budgetary priorities. For example, the Los Angeles County Board of Supervisors failed to raise the general relief grant level during the five year period from 1981 to 1986.[59]

But the right to general relief for roughly 77,000 Californians is their only source of aid.[60] Without it, they would have no access to shelter and no source of food. They would be completely destitute. By placing the right to general relief in the hands of the board of supervisors,

57. *See* Comment, *General Assistance in California*, 12 SAN FERN. V.L. REV. 31, 35 (1984).

58. *Id.* at 32 n.5.

59. *See* Plaintiffs' Memorandum of Points and Authorities in Opposition to Motion for Summary Judgment and Motion for Summary Adjudication of Issues at 3, Blair v. Board of Supervisors (No. C568184) (L.A. Super. Ct. filed Jan. 9, 1987) (settled before trial) [hereinafter Blair Memorandum].

60. PUBLIC WELFARE IN CALIFORNIA, *supra* note 15, at table 9.

there is the risk that a minority, those who have the least, both financially and politically, will be homeless and hungry due to the political pressures for limited county funds.

As a result of each county's insularity and independence from each other, there are grave inadequacies in the general relief program. For example, there are 31,300-33,800 homeless people in Los Angeles County alone.[61] A frightening example of the reality of the program's inadequacies is that during the week of January 12, 1987, four persons died on the streets of Los Angeles from exposure and hypothermia.[62]

The most common problem faced throughout the state is inadequate benefit levels. Of the fifty-eight counties in California, five provide less than $50 a month.[63] Eight provide between $50-$100.[64] Thirty-two counties provide between $100-$200 a month.[65] Thirteen counties provide more than $200 a month.[66] When statistics demonstrate that housing is unavailable for less than $190 a month in Los Angeles County, providing monthly benefits of $228 cannot possibly meet the most basic needs of the poor.[67] In order for a person to stay off the streets, benefit levels must be sufficient to permit a person to afford housing as well as groceries, clothes, transportation, medical care and personal hygienics.

Inadequacies also exist in the procedural due process safeguards available to general relief applicants and recipients. In 1979, applicants and recipients became entitled to procedural due process before benefits could be denied or terminated.[68] In reality, the process is most often non-existent or at best minimal.[69] In Los Angeles County, out of the roughly 2,000 hearing notices sent out each month, less than 100 hearings are provided. This is in large part due to notices being sent to old or unused addresses. Because the applicant/recipient receives aid sufficient

61. OFFICE OF POLICY DEVELOPMENT & RESEARCH, U.S. DEP'T OF HOUSING & URBAN DEVELOPMENT, A REPORT TO THE SECRETARY ON THE HOMELESS AND EMERGENCY SHELTERS 14 (1984) [hereinafter REPORT TO THE SECRETARY].

62. Simon & Himmel, *L.A. Opens City Hall as Shelter for Homeless*, L.A. Times, Jan. 21, 1987, § I, at 16, col. 3. One died on the street outside a Chinese restaurant in Chinatown. It was 36 degrees that night. Another huddled for warmth in a car tire and froze during the night. A third died wrapped in blankets in the Hansen Dam Park. The fourth was found alone in a park. His body temperature had fallen below 60 degrees.

63. PUBLIC WELFARE IN CALIFORNIA, *supra* note 15, at table 7.

64. *Id.*

65. *Id.*

66. *Id.*

67. *See* Blair Memorandum, *supra* note 59 at 35.

68. *See* Griffeth v. Detrich, 603 F.2d 118, 119 (9th Cir. 1979).

69. It is beyond the scope of this Article to discuss the inadequacy of the procedural due process being afforded to general relief recipients. It is enough for the limited purposes of this Article to recognize that the inadequacy exists, and hope it will be reviewed and remedied.

to remain in an apartment only for a portion of the month, the applicant/recipient is forced to live on the street for the remainder of the month. Notices informing the applicant/recipient of his or her hearing date or benefit termination arrive at a location no longer being used. The hearing date passes, and the applicant/recipient's benefits are terminated/denied without review. This procedural due process flaw is exacerbated by Los Angeles County's fixed address requirement which denies applicants/recipients the ability to use homeless shelters as mailing addresses. The homeless person on the street never learns of his or her hearing, and the right to procedural due process remains an empty procedural protection.

Various other inadequacies and improprieties have been reported. They include the use of inaccessible resources in the eligibility computation to disqualify applicants;[70] the unavailibility of emergency housing for applicants and recipients;[71] residency requirements which effectively exclude the homeless from relief;[72] strenuous application procedures and administrative meeting requirements which preclude the mentally ill/homeless from receiving relief;[73] punitive workfare penalties which serve to exclude recipients from relief for extended periods of time.[74]

The only place to challenge the inadequacies of a county's general relief program is in the courts. How the court perceives its role in defining the statutory right to general relief impacts directly upon the lives of the most desperate and powerless in our society. If the court defers to the discretion of the county board of supervisors concerning the administration of general relief, then the substantive quality of the right to general relief may be narrowed. If the courts engage too far into the practice of defining the scope and quality of the right to relief, then the courts may overstep their authority and tread into areas left to the discretion of the county. The next section will examine the different roles the courts have played in California's general relief system.

III. STATUTORY CONSTRUCTION

Since early in the nation's history, the judiciary has been the final interpreter of the law. In *Marbury v. Madison*,[75] Chief Justice John Mar-

70. *See* Comment, *supra* note 57, at 37.

71. *Id.*

72. *Id.*; *but see* Nelson v. Board of Supervisors, 190 Cal. App. 3d 25, 235 Cal. Rptr. 305 (1987).

73. For a discussion of *Rensch v. County of Los Angeles*, see *infra* text accompanying notes 310-24.

74. For a discussion of the 60-day penalty see *infra* text and accompanying notes 329-34.

75. 5 U.S. (1 Cranch) 137 (1803).

shall proclaimed that "it is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule."[76] More recently the California Supreme Court stated:

> "While the construction of a statute by officials charged with its administration, including their interpretation of the authority invested in them to implement and carry out its provisions, is entitled to great weight, nevertheless 'Whatever the force of administrative construction . . . final responsibility for the interpretation of the law rests with the courts.' "[77]

Since 1932, the California courts have attempted to intepret and apply the law as found in various general relief statutes.[78] In the course of this jurisprudence, two distinct lines of cases have emerged. In the first line of cases, "the early cases," the California courts explicitly deferred to the county's judgment with respect to the administration of the general relief program.[79] The courts refused to challenge the county's various interpretations of the general relief statutes.[80] Courts read the statutes to provide the counties with virtually unlimited discretion.[81]

In the second line of cases, "the modern cases," the California courts announced that counties could exercise their discretion only within fixed boundaries.[82] Beginning in the early 1970's, the courts began to inquire whether the board of supervisors was exercising its discretion consistently with the overall purposes of the general relief statutes.[83] Where a county's regulation was inconsistent with the purposes of the welfare statutes, the courts reasoned that the board had exceded the boundaries of its discretion.[84] In stark contrast to their predecessors, the modern courts prohibited exclusionary rules that were not reasonably necessary to effectuate the purposes of the general relief statutes.[85] Modern courts, far from being deferential to a county's judgments, have re-

76. *Marbury*, 5 U.S. (1 Cranch) at 177.

77. Mooney v. Pickett, 4 Cal. 3d 669, 681, 483 P.2d 1231, 1239, 94 Cal. Rptr. 279, 287 (1971) (quoting Whitcomb Hotel v. California Employment Comm'n, 24 Cal. 2d 753, 757, 151 P.2d 233, 235 (1944)).

78. Comment, *supra* note 57, at 35.

79. *See, e.g.*, Patten v. County of San Diego, 106 Cal. App. 2d 467, 470, 235 P.2d 217, 219 (1951).

80. *See, e.g., id.*

81. *See, e.g., id.*

82. *See, e.g., Mooney*, 4 Cal. 3d at 679, 483 P.2d at 1237, 94 Cal. Rptr. at 285.

83. *See, e.g., id.*

84. *See, e.g.*, Robbins v. Superior Court, 38 Cal. 3d 199, 211, 695 P.2d 695, 702-03, 211 Cal. Rptr. 398, 405-06 (1985).

85. *See, e.g., Mooney*, 4 Cal. 3d at 679, 483 P.2d at 1237, 94 Cal. Rptr. at 285.

quired the county to demonstrate the adequacy of its assistance levels.[86] In this way, the modern courts have made it their business to interpret the meaning of the welfare statutes and to define the meaning of the right to general relief.

Reference to both lines of cases is still common in modern practice.[87] Counties seeking to defend their programs invariably refer to the early cases for the proposition that the county has discretion to run its general relief program.[88] Counties argue that it is not the courts' business to direct the counties how to conduct their general relief programs.[89] Plaintiffs challenging a county's regulations cite the modern cases for the proposition that a county cannot exercise its discretion in a manner inconsistent with the welfare statutes.[90]

An examination of these two lines of cases will demonstrate how the two different roles of the California courts have affected the scope and quality of the right to general relief. Understanding how the courts have approached general relief cases in the past will help to guide the reasoning of the courts in the future.

Because the administration of every county program has two parts, eligibility standards and assistance levels, the discussion of each line of cases is subdivided accordingly. Part one of each section shall discuss how the courts review county eligibility standards; part two will discuss county assistance levels. The combination of eligibility standards and assistance levels accounts for the overall administration of the general relief program. How a county interprets its duty to relieve and support the poor is reflected in its performance of these two functions. A county's eligibility standards describe the scope of the general relief program: who is considered needy and who is not; who deserves care and who does not. The county's assistance levels reveal the quality of the statutory right and reflect the county's commitment towards fulfilling the statutory goals of decent care, self-sufficiency, self-respect and the reintegration of indigents back into working society.[91]

86. *See, e.g.*, Boehm v. Superior Court, 178 Cal. App. 3d 494, 498-99, 223 Cal. Rptr. 716, 721-22 (1986) [hereinafter *Boehm II*].

87. *See, e.g.*, *Mooney*, 4 Cal. 3d at 680 n.13, 483 P.2d at 1238 n.13, 94 Cal. Rptr. at 286 n.13.

88. *See, e.g.*, *id.*

89. *See, e.g.*, Long v. City of San Francisco, 78 Cal. App. 3d 61, 67, 144 Cal. Rptr. 64, 68 (1978).

90. *See, e.g.*, Plaintiff's Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction at 25, Rensch v. County of Los Angeles (L.A. Super. Ct.) (No. C595155) (1986) [hereinafter Rensch Memorandum].

91. For example, in Los Angeles County, adults over 18 who are ineligible for AFDC, SSI/SSP or refugee assistance and have no income are eligible for general relief assistance. The

A. The Early Cases

In the early cases, courts were loath to interfere with the administration of the general relief program. Several characteristics are common to this line of court decisions. First, the courts believed that the general relief statutes specifically allocated the responsibility of administering the county's assistance programs to the board of supervisors of each county.[92] Second, without a showing that the board of supervisors acted arbitrarily, capriciously or unreasonably, courts lacked the authority to interfere in the board's administration of the general relief program.[93] Third, the courts refused to scrutinize the counties' justifications for establishing its eligibility and assistance standards.[94] As a result, the assumptions underlying the county regulations were never revealed nor subjected to judicial review. The courts uniformly upheld county regulations. From 1951 to 1971, this line of reasoning went unchallenged.

1. Eligibility standards

The first significant case to consider the legal duties of a county under the general relief statutes was *Patten v. County of San Diego*.[95] Mr. Patten was a general relief recipient in San Diego County.[96] He failed to report that he had received money from his sister while receiving county aid.[97] When this was discovered, his general relief was discontinued.[98] Mr. Patten then sought to be reinstated on general relief, but was denied.[99] Mr. Patten instituted mandate proceedings to compel the county to reinstate him on general relief.[100] The Department of Public Welfare in San Diego stipulated that at the time of trial Mr. Patten was indigent.[101] The court ordered that Mr. Patten be returned to the general relief rolls.[102] Two months after Mr. Patten was reinstated, he

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county assistance level, as of May 1987, was calculated as follows: $150 for housing, $86 for food and $11 for personal care and household upkeep. Blair Memorandum, *supra* note 59, at 3-4. Due to a settlement agreement reached in *Blair v. County of Los Angeles*, the assistance level increased by $33 in July of 1987 and will increase by $33 in July of 1988.

92. *See, e.g.*, Patten v. County of San Diego, 106 Cal. App. 2d 467, 470, 235 P.2d 217, 219 (1951).

93. *See, e.g., id.*

94. *See, e.g., id.*

95. 106 Cal. App. 2d 467, 235 P.2d 217.

96. *Id.* at 469, 218 P.2d at 218.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* at 469, 218 P.2d at 219.

102. *Id.*

filed for retroactive benefits covering the period of time during which he was indigent and the legal dispute took place.[103] The court of appeal held that Mr. Patten was not entitled to such relief because the trial court had not made findings as to the time span of his indigency, and there was no evidence showing that the department arbitrarily or capriciously denied Mr. Patten his relief.[104] The court stated:

> The administration of county general relief given pursuant to section 2500 of the Welfare and Institutions Code is vested in the county boards of supervisors. The Welfare and Institutions Code does not require that the county grant indigents any specific type of relief nor does it require the payment of any specific amount of money to indigents nor prescribe the time at which payments are to be made. These are matters within the discretion of the board of supervisors and the court has no authority to interfere with the administrative determinations of a board of supervisors with respect to the granting of county general relief in the absence of a clear showing of fraud or arbitrary or capricious conduct.[105]

Another early case involving eligibility standards was *Adkins v. Leach*.[106] As a prerequisite to relief in Monterey County, the county board of supervisors required each applicant to furnish a dwelling address.[107] Plaintiffs filed a class action suit claiming that Monterey's residency requirement violated the county's duty to relieve and support all indigent persons under Welfare and Institutions Code section 17000.[108] Plaintiffs demonstrated that in Monterey County landlords required tenants to pay rent in advance before taking possession.[109] Plaintiffs were all indigent and could not afford to make advance payments.[110] "Thus Adkins and his family were in a position of frustration where they could obtain no relief until they had a county residence, and they could acquire no county residence until they were furnished relief."[111] As a result, plaintiffs were forced to "live in the streets and [could not] obtain food."[112]

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103. *Id.*
104. *Id.*
105. *Id.* at 470, 235 P.2d at 219.
106. 17 Cal. App. 3d 771, 95 Cal. Rptr. 61 (1971).
107. *Id.* at 774, 778, 95 Cal. Rptr. at 62, 65.
108. *Id.* at 773-74, 95 Cal. Rptr. at 62.
109. *Id.* at 774, 95 Cal. Rptr. at 62.
110. *Id.*
111. *Id.*
112. *Id.* Plaintiffs also sought an order under section 17001 to require Monterey County's Board of Supervisors to adopt "standards under which aid is to be given to (or withheld from)

The court, relying on *Patten*,[113] held that the county's regulation was "neither arbitrary nor capricious conduct."[114] The court said that the residency requirement was reasonable because it might ensure that a recipient did not collect relief and "then pass on, perhaps to repeat his demand in another county."[115] The court therefore upheld the county's residency requirement as being within the county board of supervisors' discretion.[116]

The early courts held that absent capricious or arbitrary action, the counties had exclusive authority to decide the type and amount of relief and how frequently relief would be granted.[117] No inquiry was made to ensure county general relief programs were adequately meeting the needs of the poor.[118] The courts reasoned that although counties had a mandatory duty to relieve and support the poor, the counties had authority to determine the form and amount of relief.[119]

Exercising their discretion, counties failed to relieve and support their indigent poor, like Mr. Patten or the Adkins family. The court in *Adkins* recognized plaintiff's allegation that the Adkins family was forced to live on the streets without food.[120] But the court found that the county was justified in excluding the homeless poor from relief because it was reasonable for the county to protect itself from fraudulant claims.[121] The court accepted the county's argument that homeless persons may be more likely to "pass on" to other counties and collect relief than other general relief recipients.[122] The court accepted the county's justification

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the persons described in section 17000." *Id.* at 776-77, 95 Cal. Rptr. at 64. Six years after the codes had been put into law, the board of supervisors had failed to adopt such standards. The California legislature enacted sections 17000-17006 in 1965. CAL. WELF. & INST. CODE §§ 17000-17006 (West 1980). *Adkins* was decided in 1971. 17 Cal. App. 3d at 771, 95 Cal. Rptr. at 61. Plaintiffs challenged the standards being used by the Monterey Welfare Department as being in violation of the due process clause as they were not adopted by the board. *Id.* at 775, 95 Cal. Rptr. at 63. The California court of appeal held that the board of supervisors was required to promulgate standards of aid and care for the indigent. *Id.* The court instructed the board to adopt such standards. *Id.* at 776-77, 95 Cal. Rptr. at 64.

113. 106 Cal. App. 2d 467, 235 P.2d 217.

114. *Adkins*, 17 Cal. App. 3d at 779, 95 Cal. Rptr. at 66. It is important to note, however, that although this case was decided in the early 1970's, it was decided without the guidance of the supreme court's decision in Mooney v. Pickett, 4 Cal. 3d 669, 483 P.2d 1231, 94 Cal. Rptr. 279 (1971). This may explain the court's use of an analysis typical of the early cases.

115. *Adkins*, 17 Cal. App. 3d at 779, 95 Cal. Rptr. at 66.

116. *Id.*

117. *See supra* notes 92-191 and accompanying text.

118. *See supra* notes 92-191 and accompanying text.

119. *See supra* notes 92-191 and accompanying text.

120. *Adkins*, 17 Cal. App. 2d at 774, 95 Cal. Rptr. at 62.

121. *Id.* at 779, 95 Cal. Rptr. at 66.

122. *Id.*

without factual support, scrutiny or questioning.

Patten,[123] read together with *Adkins*,[124] may be cited for the proposition that a county board of supervisors has broad discretion to determine eligibility for relief. The county need not relieve and support all its indigents if it can justify exclusion. Moreover, the county is not required to present a valid justification for its exclusionary regulation; it need only present a justification. Thus, the early courts deferred to the judgments of the counties with little or no scrutiny.

2. Assistance levels

Several decisions regarding assistance levels were also made during the early line of cases. The first case was *County of Los Angeles v. Department of Social Welfare*.[125] There, eleven persons challenged Los Angeles County's practice of treating old age security or needy blind aid as family income for purposes of computing the amount of county relief to be paid to their indigent husbands or wives.[126] By counting categorical aid payments as family income,[127] the county proportionately decreased the indigent spouse's general relief payment.[128]

Plaintiffs argued that the county's practice in effect required the aged or blind recipient to use part of his/her aid for the support of his/her spouse.[129] The court held that "[t]he administration of county relief to indigents, as distinguished from old age security and needy blind assistance, is vested exclusively in the county supervisors who have discretion, without supervision by the state, to determine eligibility for, the type and amount of, and conditions to be attached to indigent relief."[130] The court ruled that the county could decrease the amount of aid to its indigent recipients without explaining the reason for the decrease.[131] The court held that the county had the exclusive authority to determine

123. 106 Cal. App. 2d 467, 235 P.2d 217.

124. 17 Cal. App. 3d 771, 95 Cal. Rptr. 61.

125. 41 Cal. 2d 455, 260 P.2d 41 (1953).

126. *Id.* at 456, 260 P.2d at 42.

127. Categorical aid payments, such as old age security or needy blind aid, however, are federal/state categorical programs and are not intended to be subject to the demands of the county. *Department of Social Welfare*, 41 Cal. 2d at 458, 459, 260 P.2d at 43. The money appropriated for the "maintenance and support of aged and blind persons must be used by the counties exclusively for such purpose." 41 Cal. 2d at 458-59, 260 P.2d at 43.

128. *Department of Social Welfare*, 41 Cal. 2d at 456, 260 P.2d at 42.

129. *Id.* at 457, 260 P.2d at 43.

130. *Id.* at 458, 260 P.2d at 43 (citing Patten v. County of San Diego, 106 Cal. App. 2d 467, 470, 235 P.2d 217, 219 (1951)).

131. *Id.*

the "necessity for and amount to be allowed as indigent relief . . . ."[132]

Twenty-one years later, a California court of appeal, in *Berkeley v. Alameda County Board of Supervisors*,[133] considered a challenge to Alameda County's housing grant. Alameda County regulation section 9-25.7 stated that "[u]nrelated recipients residing in a common household shall have their grant determined in the same manner as a family group."[134] The effect of this regulation was to reduce a general relief recipient's assistance level because the recipient was living with other persons. Plaintiffs argued that without a showing of reduced need on the part of each unrelated general assistance recipient, Alameda's regulation violated the recipient's due process, equal protection, and freedom of association rights.[135] Plaintiffs, for the first time, attempted to challenge a county's regulation on constitutional, rather than statutory grounds.[136] The court in turn rendered a constitutional rather than statutory analysis.[137]

The court rejected the plaintiffs' due process argument.[138] Plaintiffs argued that by reducing each unrelated recipient's assistance level for housing, the county had presumed these recipients were sharing rental expenses, and therefore had less "need."[139] If such a presumption had existed, the due process clause may well have been violated.[140] However, the court found that no such presumption existed.[141]

The court stated that the "[a]ppellant's attack really centers on the county's discretion to set the amounts which it will pay indigents."[142] Relying on *Adkins*,[143] the court held that the determination of assistance levels was solely within the province and duty of the board of supervi-

132. *Id.*

133. 40 Cal. App. 3d 961, 115 Cal. Rptr. 540 (1974). Although decided in the mid-1970's, the reasoning used in *Berkeley* tracks that of the early cases.

134. *Id.* at 967, 115 Cal. Rptr. at 544.

135. *Id.* at 968-75, 115 Cal. Rptr. at 544-49.

136. *Id.*

137. *Id.*

138. *Id.* at 965-71, 115 Cal. Rptr. at 542-46.

139. *Id.* at 968, 115 Cal. Rptr. at 544.

140. *Id.* at 969-70, 115 Cal. Rptr. at 545. The court acknowledged, however, that if the recipient was allowed a hearing to show that there was no decrease in the amount of money needed for shelter and utilities even though the size of the household increased, such a regulation would only raise a rebuttable presumption. The court cited *Owens v. Parham*, 350 F. Supp. 598 (N.D. Ga. 1972), for the proposition that a rebuttable presumption was constitutionally permissible if the recipient was granted the opportunity of a hearing. *Berkeley*, 40 Cal. App. 3d at 970, 115 Cal. Rptr. at 546.

141. *Id.* at 972, 115 Cal. Rptr. at 547.

142. *Id.* at 970, 115 Cal. Rptr. at 546.

143. 7 Cal. App. 3d 771, 95 Cal. Rptr. 61.

sors.[144] It followed, then, that the court could not interfere in the board of supervisors' decision unless there was a showing of fraudulent, arbitrary or capricious conduct.[145] The county had no obligation to determine grant levels according to an individual recipient's needs.[146]

The court also rejected the plaintiffs' equal protection challenge.[147] Plaintiffs argued that Alameda's regulation "discriminates against the class of recipients living with other recipients or non-recipients."[148] Plaintiffs asserted that such a classification "impinge[d] on constitutional guarantees and [was] subject to strict judicial review, and must be justified by compelling governmental interest."[149]

The court quickly attacked plaintiffs' assumption that either "fundamental interests" or "suspect classifications" were involved.[150] Relying on the United States Supreme Court's decision in *Dandridge v. Williams*,[151] the California court held that "in the area of economies and social welfare, a state does not violate the equal protection clause if the classification has some 'reasonable basis.' "[152]

The court found that Alameda County's regulation had a "reasonable basis" for decreasing assistance levels to recipients living in a group.[153] The county argued that there were "economies in group living."[154] The court stated that although this case dealt with the most basic economic needs of the impoverished, as long as "the classification has 'some reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' "[155] The court found the county had a " 'reasonable basis' for allowing increased sums for those recipients living alone than for those living in a group . . . [because] there are economies in group living."[156]

Lastly, the court rejected the plaintiffs' freedom of association chal-

144. *Berkeley*, 40 Cal. App. 3d at 970-71, 115 Cal. Rptr. at 546.

145. *Id.* at 971, 115 Cal. Rptr. at 546 (citing Adkins v. Leach, 17 Cal. App. 3d 771, 778-79, 95 Cal. Rptr. 61, 65. (1971)).

146. *Id.* at 968, 115 Cal. Rptr. at 544.

147. *Id.* at 971, 115 Cal. Rptr. at 546-47.

148. *Id.* at 971, 115 Cal. Rptr. at 546.

149. *Id.*

150. *Id.* at 971-72, 115 Cal. Rptr. at 546-47.

151. 397 U.S. 471 (1970).

152. *Berkeley*, 40 Cal. App. 3d at 972, 115 Cal. Rptr. at 547 (citing Dandridge v. Williams, 397 U.S. 471, 485 (1970)).

153. *Id.*

154. *Id.*

155. *Id.* (quoting Dandridge v. Williams, 397 U.S. at 471, 485 (1970)).

156. *Id.*

lenge.[157] Plaintiffs argued that the county's regulation forced them to choose between "moving into unshared housing or foregoing their proper general assistance grant."[158] The California court of appeal ruled that under a constitutional analysis, the county's action did not "attempt to regulate or prohibit speech, assembly, sexual expression or even association."[159] "The only stated purpose of [the county regulation] was an attempt to preserve county funds."[160] The court held that the plaintiffs' desire to live together did not implicate any of the constitutional values of speech, assembly or sexual expression.

These cases, *Department of Social Welfare*[161] and *Berkeley*,[162] read together, stand for the proposition that a county can set assistance levels independent of a person's needs. A county had no obligation to explain its decreased payments or to justify as adequate the particular amount of aid allocated.[163] In fact, the county only needed to show that there was some reasonable basis to believe that a person had less need.[164] No proof that a person actually had less need was necessary.[165] The early courts declined to scrutinize a county's justifications for enacting a regulation, and thus failed to ensure that its regulation furthered the purposes of the welfare statutes. Therefore, under the early line of cases, a county had no legal obligation to demonstrate that its relief payments adequately relieved and supported the poor.

In the early cases, the role of the court was to ensure that the board of supervisors acted, but not to ensure that the board of supervisors acted in a manner consistent with the purposes of the general relief statutes. Courts may have arrived at this standard of review as a result of their belief that the board of supervisors was more capable of gauging the needs of the poor. Deference to a county board of supervisors was also supported by the belief that "officials [were] presumed to act in accordance with the law."[166] The court's reluctance to interfere with and define the obligations of the board of supervisors under the statutes may have been a result of the court's lack of experience or knowledge in setting eligibility standards or assistance levels.

157. *Id.* at 973-74, 115 Cal. Rptr. at 547-48.
158. *Id.* at 973, 115 Cal. Rptr. at 547.
159. *Id.* at 974, 115 Cal. Rptr. at 548.
160. *Id.*
161. 41 Cal. 2d 455, 260 P.2d 41 (1953).
162. 40 Cal. App. 3d 961, 115 Cal. Rptr. 540 (1974).
163. *See Department of Social Welfare*, 41 Cal. 2d 455, 458, 260 P.2d 41, 43.
164. *Berkeley*, 40 Cal. App. 3d at 972, 115 Cal. Rptr. at 547.
165. *Id.* at 968, 115 Cal. Rptr. at 544.
166. *Patten*, 106 Cal. App. 2d at 470, 235 P.2d at 219.

The danger of the court's early position, however, was that it allowed the board of supervisors to administer its general relief program based upon statutorily impermissible assumptions regarding the poor and their right to welfare. Throughout the early cases, several assumptions regarding an indigent's right to welfare repeatedly surfaced. The first was the belief that certain poor were more deserving than others. Second, counties assumed it was permissible to weigh their own fiscal problems against the needs of the poor. Third, counties assumed that assistance comparisons between neighboring counties were permissible. In this way, counties reasoned that if their relief standards were above average, the poor from other counties would be drawn to their county. Relying on this "magnet theory," counties kept their rates lower than their neighbors' rates. Fourth, because the poor and indigent have little political influence, counties assumed they could treat the right to welfare as a privilege, to be expanded and contracted as politically expedient.

Many of these assumptions were wedded to historical perceptions regarding the poor. For example, the assumption that certain poor are more deserving than others can be traced to the Elizabethan Poor Law of 1601.[167] Vagabondage, begging and thievery were common in sixteenth century England.[168] The Henrican Poor Law of 1536, responding to these conditions and hoping to end poverty, made each county responsible for its poor.[169] Seen as a part of a new social order, the poor laws dealt harshly with those poor who were viewed as undeserving.[170] The undeserving poor were the able-bodied beggers.[171] Such persons were to be brought to the marketplace and "there to be tyed to the end of a carte naked and be beten with whyppes throughe out . . . tyll [their bodies] . . . be blody by reason of suche whypping."[172] Sixty-five years later, the Elizabethan Poor Law established three categories of dependent persons: the children, the unworthy poor (able-bodied but unemployed) and the worthy poor (the incapacitated or helpless).[173]

Remnants of the distinctions between worthy and unworthy poor can still be found in the regulations promulgated by certain California counties. For example, in *Mooney v. Pickett*,[174] the County of San Mateo's Regulation GA-08 denied non-emergency general assistance to em-

167. W. TRATTNER, *supra* note 2, at 11.
168. *Id.* at 7.
169. *Id.* at 8-9.
170. *Id.* at 8.
171. *Id.*
172. *Id.*
173. *Id.* at 11.
174. 4 Cal. 3d 669, 483 P.2d 1231, 94 Cal. Rptr. 279 (1971).

ployable single men.[175] At the time, thirteen other counties in California also had similar "single man rules."[176] Such rules, in effect, punished able-bodied males for not being employed without regard for the impossibility of obtaining employment in a depressed labor market.[177] The board of supervisors assumed that such men "should" or "could" be employed.[178] The counties attempted to justify their regulation and argued that single employable males were "theoretically" employable and therefore should not be entitled to relief.[179]

The *Mooney* court, in language indicative of the modern case approach, exposed the flaws of the county's assumptions. The court stated:

> To the man who cannot obtain employment his theoretical employability is a barren resource; it is inedible; it provides neither shelter nor any other necessity of life. Until he can get a job, he does not differ in economic resources from the man whose unemployment stems from more personal disabilities.[180]

The California Supreme Court, exerting its power as the final interpreter of the law, challenged and rejected San Mateo's assumption that disabled unemployable men were deserving while employable unemployed men were undeserving.[181]

A second assumption relied on by the counties was that their own financial difficulties justified narrow eligibility standards or subminimal assistance levels.[182] In *Mooney*, San Mateo County argued that "the county simply [could not] afford to extend General Assistance to employable persons . . . ."[183] In almost every case involving general relief, counties have made an economic argument in an attempt to justify their overly restrictive standards. The *Mooney* court's response is indicative of the modern case law approach:

> We are aware of the financial difficulties which attend present welfare programs on local, state, and national levels. This court, however, is not fitted to write a new welfare law for the State of California, and while the Legislature addresses itself to that task it remains our task to enforce the existing law.[184]

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175. *Id.* at 671, 483 P.2d at 1232, 94 Cal. Rptr. at 280.
176. *Id.* at 675 n.4, 483 P.2d at 1234 n.4, 94 Cal. Rptr. at 282 n.4.
177. *Id.* at 681, 483 P.2d at 1239, 94 Cal. Rptr. at 287.
178. *Id.*
179. *Id.* at 679-80, 483 P.2d at 1238, 94 Cal. Rptr. at 286.
180. *Id.* at 680, 483 P.2d at 1238, 94 Cal. Rptr. at 286.
181. *Id.* at 679-80, 483 P.2d at 1238, 94 Cal. Rptr. at 286.
182. *Id.* at 680, 483 P.2d at 1238, 94 Cal. Rptr. at 286.
183. *Id.*
184. *Id.*

Fifteen years later, a California court of appeal, responding to the same argument made by Merced County, said: "[t]his court is not unmindful of the fiscal restraint imposed by Proposition 13 and the consequent need for strict control of all county expenditures. However, budgetary constraints cannot justify excluding from minimum subsistence grants to the indigent allowance for each of the basic necessities of life . . . . "[185]

Third, counties assumed that because poor people have less political influence, counties could narrowly define the scope and quality of the right to general relief without suffering any political consequences. The fact that poor people have historically gained benefits only when their numbers swelled and their anger erupted tells of the political nature of the right to welfare. For example, during the 1960's with the rise of the civil rights movement, political pressure was exerted on both the federal and state governments to ease the hardships of life in the ghettos.[186] The riots in New York, Los Angeles, Detroit and Newark were testimonies of the political malcontent of the poor.[187] When the "invisible poor" became visible and organized, poverty became an issue to which politicians had to respond. But as poverty seemingly receeded in the 1970's, so too did the political dialogue. In Los Angeles, for example, the board of supervisors failed to raise the general assistance grant level for the five year period of 1981 to 1986.[188] This can be attributed in part to the board's impermissible assumption that because the poor lack political power, their right to welfare was a privilege. And therefore welfare funds could be reduced to increase the funds available for other more politically volatile causes.

Members on the board of supervisors and heads of city governments are also acutely aware of the dangers of becoming magnet cities for the poor. In a memorandum to the Board of Supervisors of Los Angeles County, Mr. Eddy Tanaka, Director of the Los Angeles County Department of Social Services, stated that if Los Angeles County were to eliminate its sixty day penalty it "may encourage migration of indigents into our County."[189] As one commentator has pointed out:

> When state and local officials determine the level of funding for care for the homeless without federal participation, their fear of becoming a magnet for the homeless predominates. Proponents of improved programs for the homeless must contend

185. *Boehm II*, 178 Cal. App. 3d 494, 503, 223 Cal. Rptr. 716, 722 (1986).

186. *See* W. TRATTNER, *supra* note 2, at 297.

187. *Id.* at 294.

188. *See* Blair Memorandum, *supra* note 59, at 3.

189. Memorandum from Eddy Tanaka to County Board of Supervisors (Sept. 5, 1986).

> with the insistence of opponents that a more comprehensive shelter program will produce a never-ending stream of homeless people and an ever-widening cycle of expenditures. For instance, the mayor of New York City rejected a proposal to develop permanent shelter facilities by claiming that homeless people would "flock here," thereby making New York a "landlord of last resort."[190]

The magnet theory provides supervisors with an incentive to decrease assistance levels to the lowest common denominator, equal to the levels of surrounding counties.

The statutory framework of county general relief programs allows the board of supervisors in each county to rely on these various assumptions in determining eligibility and assistance levels. There is no support for these assumptions, however, in the authorizing language of the statutes. Use of these assumptions by the board of supervisors not only undermines the intent of the statute, but also defeats the animating purposes of the general relief program. The deferential standard of review applied in the early cases furthered the counties' reliance on these assumptions. As long as the counties were able to pass judicial scrutiny by justifying their programs based upon these assumptions, general relief was treated more as a privilege than as a statutory right.

As the modern courts altered their standard of scrutiny, the role of the court changed from that of a passive reviewer to an active enforcer of the statutes. The decisions of the modern courts have, in effect, overruled the reasoning used in the earlier line of cases. Reliance on the early cases is still common, but as the next section will discuss, such reliance is at best precarious and unjustified.

B. Modern Cases

In the landmark case of *Mooney v. Pickett*,[191] the California Supreme Court announced that the board of supervisors in each county could exercise its discretion only within fixed boundaries.[192] Since that time, courts have struggled to determine the limits of those boundaries. It is clear, however, that where those boundaries end, in large part, determines the scope and quality of the right to welfare.

In the course of litigation since *Mooney*, courts have analyzed cases

190. Note, *Homelessness: Halting the Race to the Bottom*, 3 YALE L. & POL'Y REV. 520, 525 (1985) (discussing letter to the editor from Mayor Edward I. Koch as reported in N.Y. Times, June 23, 1984, at A22, col. 1).

191. 14 Cal. 3d 669, 483 P.2d 1231, 94 Cal. Rptr. 279 (1971).

192. *Id.* at 679, 483 P.2d at 1237, 94 Cal. Rptr. at 285.

with two primary concerns in mind. First, the courts have scrutinized whether the county's regulations were consistent with the overarching purposes and objectives of the state welfare statutes.[193] Second, the courts have inquired whether the county's assistance levels were based upon minimum subsistence studies conducted in each county.[194] Where a county's regulations failed to pass the court's scrutiny, the court invalidated the county's regulation stating that the county board of supervisors had either failed to meet its mandatory duty under Welfare and Institutions Code section 17000[195] or that the board had overreached its discretionary authority by adopting regulations which were inconsistent with the statutes.[196]

With these two concerns in mind, modern courts have consistently rejected four arguments made by counties. First, counties have tried to convince courts that because they can "determine eligibility for, the type and amount of, and conditions to be attached to indigent relief[,]"[197] they should be considered autonomous bodies for purposes of the general relief program.[198] Rejecting this position, modern courts have stated that counties act as the state's agents, and as such must act in conformity with and effectuate the purposes of the enabling statutes.[199] Second, courts have rejected the counties' long standing argument that their budgetary constraints may be considered in determining general relief standards.[200] Third, regulations attempting to include theoretical employment or hypothetical resources, such as parental support, have been condemned as contrary to the intent of the enabling statutes.[201] Fourth, courts have ruled that where a county makes an irrebuttable presumption that a certain class of people have no "need" for aid, such a regulation violates the

193. *See, e.g.*, Boehm v. County of Merced, 163 Cal. App. 3d 447, 451-52, 209 Cal. Rptr. 530, 532 (1985) [hereinafter *Boehm I*].

194. *See, e.g., id.* at 452, 209 Cal. Rptr. at 532-33.

195. *See, e.g.*, Bernhardt v. Board of Supervisors, 58 Cal. App. 3d 806, 810-11, 130 Cal. Rptr. 189, 192 (1976).

196. *See, e.g.*, Clay v. Tryk, 177 Cal. App. 3d 119, 124-27, 222 Cal. Rptr. 729, 731-33 (1986).

197. Mooney v. Pickett, 4 Cal. 3d 669, 678, 483 P.2d 1231, 1237, 94 Cal. Rptr. 279, 285 (1971) (quoting County of Los Angeles v. Department of Social Welfare, 41 Cal. 2d 455, 458, 260 P.2d 41, 43 (1953)).

198. *Id.*

199. *See* Robbins v. Superior Court, 38 Cal. 3d 199, 211-12, 695 P.2d 695, 702-03, 211 Cal. Rptr. 398, 405-06 (1985); *Mooney*, 4 Cal. 3d at 679, 483 P.2d at 1237, 94 Cal. Rptr. at 285.

200. *See Mooney*, 4 Cal. 3d at 680, 483 P.2d at 1238, 94 Cal. Rptr. at 286; *Boehm II*, 178 Cal. App. 3d 494, 503, 223 Cal. Rptr. 716, 722 (1986); *Bernhardt*, 58 Cal. App. 3d at 811, 130 Cal. Rptr. at 192-93; City of San Francisco v. Superior Court, 57 Cal. App. 3d 44, 47, 128 Cal. Rptr. 712, 714 (1976).

201. *Mooney*, 4 Cal. 3d at 679-80, 483 P.2d at 1238, 94 Cal. Rptr. at 286; *Bernhardt*, 58 Cal. App. 3d at 812, 130 Cal. Rptr. at 193.

intent of the statutes.[202] The modern courts have applied their reasoning to both eligibility standards and assistance levels.

1. Eligibility standards

Three modern cases can be cited for the proposition that a county's eligibility standards must comport with the overall goals of the general relief statutes and must be reasonably necessary to effectuate those goals.[203] In *Bernhardt v. Board of Supervisors*,[204] Alameda County adopted regulations permitting aid to young adults, persons eighteen, nineteen or twenty years of age, if they qualified under an "exceptional circumstances" standard.[205] The county reasoned that young adults could and should return to their parents so their parents could "fulfill their parental obligation."[206]

The California court of appeal, applying a statutory analysis, struck the county's regulation.[207] The court held that "section 17000 imposes upon respondent county a mandatory duty to support *all* indigent persons lawfully resident therein, and . . . that it cannot impose additional standards of eligibility which are neither established nor authorized by the Legislature."[208] The county argued that establishment of the regulation was directly within the county's statutory discretion.[209] However, the court read the statute otherwise and found that the county had acted beyond the scope of its discretion.[210] The county board of supervisors acted outside the "fixed boundaries" of its discretionary authority by adopting a regulation that was inconsistent with the purposes of section 17000.[211]

Nine years later, the California Supreme Court decided *Robbins v. Superior Court*.[212] In *Robbins*, twenty single, employable residents of

202. *Clay*, 177 Cal. App. 3d at 124, 222 Cal. Rptr. at 732.

203. *See Robbins*, 33 Cal. 3d 199, 695 P.2d 695, 211 Cal. Rptr. 398; *Mooney*, 4 Cal. 3d 669, 483 P.2d 1231, 94 Cal. Rptr. 279; *Bernhardt*, 58 Cal. App. 3d 806, 130 Cal. Rptr. 189.

204. 58 Cal. App. 3d 806, 130 Cal. Rptr. 189.

205. *Id.* at 808-09, 103 Cal. Rptr. at 190-91.

206. *Id.* at 812-13, 130 Cal. Rptr. at 193. ALAMEDA COUNTY, CAL., CODE art. 16, § 9-31.2 (1972).

207. *Bernhardt*, 58 Cal. App. 3d at 812-13, 130 Cal. Rptr. at 193.

208. *Id.* at 810, 130 Cal. Rptr. at 192 (emphasis in original).

209. *Id.*

210. *Id.* at 810-13, 130 Cal. Rptr. at 192-93.

211. *Id.* at 811-13, 130 Cal. Rptr. at 192-93. The court, quoting *Mooney*, stated that "the ordinance and regulations leave the needy but unexceptional 'young adult' without 'any source of relief whatsoever—a result inconsistent with the language and purpose of section 17000 and other statutes establishing General Assistance relief.' " *Id.* at 812, 130 Cal. Rptr. at 193 (quoting Mooney v. Pickett, 4 Cal. 3d 669, 681, 483 P.2d 1231, 1239, 94 Cal. Rptr. 279, 287 (1971)).

212. 38 Cal. 3d 199, 695 P.2d 695, 211 Cal. Rptr. 398.

Sacramento County challenged a regulation requiring eligible single and employable residents to accept "in-kind" benefits of food and shelter at a county run facility instead of a cash grant.[213] Applicants were therefore given the choice of living in the county shelter or foregoing aid altogether.[214]

Plaintiffs challenged the county's "in-kind" regulation on two grounds. First, plaintiffs argued that the regulation failed to comply with the purposes of general relief.[215] Second, plaintiffs argued that such a requirement violated their right to privacy under the California Constitution.[216] The court found both arguments persuasive.[217]

The court compared the county's regulation to the statutory purposes of Welfare and Institutions Code section 10000. Finding the county's regulation inconsistent with the statute, the court said that the county's regulation "does not 'humanely' promote 'self-reliance' or 'self-respect' when it compels its impoverished residents to give up their living quarters and control over their daily lives in exchange for residence in a rigidly regulated facility."[218] The court noted that the county's policy of giving the applicant the "option" to refuse to live at the county shelter could "scarcely be characterized as 'humane.' "[219] By exercising his/her option, an applicant would become self-reliant, but destitute and homeless. The court ruled that the policy violated the goals of the state's welfare laws.[220]

The county, in turn, argued that "county supervisors have sole discretion to determine who is eligible for indigent relief, the type and amount of relief to be received, and the conditions to be attached to such relief."[221] Familiar with this argument, the court acknowledged that each county has broad discretion, but reaffirmed that discretion could be

213. *Id.* at 203, 695 P.2d at 697, 211 Cal. Rptr. at 400.

214. The Bannon Street Emergency Shelter housed up to 67 men and women. *Id.* at 204, 695 P.2d at 697, 211 Cal. Rptr. at 400. The residents would sleep in dormitories with shared toilet facilities. *Id.* The dormitories were open, with no private rooms, alcoves or dividing walls. *Id.*

Residents were not allowed to enter the facility or the women's dormitory without staff permission. *Id.* Thirty minute meal periods were scheduled three times a day, and alcoholic beverages were prohibited. *Id.* Telephone use was limited to a payphone in the lobby. *Id.* A "bed check" was conducted each night at nine o'clock p.m., and each resident was required to be present. *Id.* No one was allowed to leave the facility after the bed check. *Id.*

215. *Id.* at 208, 695 P.2d at 700, 211 Cal. Rptr. at 403.

216. *Id.* at 212, 695 P.2d at 703, 211 Cal. Rptr. at 406.

217. *Id.* at 209, 213, 695 P.2d at 701, 704, 211 Cal. Rptr. at 404, 407.

218. *Id.* at 209, 695 P.2d at 701, 211 Cal. Rptr. at 404.

219. *Id.*

220. *Id.*

221. *Id.* at 211, 695 P.2d at 702, 211 Cal. Rptr. at 405.

exercised only within certain fixed boundaries.[222] Where the county is acting in the capacity of a state agency, its regulations "must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose."[223] Where a county's regulations fail to adhere to the purpose of the general relief program, the court must strike down the regulations for the simple reason that the county has stepped beyond its discretionary authority.

In several places, the supreme court emphatically stated that it is the proper role and duty of the court to ensure that a county's regulations comply with the statutory goals of the general relief program.[224] "[C]ourts must enforce the counties' duty to 'encourage self-reliance' in a 'humane' manner consistent with modern standards."[225] The supreme court also stated: "[w]e have no doubt that when statutes affecting the well-being—perhaps the very survival—of citizens of this state are being violated with impunity by the [county], an agent of the state, the courts, as final interpreters of the law, must intervene to enforce compliance."[226]

Finding that the courts have a duty to enforce welfare laws, the supreme court asserted that such laws should be liberally interpreted and actively enforced.[227] Such a method of interpretation is due in part, the court said, to the evolving nature of welfare laws. " 'The evolution of public welfare has been from public 'charity' towards social justice. Courts should facilitate such development by an enlightened and liberal interpretation of all welfare laws.' "[228]

Resolving its statutory analysis in favor of plaintiffs, the court next turned to the plaintiffs' privacy claims. The supreme court found merit in the plantiffs' argument that the county's regulations violated their right to privacy under the California Constitution.[229] The right to privacy was held to encompass the right to choose the people with whom one lives.[230] The court reasoned that an "acute loss of personal privacy

222. *Id.* The court at this point stated that there "are clear-cut limits" to a county's discretion. *Id.* Unfortunately those limits have failed to emerge as being clear-cut.

223. *Id.* at 211, 695 P.2d at 702, 211 Cal. Rptr. at 406.

224. *Id.* at 212, 695 P.2d at 703, 211 Cal. Rptr. at 406.

225. *Id.* at 210, 695 P.2d at 701, 211 Cal. Rptr. at 404-05.

226. *Id.* at 212, 695 P.2d at 703, 211 Cal. Rptr. at 406 (quoting City of San Francisco v. Superior Court, 57 Cal. App. 3d 44, 50, 128 Cal. Rptr. 712, 716 (1976)).

227. *Id.* at 208, 695 P.2d at 700-01, 211 Cal. Rptr. at 404.

228. *Id.* at 209, 695 P.2d at 701, 211 Cal. Rptr. at 404 (quoting County of Los Angeles v. Worker's Comp. Appeals Bd., 30 Cal. 3d 391, 401, 637 P.2d 681, 687, 179 Cal. Rptr. 214, 220 (1981)).

229. *Id.* at 213, 695 P.2d at 704, 211 Cal. Rptr. at 407.

230. *Id.* (citing City of Santa Barbara v. Adamson, 27 Cal. 3d 123, 130, 610 P.2d 436, 439, 164 Cal. Rptr. 539, 542 (1980)).

is inevitable where residents sleep in dormitories, eat in a cafeteria, use the same bathrooms, and live according to institutionally prescribed rules of conduct."[231] Finding the indigent's right to welfare was conditioned upon a waiver of their constitutional right to privacy, the court required that the government regulation be subjected to strict judicial scrutiny.[232] The county was unable to show that "there [were] no available alternative means that could maintain the integrity of the benefits program without severely restricting a constitutional right."[233]

The county made four arguments in an attempt to justify its regulation. These four arguments were: 1) persons who lived at the county shelter were better cared for by the county; 2) persons who stayed at the county shelter remained on general relief for shorter periods of time; 3) by requiring persons to live at the county shelter, there were fewer chances of general relief fraud; and 4) by requiring persons to live at the county shelter, the county saved money. The court rejected all four arguments as insufficient.[234] In response to one such argument, the court stated, "[t]he denial of the fundamental right to privacy for impoverished citizens is no less intolerable simply because they are poor."[235] The court's response was sharply aimed at the county's assumption that because these people were poor they had less "need" or "right" to privacy.[236]

In *Nelson v. Board of Supervisors*,[237] plaintiffs challenged San Diego County's regulation which terminated general relief payments to persons who were unable to obtain a "valid address" within sixty days of their initial application.[238] San Diego's "valid address" requirement was similar in theory and practice to that of Monterey County's "residency requirement" in *Adkins v. Leach*.[239] Plaintiffs argued that San Diego's "valid address" regulation effectively and impermissibly excluded homeless people from relief.[240] The court of appeal agreed with the plaintiffs,

231. *Id.*

232. *Id.* (quoting Bagley v. Washington Township Hosp. Dist., 65 Cal. 2d 499, 505, 421 P.2d 409, 414, 55 Cal. Rptr. 401, 406 (1966)).

233. *Id.*

234. *Id.* at 214-17, 695 P.2d at 704-07, 211 Cal. Rptr. at 408-10.

235. *Id.* at 215, 695 P.2d at 705, 211 Cal. Rptr. at 408.

236. *Id.*

237. 190 Cal. App. 3d 25, 235 Cal. Rptr. 305 (1987).

238. *Id.* at 27, 235 Cal. Rptr. at 306.

239. 17 Cal. App. 3d 771, 95 Cal. Rptr. 61 (1971).

240. *Nelson*, 190 Cal. App. 3d at 32, 235 Cal. Rptr. at 310. Plaintiff Nelson was a homeless resident of San Diego County. *Id.* at 28, 235 Cal. Rptr. at 307. She had lived in San Diego for 33 years. *Id.* She applied for general relief in 1985 and received aid for only 60 days because she could not provide a rent receipt. *Id.* Furthermore, because she could not locate housing within sixty days of her application for relief, her relief was terminated. *Id.*

and ordered the superior court to reverse its decision granting San Diego County's demurrer on the initial complaint.[241]

Reviewing the legality of the county's ordinance, the court set out a two part test. First, the court examined whether the county's regulation was consistent with the general relief statutes.[242] Second, the court inquired whether the regulation was reasonably necessary to effectuate the statutory purposes of general relief.[243] The court found San Diego's ordinance invalid under both prongs.[244]

The court examining the general relief statutes found no evidence that a valid address was a prerequisite to proving residency.[245] "[T]he statute does not exclude those indigent residents without addresses."[246] Reviewing prior case law, Government Code sections 243, 244 and Welfare and Institutions Code section 17101, the *Nelson* court found residency to be a function of a person's presence and intent to remain in the jurisdiction.[247] The court, therefore, ruled that the ordinance was "inconsistent with an [sic] in open conflict with section 17000's mandate to relieve [and] support lawfully resident indigent persons."[248]

The court also found that there was "nothing in [the] record to compel a finding . . . [that] the challenged regulations further[ed] any governmental interest necessary to effectuate the purposes of the general relief statutes."[249] The court rejected the county's argument that the "valid address" requirement was necesary to prevent fraudulent claims.[250] The court stated that preventing fraudulent claims was a legitimate county interest, but cautioned that "regulations may be invalid if they are more restrictive than necessary and extend not only to claimants suspected of fraud but also to nonsuspected claimants."[251] Nothing in the record established that "as a matter of law homeless general relief recipients [were] more likely than other general relief recipients to make fraudulent benefit claims."[252] As a result, the court ruled that the challenged regulations were not "necessary to prevent fraud."[253]

241. *Id.* at 35, 235 Cal. Rptr. at 312.
242. *Id.* at 29-31, 235 Cal. Rptr. at 308-09.
243. *Id.* at 31-32, 235 Cal. Rptr. at 309-10.
244. *Id.* at 29, 235 Cal. Rptr. at 307.
245. *Id.* at 31, 235 Cal. Rptr. at 309.
246. *Id.* at 30, 235 Cal. Rptr. at 309.
247. *Id.* at 30, 235 Cal. Rptr. at 308.
248. *Id.* at 31, 235 Cal. Rptr. at 309.
249. *Id.* at 31-32, 235 Cal. Rptr. at 309-10.
250. *Id.* at 31, 235 Cal. Rptr. at 309.
251. *Id.* at 32, 235 Cal. Rptr. at 309.
252. *Id.* at 32, 235 Cal. Rptr. at 310.
253. *Id.*

The court flatly rejected the county's attempts to justify its regulation on the grounds that housing was available in San Diego, and that the regulation was cost effective.[254] The court stated that nothing in the record indicated that finding housing was anything but "merely theoretical."[255] The court quoting *Bernhardt* said a "county-established exclusion, from eligibility for General Assistance relief, may not be justified by substantial public cost to be anticipated in its absence . . . ."[256] The court thus focused on and rejected two of the justifications counties had often relied upon in the early cases.

In a clear demonstration of the modern court's disapproval of the reasoning used in the early cases, the *Nelson* court refused to follow *Adkins'* precedent. The court stated that "whatever its validity in 1971, latter case law has undermined *Adkins*. *Adkins* is not binding on this court now."[257] The *Nelson* court attacked *Adkins'* failure to "analyze whether Monterey County's address requirement was in fact necessary to achieve its apparent purpose of assuring general [relief] applicants were 'truly' residents or to further any other legitimate governmental interest."[258] The *Nelson* court not only rejected the reasoning applied in *Adkins*, but also condemned the deferential treatment the early courts gave to the counties.[259]

As evidenced by these three cases, modern courts will subject a counties' exclusionary regulations to a substantial or strict level of scrutiny requiring that they prove their regulations to be necessary to effectuate the purposes of the general relief statutes. Modern courts have refused to defer to the judgments of the counties and continue to require them to substantiate their regulations. As a result of the stricter level of scrutiny applied by modern courts in general relief cases, reliance upon the reasoning used in the early cases is misplaced.

2. Assistance levels

The modern courts' reasoning has also completely altered the manner in which counties are permitted to set assistance levels. The actual assistance level which is paid each month to an indigent person has been and continues to be the subject of vehement dispute between counties and the courts. To a large extent how the courts interpret the meaning of the

254. *Id.*

255. *Id.* at 32, 235 Cal. Rptr. at 310.

256. *Id.* (quoting Bernhardt v. Board of Supervisors, 58 Cal. App. 3d 806, 811, 130 Cal. Rptr. 189, 192 (1976)).

257. *Id.* at 33, 235 Cal. Rptr. at 310.

258. *Id.* at 34, 235 Cal. Rptr. at 311.

259. *See id.*

terms "relieve" and "support" determines the amount of aid that must be paid, and thus the quality of life the poor and the indigent will lead.

The first of the modern cases to discuss assistance levels was *City of San Francisco v. Superior Court.*[260] In *City of San Francisco,* plaintiffs sought to compel the City and County of San Francisco to adopt standards of aid and care for its indigent and dependent poor.[261] Plaintiffs also argued that the benefits provided by the city and county were arbitrarily low and denied plaintiffs assistance levels sufficient to meet their minimum needs.[262]

In this case, San Francisco had a flat grant system of aid. Men received $83 per month, and women received $88.[263] The board did not employ any standard to arrive at these figures.[264] The Department of Social Services simply divided the amount that "the mayor and the board of supervisors had deigned to appropriate" among the recipients.[265] Plaintiffs presented evidence that for a person to survive in San Francisco, at a minimum subsistence level, $140 a month was necessary.[266]

The superior court directed the Social Services Commission to conduct public hearings to determine the facts necessary to establish standards of aid and care.[267] Their findings were to be submitted to the court, and the court would determine the ultimate standards of aid and care.[268]

Reviewing the superior court's order, the court of appeal began by conducting an analysis of the board of supervisors' statutory duty.[269] The court found that by not adopting standards upon which adequate assistance levels could be determined, the City and County of San Francisco failed to meet its duty under sections 17000 and 17001.[270] The court of appeal stated:

In the absence of any standards, we can only conclude that the

260. 57 Cal. App. 3d 44, 128 Cal. Rptr. 712.

261. *Id.* at 46, 128 Cal. Rptr. at 714. Even though Welfare and Institutions Code section 17001 imposed a mandatory duty upon the board to adopt standards, 11 years after its passage, the City and County of San Francisco had still failed to adopt any standards. *Id.*

262. *Id.*

263. *Id.* at 48, 128 Cal. Rptr. at 715. General assistance grants in the surrounding counties were: Marin - $195; Santa Clara - $148; San Mateo - $143; Alameda - $115; Contra Costa - $113. *Id.* The fact that San Francisco's grant was significantly lower than its neighboring counties is evidence of the "magnet theory."

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.* at 51, 128 Cal. Rptr. at 717.

268. *Id.* at 46, 128 Cal. Rptr. at 714.

269. *Id.* at 49, 128 Cal. Rptr. at 715-16.

270. *Id.* at 49, 128 Cal. Rptr. at 716.

> fixing of a level of aid so far below what is necessary to survive to persons who have no other means by which to live is arbitrary and capricious and not consistent with the objects and purposes of the law relating to public assistance programs set forth in section 10000.[271]

The court of appeal upheld the superior court's order instructing the Social Services Commission to determine the facts necessary to establish assistance levels.[272] The court of appeal agreed that the court could "review the appropriateness of the standards adopted by the Department of Social Services."[273] The court of appeal also agreed with the lower court that in order for the county to fulfill its legal duty to relieve and support the poor, it must provide a level of care sufficient to meet the minimum subsistence needs of the poor.[274]

The court of appeal, however, disagreed with the superior court's order in certain respects. The court of appeal stated that the lower court could not instruct the City and County of San Francisco to conduct public hearings.[275] In addition, the court of appeal further held that the superior court would be encroaching upon the county's territory if it attempted to determine the actual assistance level to be paid.[276] The court of appeal ruled that it was the proper role of the court to ensure that the grant level adequately met the minimum subsistence needs of the poor, but the court could not actually determine what the grant levels could be.[277] The court could review the methods used to arrive at the figures, but could not actually select the figures itself.[278]

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271. *Id.*

272. *Id.* at 50, 128 Cal. Rptr. at 716-17.

273. *Id.* at 51, 128 Cal. Rptr. at 717.

274. *Id.* at 50, 128 Cal. Rptr. at 716-17.

275. *Id.* at 50, 128 Cal. Rptr. at 717.

276. *Id.*

277. *Id.* at 50-51, 128 Cal. Rptr. at 716-17.

278. *Id.* at 51, 128 Cal. Rptr. at 717. In *Long v. City of San Francisco*, the case following *City of San Francisco*, the court went one step further. 78 Cal. App. 3d 61, 144 Cal. Rptr. 64 (1978). After reviewing the city and county's study, the court determined what the actual standards could not be. *Id.* at 71-72, 144 Cal. Rptr. at 70. In this case, the board of supervisors attempted to include the dollar value of food stamps in its monthly assistance levels. *Id.* at 64, 144 Cal. Rptr. at 66. If the county included food stamps in its benefit package, the amount of the package would have been $149 per month. *Id.* at 67, 144 Cal. Rptr. at 68. If food stamps were not allowed, the amount would decrease to $107 per month. *Id.* The court found that $107 per month was clearly unreasonable. *Id.* at 69, 144 Cal. Rptr. at 68. The court implicitly declared that $107 per month was insufficient to relieve and support the poor. *Id.*

Long was the first case to address whether welfare standards could be struck down solely on the ground of inadequacy. *Id.* at 68, 144 Cal. Rptr. at 68. The court, interpreting the legislative purpose behind the adoption of food stamps, concluded that the City and County of

Almost ten years later, in *Boehm v. County of Merced (Boehm I)*,[279] the court of appeal again considered the adequacy of a county's grant levels. In 1983, Merced County reduced its general assistance grant level from $198 per month, a level which had not been increased since 1981, to $175 per month.[280] The Merced County Board of Supervisors made such a reduction, however, without reviewing a factual survey delineating the minimum subsistence needs of Merced County's poor.[281] The board of supervisors simply delegated its responsibility to make the required determination and to recommend revised subsistence standards based upon this determination to the Department of Human Resources.[282] The department's written factual study of subsistence needs was never submitted to the board.[283] The only information before the board at the time it reduced benefits was a survey comparing the general assistance standards of other San Joaquin Valley counties to that of Merced County.[284]

The court held that by reducing assistance levels without having seen the Department of Human Resources' study, the board failed to meet its statutory duty.[285] The court reasoned that as there was nothing before the board to establish a basis for its factual determinations, the board's reduction of general assistance payments was arbitrary and capricious.[286] "The board could not have determined whether it was 'fat trimming' or a 'chiseling of the indigents' bones' without having presented to it a study of minimum subsistence needs of Merced County indigents."[287]

San Francisco improperly included the value of food stamps in their calculations for general relief grant levels. *Id.* at 72, 144 Cal. Rptr. at 70. The court then invalidated the county's ordinance which included the food stamp payments as part of the benefit package. *Id.* The court, having determined that the standards used to reach the figure of $107 per month were impermissible, ruled that the city and county had failed to meet the statutory mandate to relieve and support the poor. *Id.*

The court did not decide what the actual assistance level should be. Rather, the court decided what the assistance level could not be. The assistance level could not be based upon the impermissible inclusion of categorical food stamp benefits. *Id.* at 71, 144 Cal. Rptr. at 70. But within the text of the decision, the court also indicated that if the county tried to allocate an assistance level of $107 per month, the court would find that to be unreasonable and thus, impermissible. *Id.* at 68-69, 144 Cal. Rptr. at 68.

279. 163 Cal. App. 3d 447, 209 Cal. Rptr. 530.

280. *Id.* at 449, 209 Cal. Rptr. at 531.

281. *Id.* at 450, 209 Cal. Rptr. at 531.

282. *Id.*

283. *Id.* at 452, 209 Cal. Rptr. at 533.

284. *Id.* By considering the general relief payments of other counties, the board of supervisors undoubtedly tried to avoid being a magnet city.

285. *Id.* at 451-53, 209 Cal. Rptr. at 532-33.

286. *Id.* at 452-53, 209 Cal. Rptr. at 532-33.

287. *Id.* at 453, 209 Cal. Rptr. at 533.

Following the court's order in *Boehm I*, the county conducted two studies of the minimum subsistence needs of its indigents.[288] Each study, however, only concerned the minimum subsistence needs for housing (including utilities) and food.[289] Initially, the county set the assistance level at $175 per month,[290] which was the same amount as the 1983 reduction level.[291] After the second study was completed, the county raised the amount to $185.[292] The indigent residents of Merced County again filed suit against the board of supervisors claiming that because the county only conducted studies regarding food and housing, the county failed to relieve and support the minimum subsistence needs of the poor.[293] In *Boehm II*,[294] plaintiffs asserted that by only conducting studies of food and housing costs, the county had again acted arbitrarily and capriciously.[295]

> The court, ruling in favor of the plaintiffs, stated that the counties: *[M]ust* set [general assistance] standards of aid and care that provide benefits necessary for basic survival. In order to determine the level of [general assistance] to be paid, the County must conduct a study of what is necessary for minimum subsistence. Otherwise, we are left with a "standardless administration of general assistance [which] places the hungry and poor at the administrator's whim and does little to foster the belief, so important in a democratic society, that justice has been served . . . ."[296]

The court then defined the term "minimum subsistence."[297] The court stated that "minimum subsistence, at the very least, must include allocations for housing, food, utilities, clothing, transportation and medical care."[298] By setting the floor of "minimum subsistence," the court

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288. *Boehm II*, 178 Cal. App. 3d at 497, 223 Cal. Rptr. at 718.

289. *Id.*

290. *Id.*

291. *Id.*

292. *Id.* This level was still $13 less than the pre-July 1983 level.

293. *Id.* at 497-98, 223 Cal. Rptr. at 718.

294. 178 Cal. App. 3d 494, 223 Cal. Rptr. 716.

295. *Id.* at 497, 223 Cal. Rptr. at 717.

296. *Id.* at 501, 223 Cal. Rptr. at 720 (quoting Baker Chaput v. Cammett, 406 F. Supp. 1134, 1139 (D.N.H. 1976)) (citations omitted).

297. *Id.* at 501, 223 Cal. Rptr. at 720.

298. *Id.* The court derived its definition of minimum subsistence from various court decisions and several international treaties. *Id.* The court cited the Universal Declaration of Human Rights. *Id.* at 502, 223 Cal. Rptr. at 721. "Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood

prevented the board of supervisors from interpreting in their own way the meaning of minimum subsistence. The court held that including allowances for clothing, transportation, and medical care " 'are essential and necessary to 'encourage [self-respect and] self-reliance' . . . in a 'humane' manner consistent with modern standards.' "[299]

The *Boehm II* court ruled that because the county "[f]ixed the level of [general assistance] without considering all of the necessities of life," the county acted arbitrarily and capriciously.[300] The court of appeal ordered the trial court to issue an injunction preventing the county from reducing its general relief benefits below $198 and to award petitioners retroactive benefits, prejudgment interest, attorneys fees and costs.[301] The court further ordered the county to initiate and complete, without delay, a study of all the needs of its indigent residents and to provide appropriate levels of relief based on that study.[302] Again, the court did not actually determine what assistance levels would or should be;[303] rather, the court indicated that if a county's assistance level failed to consider an indigent's full needs, the county had failed to meet its mandatory duty.[304]

As a result of the modern courts' statutory interpretation that to relieve and support the poor means to alleviate the minimum subsistence needs of the poor, counties can no longer set their general relief grant levels without surveying the costs of living in their counties. In the course of these cases, the courts have reinterpreted the counties' discretionary authority. According to the California court of appeal, counties may no longer provide relief in the amount, type and frequency of their choice. Counties must now provide care which is adequate to relieve the minimum subsistence needs of the poor. Furthermore, counties must demonstrate to the court through minimum subsistence studies that their assistance levels are adequate. The failure to base their assistance grants on statistical studies renders a county grant level arbitrary and capricious.

Several modern appellate courts have recognized that since *Mooney*, the standard of review applied in the early cases has been modified sub-

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in circumstances beyond his control." *Id.* (quoting *Universal Declaration of Human Rights*, G.A. Res. 217A(111), U.N. Doc. A/810, art. 25(1) (1948)).

299. *Id.* at 502, 223 Cal. Rptr. at 722 (brackets in original) (citing Robbins v. Superior Court, 38 Cal. 3d 199, 210, 695 P.2d 695, 702, 211 Cal. Rptr. 398, 404 (1985)).

300. *Id.* at 503, 223 Cal. Rptr. at 722.

301. *Id.* at 504, 223 Cal. Rptr. at 722.

302. *Id.*

303. *Id.*

304. *Id.* at 499-500, 223 Cal. Rptr. at 719.

stantially.[305] A more accurate description of modern case law, however, would be that the modern line of reasoning has overruled that of the early cases. For example, the *Nelson* court explicitly stated that the analysis used in *Adkins v. Leach*[306] was improper and therefore declined to follow it.[307] Due to a series of modern court of appeal decisions, nothing is left of the early courts' trust in the counties' administrative or discretionary authority. Courts no longer accept at face value the arguments or justifications counties posit. Deference to the counties' judgments, once the yardstick of the early cases, has been replaced by a standard of factual scrutiny and circumspection.

Eligibility standards that at one time could exclude persons because of theoretical resources or hypothetical criminal practices are no longer permissible. Under the modern courts, all indigent persons are eligible for relief unless the county can show that its exclusionary regulation is reasonably necessary to effectuate the purposes of the welfare statutes. Modern case law suggests that the courts will subject county regulations to a substantial or strict level of scrutiny. Assistance levels which under the early cases could be set according to the counties' needs, must under the modern court be set according to the minimum subsistence needs of the poor.

In the course of fifty years, California courts have played two distinct roles in the general relief program. In the early cases, the courts played a passive role of deference and restraint. In the modern cases, the courts have played an active role concerned with the counties' proper implementation of the general relief statutes. As a result, the courts have narrowed the discretionary authority of the counties and set a floor to the meaning of general relief.

These two different roles have been manifested in two different versions of the right to general relief. During the early cases, the right to general relief was a privilege more than a right. The scope and quality of the right was left to the wide discretion of the counties. Counties could choose to provide almost no care, or exclude persons based on residency or employability. Modern courts, however, have fashioned this privilege into an enforceable right. The modern courts have provided substantive meaning to the terms "relieve" and "support." In so doing, the courts have enunciated the counties' minimum legal duties.

How the right to general relief will fare over the next fifty years will,

305. *See Nelson*, 190 Cal. App. 3d 25, 235 Cal. Rptr. 305; *Clay*, 177 Cal. App. 3d 119, 222 Cal. Rptr. 729.

306. 17 Cal. App. 3d 771, 95 Cal. Rptr. 61.

307. 190 Cal. App. 3d at 34, 235 Cal. Rptr. at 310.

in large part, depend upon whether the courts continue to play an active role, or return to a passive role in California's general relief system. The California Supreme Court has rarely considered general relief. Since 1972, the California Supreme Court has only addressed the issue twice.[308] In both cases, the court has taken great steps towards encouraging an active court. How the present supreme court will deal with questions of welfare policy and the general relief system is as yet unknown.[309] The next section will present an argument for the continued active role of the court.

IV. THE CONTINUING ROLE OF THE COURT

To argue that the courts should continue to play an active role in the California general relief system requires some definition. Use of the term "active" is not intended to mean that the court should attempt to establish eligibility standards or set assistance levels on its own. Instead, the term "active" suggests that the court should continue to scrutinize county regulations to ensure that they meet the overall purposes of the general relief statutes.

Under this theory, the role of an active court is limited. The courts should continue to require the counties to demonstrate that any exclusionary regulation is reasonably necessary to promote the purposes of the welfare statutes. Courts should also continue to actively review and scrutinize county assistance levels to ensure they are in fact adequate to meet the minimum subsistence needs of the poor. The greatest challenge facing future courts therefore will not be the creation of new standards of review or definitions. Rather, the most difficult task for the courts will be to familiarize themselves with the operations of the general relief systems in their counties to ensure the counties' claims are actually being carried out and are consistent with the purposes of the statutes.

Understanding what the role of an active court will be does not demonstrate, however, that an active court is preferable to a passive court. Which role is preferable depends upon one's reading of the authorizing statutes. If one reads the statutes to provide the board of supervisors with the discretion to establish general relief programs in

308. *See Robbins*, 38 Cal. 3d 199, 695 P.2d 695, 211 Cal. Rptr. 398; *Mooney*, 4 Cal. 3d 669, 483 P.2d 1231, 94 Cal. Rptr. 279.

309. In 1987, the composition of the California Supreme Court changed. With the addition of several conservative justices, the continued active role of the California courts in the general relief program is uncertain. More conservative justices, concerned about the social costs of greater general relief payments and the individual autonomy of the counties, may perceive the proper role of the courts as being more deferential to the counties' judgments and less active in its review.

response to the needs of the county, then a passive court, like that of the early cases, is preferable. If, however, one reads the statutes to require the county to provide adequate care to all of its poor, then an active court, which views the counties as agents of the state, is preferable. As argued in part I, the latter reading of the statutes is preferable.

Three situations which continue to trouble the California general relief system will help to demonstrate the role and responsibilities of an active court. First, in reviewing cases involving eligibility standards, future courts should scrutinize county regulations to ensure that they make relief available both in theory and in practice to all indigent persons.

In *Rensch v. County of Los Angeles*, plaintiffs were a class of mentally disabled indigent and homeless residents of Los Angeles.[310] Plaintiffs sought injunctive relief to correct Los Angeles' allegedly burdensome and exclusionary application process.[311] Plaintiffs argued that because the application process was arduous, they were effectively excluded from relief and forced to live on the streets.[312]

According to the pleadings, roughly ninety percent of the women and forty to sixty percent of the men on skid row are mentally disabled.[313] Studies indicate that over twenty-two percent of the mentally ill homeless on skid row experienced previous psychiatric hospitalization.[314]

The eligibility dilemma for the plaintiffs was not their theoretical eligibility, as they were all indigent and homeless, but was their practical ability to complete the application procedures in order to qualify for relief.[315] Plaintiffs argued that the application procedures presented both mental and physical obstacles.[316]

For example, Mr. Rensch was required to meet with over thirty different people in nine locations.[317] Mr. Rensch was not provided with sufficient money or tokens for transportation or for telephone calls.[318] Mr. Rensch is mentally retarded.[319]

The application form was over eighteen pages long.[320] The form

310. Rensch Memorandum, *supra* note 90, at 1.
311. *Id.*
312. *Id.*
313. *Id.* at 8.
314. *Id.* at 10.
315. *Id.* at 11.
316. *Id.* at 12.
317. *Id.*
318. *Id.*
319. *Id.* at 5.
320. *Id.* at 14.

had complex instructions and difficult questions.[321] The pleadings indicated that ten additional pages were often required after the initial forms were completed.[322] The forms were all written at the twelfth grade reading level.[323] The generally accepted average reading level for consumers and other public documents is at the sixth to seventh grade level.[324]

Mr. Robert Chaffee, Director of the Department of Social Services of Assistance Payments for the county, stated "[r]ight now, even a competent homeless person has a rough time getting through a welfare application process that was designed to be rough. It [was] designed, quite frankly, to be exclusionary."[325] As a result of these obstacles, general relief was but a theoretical possibility for the mentally ill homeless. The irony of *Rensch* is that the mentally ill homeless are the very persons the statutes were intended to aid.

Although the county settled out of court with the plaintiffs and agreed to simplify its application process, the procedures are still burdensome. A court reviewing such a case should apply the two part test set out in *Nelson v. Board of Supervisors*.[326] First, the court should inquire whether the application process is consistent with the goals of the welfare statutes.[327] Next, the court should scrutinize whether the application process is reasonably necessary to effectuate those goals.[328] Another way of framing the second inquiry is for the court to examine whether there are any less restrictive application procedures which would not unreasonably burden the county and would better serve the purposes of the welfare statutes.

Second, future courts reviewing eligibility standards should carefully scrutinize regulations to ensure they are not predicated upon impermissible assumptions. For example, in Los Angeles County, general relief applicants and recipients who are considered employable must perform certain initial and ongoing tasks to receive relief.[329] In addition, employable general relief applicants/recipients are required to participate

321. *Id.*
322. *Id.*
323. *Id.*
324. *Id.*
325. Speech by Robert Chaffee, Director of the Bureau of Assistance Payments, Department of Public Social Services (Oct. 9, 1984).
326. 190 Cal. App. 3d 25, 235 Cal. Rptr. 305 (1987).
327. *Id.* at 31, 235 Cal. Rptr. at 309.
328. *Id.*
329. These requirements are: applicants/recipients must apply for unemployment insurance benefits if it appears they are eligible; applicants/recipients must register for work with the California Employment Development Department; applicants/recipients must conduct a specified number of job searches each month.

in workfare projects. These persons are required to "work off" their assistance grants by working in various county departments.[330] Persons who fail to meet these requirements are suspended from general relief for sixty days.[331] This is commonly known as the "sixty day penalty."

Such a regulation imposing a sixty day penalty should be subjected to judicial scrutiny to ensure that it comports with the purposes of the general relief statutes. Excluding persons who are already indigent from relief for a period of sixty days is contrary to the express purposes of the general relief statutes.[332] Such a penalty ensures that an already needy person becomes destitute and homeless. Adoption of such a penalty is unsupported by the language or intent of the general relief statutes.

The sixty day penalty should be reviewed to ensure that it is reasonably necessary to effectuate the purposes of the welfare statutes. Courts should carefully scrutinize the county's justifications, especially in situations where a county's exclusionary regulation will deprive persons of all subsistence benefits. If the county's purpose is to ensure that persons

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330. On the average, employable persons work eight, eight hour, work days a month in order to "work off" the general relief grant. The expressed intention of the workfare program is to "[keep] the indigent from idleness and [assist] in his or her rehabilitation and the preservation of his or her self-respect." CAL. WELF. & INST. CODE § 17200 (West 1980 & Supp. 1987). In Los Angeles, the jobs that are commonly required of persons on workfare are to "clean county beaches, mop hallways in county buildings and tend furnaces at the county crematorium, which disposes of the earthly remains of the county's poor." Blasi, *If 'Decent Provision for the Poor' is the Test, We Flunk*, L.A. Times, Feb. 3, 1986, § II, at 5, col. 1.

Clearly the jobs chosen for persons in workfare in Los Angeles County are inconsistent with the purpose of the general relief statutes. Mr. Eddy Tanaka, Director of the Department of Social Services, in a letter dated September 5, 1986, stated that the employment requirements are "designed to help the [general relief] client obtain full-time employment by requiring him/her to apply for jobs, to gain work experience on the workfare project and/or to participate in job training." Letter from Eddy Tanaka to the Board of Supervisors (Sept. 5, 1986) (discussing the 60 day penalty). The workfare jobs presently in use in Los Angeles County do not seem to further Mr. Tanaka's goals nor do they provide indigents with the opportunity to reintegrate into society.

331. A 60 day penalty will be imposed when a person does one of the following without good cause: 1) is fired from or quits a job; 2) refuses or fails to accept a referral for a job or for job training; 3) refuses or fails to meet work project requirements; 4) refuses or fails to meet job search requirements; 5) refuses or fails to register or re-register with the E.D.D.; 6) is in a penalty period for failure to perform employment related requirements in another county.

332. Although it is beyond the scope of this Article, argument could be made that a denial of all assistance to indigent persons for 60 days violates the equal protection clause of the fourteenth amendment. The Supreme Court in two 1973 cases, United States Department of Agriculture v. Moreno, 413 U.S. 528 (1973) and United States Department of Agriculture v. Murry, 413 U.S. 508 (1973), struck down provisions of the Food Stamp Act which denied certain persons eligibility to the program. For a further discussion see Good, *Freedom From Want: The Failure of the United States Courts to Protect Subsistence Rights*, 6 HUM. RTS. Q. 335 (1984).

fulfill their employable tasks,[333] several less restrictive alternatives can be found. Suggestions have been made that for every failure to appear, an applicant's/recipient's check be reduced by a proportional dollar amount. If the person misses all of his or her work, then no general relief check would be issued, but no penalty period would be enforced. Or, for every violation of a workfare requirement, the recipient could be required to perform extra work. In addition, arguments have been made that a penalty period of one to seven days is as great an incentive to comply as a sixty day period. Imposing a longer time period than one to seven days becomes punitive and not one intended to increase workfare performance.

Courts should also be careful to examine the county's motive for imposing a sixty day penalty. If the county's purpose for excluding persons is to save county funds, then the penalty violates case law and is inconsistent with the purposes of the general relief statutes. The purpose for the sixty day period is clearly pecuniary. Mr. Eddy Tanaka, Director of the Los Angeles County Department of Social Services, has continually justified a sixty day penalty because any modification of the penalty would cost the county between $7,000,000 and $15,000,000 annually.[334] Such an underlying justification renders the sixty day penalty illegal.

Third, future courts will face challenges to the inadequacy of county assistance levels. Courts should begin their analysis by considering whether the board of supervisors has in fact conducted minimum subsistence surveys as required by *Boehm v. Superior Court*.[335] Next, the court should determine if the board of supervisors in fact has reviewed these studies before determining the appropriate assistance level. The difficult issue confronting future courts, however, will be determining the accuracy required for a legitimate survey.

For example, in *Blair v. Board of Supervisors*,[336] settled before trial, a group of indigent residents of Los Angeles County claimed that the county's housing costs survey was flawed because it failed to accurately reflect housing costs in Los Angeles County.[337] Plaintiffs argued that any assistance level could not be based on that survey.[338] Plaintiffs were prepared to present expert testimony and statistical data which demonstrated that the county's survey was inaccurate.[339]

333. *See* letter from Mr. Eddy Tanaka to the Board of Supervisors (Sept. 5, 1986).
334. *See id.*
335. 178 Cal. App. 3d 494, 223 Cal. Rptr. 716 (1986).
336. No. C568184 (L.A. Super. Ct.) (1987).
337. Blair Memorandum, *supra* note 59, at 2.
338. *Id.*
339. *Id.* at 1.

The county responded to the plaintiffs' contentions in two ways. First, the county alleged that its survey was accurate.[340] Second, the county argued that even if the county's survey was flawed and the housing portion of the general relief grant too low, the county alone had authority to decide which facts were pertinent to its general assistance grant level.[341]

Had this case gone to trial, the court should have recognized that an inaccurate study, for purposes of establishing minimum subsistence rights, is no study at all. If counties were permitted to base decisions on inaccurately low studies, then counties would fail to meet their duty of adequately caring for the poor.

The court should have also quickly dismissed the county's argument that the county had sole authority to determine assistance levels. It is settled law that the county cannot exercise its discretion to avoid its mandatory duty or to undermine the purposes of the welfare statutes.[342]

Future courts should be willing to hear arguments on the accuracy of county surveys. If the purpose of general relief is to provide for adequate aid and care, then the courts must be willing to scrutinize and analyze county data. Once plaintiffs have made a prima facie showing that a county's survey is inaccurate, the county should bear the burden of showing that its statistical analysis and methodology reasonably reflect the minimum subsistence needs of the poor. If the court finds the statistical dialogue too detailed, then the court should not hesitate to refer the case to a special master. Only through judicial scrutiny can the accuracy of assistance levels, and thus county compliance with its mandatory duty, be assured.

As these three examples demonstrate, an active judiciary can ensure that the counties comply with their mandatory duties. Passive courts would permit counties to circumvent the reach of the welfare statutes by accepting the counties' theoretical and unsupported claims. As long as the courts continue to play an active role in the California general relief system, the poor and the indigent will have an opportunity to vindicate their statutory rights.

V. CONCLUSION

In California, the scope and quality of the right to welfare largely depends on which branch of the government has the authority to con-

340. *Id.*

341. *Id.* at 2-3.

342. *See* Robbins v. Superior Court, 38 Cal. 3d 199, 695 P.2d 695, 211 Cal. Rptr. 398 (1985); Mooney v. Pickett, 4 Cal. 3d 669, 483 P.2d 1231, 94 Cal. Rptr. 279 (1971).

strue the authorizing statutes. Unless the state legislature is willing to enact a new statute, tension will remain between counties and courts. The counties will continue to argue that they alone have the authority to define the scope and quality of the right to general relief. In response, the courts, acting as the final interpreters of the law, will require the counties to comply with the goals and purposes of the general relief statutes.

At the heart of the general relief statutes is the desire for every Californian to be free from suffering, destitution and homelessness. In concert with this aspiration, courts should play an active role in the functioning of the general relief system. Courts should not hesitate to announce to the counties that in California a "fella" not only has the statutory right to food, but also to shelter, utilities, clothing, transportation and medical care. Courts should not hesitate to remind the counties that in California general assistance is predicated on the belief in social justice rather than in public charity. In California general relief is an enforceable right rather than a social privilege.